

City of Norcross

*65 Lawrenceville Street
Norcross, GA 30071*



Meeting Minutes

Monday, June 3, 2024

6:30 PM

Council Chambers

Mayor and Council

Mayor Craig Newton

Mayor Pro Tem Bruce Gaynor

Councilmember Andrew Hixson

Councilmember Josh Bare

Councilmember Matt Myers

Councilmember Marshall Cheek

- A. Call to Order by Mayor Craig Newton**
- B. Invocation**
- C. Pledge of Allegiance to the Flag of the United States of America**
- D. Roll Call (recorded)**

Attendee Name	Title	Status	Arrived
Craig Newton	Mayor	Present	
Bruce Gaynor	Mayor Pro Tem	Absent	
Andrew Hixson	Councilmember	Present	
Josh Bare	Councilmember	Present	
Matt Myers	Councilmember	Absent	
Marshall Cheek	Councilmember	Present	

Regular Meeting was called to order at 6:32 PM by Mayor Craig Newton

- E. Presentation of previous meeting minutes for acceptance**

- a. 24-7022: Approval of Previous Meeting Minutes**

Motion

A motion to Approve/Deny the May 6th Regular Council Meeting Minutes and the May 20th Policy Work Session and Executive Session.

- b. Mayor and Council - Regular Meeting - May 6, 2024 6:30 PM**

RESULT:	ACCEPTED [UNANIMOUS]
MOVER:	Marshall Cheek, Councilmember
SECONDER:	Josh Bare, Councilmember
AYES:	Andrew Hixson, Josh Bare, Marshall Cheek
ABSENT:	Bruce Gaynor, Matt Myers

- c. Policy Work Session - Policy Work Session - May 20, 2024 6:30 PM**

RESULT:	ACCEPTED [UNANIMOUS]
MOVER:	Marshall Cheek, Councilmember
SECONDER:	Josh Bare, Councilmember
AYES:	Andrew Hixson, Josh Bare, Marshall Cheek
ABSENT:	Bruce Gaynor, Matt Myers

- F. Set Agenda as Presented for Scheduled Meeting**

- 1. 24-7023: Acceptance of the Agenda & Approval of Consent Agenda**

Motion

A motion to Accept the Agenda & Approve the Consent Agenda:

24-7009: Sidewalk Safety - Bicycles

24-7026: 2014 SPLOST Change Order No. 2 Agreement

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Josh Bare, Councilmember
SECONDER:	Andrew Hixson, Councilmember
AYES:	Andrew Hixson, Josh Bare, Marshall Cheek
ABSENT:	Bruce Gaynor, Matt Myers

A motion to add the following item from the floor:

2014 SPLOST Change Order No. 2 Agreement

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Josh Bare, Councilmember
SECONDER:	Marshall Cheek, Councilmember
AYES:	Andrew Hixson, Josh Bare, Marshall Cheek
ABSENT:	Bruce Gaynor, Matt Myers

G. Ceremonial Presentations, Recognitions, and Swearing in Ceremonies

a. 24-7025: Target Industries Analysis Presentation

RESULT:	THIS MATTER WAS REFERRED TO
	Next: 6/17/2024 6:30 PM
TO:	Policy Work Session

H. Floor Open to Citizens Desiring to Address the Governing Authority

a. Comments by Citizens

Anne Hall, Norcross Gallery & Studios - comments about a \$2700 grant received from Explore Gwinnett for the 2024 Photography Contest

Carlene Brown - comments about parking issues at George Town Park, cars parked on both sides of the street

Bucky Johnson - comments about poor road conditions on Sunset Dr,

Pierre Levy - comments about protecting the historic charm of Norcross and expansion of the same

Lorraine Robinson - comments about the new streetlights across from the railroad tracks, thanked Mayor and Council, receipt of letter about fallen tree on the neighbor's fence, increase in crime on Kelly Street, request additional patrol

Penny Poole - comments about the change in the Juneteenth event

Jim Eyre - congratulated Mayor & Council on the selection of a CMR, comments about needed changes to the contract, comments about the unsure of the pergola structure and requested that the BCA be tabled for further review by the Boards.

Mary Dowdy - comments about filming letter and the impact on the downtown businesses

Lynne Ward - comments about the demo of historic homes, correct this with Code Enforcement

Jan McKenzie - comments about safety at Holcomb Bridge and Buford Hwy, and growing coyote population

b. Comments by Council

c. Comments by City Manager

A request to add the following item from the floor:

2014 SPLOST Change Order No. 2 Agreement

PH. Public Hearings

PH. 24-6992: RZ2024-003 717 S Peachtree St

Motion

A motion to Approve the rezoning from R100 (Single Family Residential) to OI (Office Institutional) at 717 S Peachtree St, The Jain Society of Greater Atlanta, with the following restated conditions:

1. To restrict the use of the property to the proposed use of expansion of religious facilities.
2. Exterior lighting shall be non-flashing and shall project toward the property and shielded to prevent light from projecting over property lines.
3. The site shall be developed in accordance with the general conformity to the site plan as presented to the Mayor and Council for final approval and to include the ornamental fencing after the ARB's review.
4. The site plan will address ingress and egress of traffic in conjunction with the traffic associated with the religious center development.
5. The applicant is reminded that this approval assumes general conformance with the adopted City of Norcross Architectural and Site Design Standards and Unified Development Ordinance (UDO). The applicant and/or builder are responsible for conforming with all design standards or UDO code sections not addressed in the staff report.

RESULT:	APPROVED WITH CONDITIONS [UNANIMOUS]
MOVER:	Josh Bare, Councilmember
SECONDER:	Andrew Hixson, Councilmember
AYES:	Andrew Hixson, Josh Bare, Marshall Cheek
ABSENT:	Bruce Gaynor, Matt Myers

J. Reports of the Mayor and Councilmembers

a. General Announcements

JUNE CALENDAR OF EVENTS

Summer Concert Series: American Flyers

Friday, June 7 | 7:30 - 9:30 p.m. | Thrasher Park

Movie Monday: Wonka

Monday, June 10 | 1:30 & 6:30 p.m. | Cultural Arts & Community Center

Coffee With Council

Saturday, June 15 | 8:00 a.m. | 45 South Cafe

Bluesberry Beer & Music Festival

Saturday, June 15 | 3:00 - 10:00 p.m. | Betty Mauldin Park

Policy Work Session

Monday, June 17 | 6:30 p.m. | City Hall, 2nd Floor Conference Room

Juneteenth Observance

Wednesday, June 19 | Sanitation & Recycling Will Operate as Normal

Juneteenth Celebration

Wednesday, June 19 | 10:00 - 10:50 a.m. | Cultural Arts & Community Center

Summer Concert Series: Still Swingin'

Friday, June 21 | 7:30 - 9:30 p.m. | Thrasher Park

Jazz In The Alley: Justin Ruff, Adrienne Woods & The Headliner Band

Saturday, June 22 | 7:30 - 9:30 p.m. | Betty Mauldin Park

Movie Monday: Arthur The King

Monday, June 24 | 1:30 & 6:30 p.m. | Cultural Arts & Community Center

K. Board Appointments

There are no Board, Commission, or Authority appointments/re-appointments for Mayor and Council to consider at this time.

L. Consent Agenda

RESULT:	ADOPTED ON CONSENT AGENDA [UNANIMOUS]
MOVER:	Josh Bare, Councilmember
SECONDER:	Andrew Hixson, Councilmember
AYES:	Andrew Hixson, Josh Bare, Marshall Cheek
ABSENT:	Bruce Gaynor, Matt Myers

1. 24-6999: Selection of Construction Manager at Risk (CMR) / General Contractor (CM/GC) for the City of Norcross Public Safety Building

This item was moved and approved under discussion.

2. 24-7000: Purchase of Solacom Unit for 3Rd Dispatch Call Taking Station

Motion

A motion to Approve the purchase of a new Solacom phone system from AT&T and a budget amendment that reflects both this unbudgeted purchase as well as the post-purchase reimbursement from Gwinnett County 911.

3. 24-6998: Modification of Lionheart Management Agreement to Facilitate Added Rental of Space in the Community Center

Motion

A motion Approve the modification of the Management Agreement between the City of Norcross and Lionheart Theatre Company, Inc. (LIONHEART) to accommodate a request for meeting space in a room on the ground floor of the Community Center at an additional cost to LIONHEART of \$250 per month.

4. 24-7001: Centro Norcross Mural Installation

Motion

A motion to Approve the painting of Mural Proposal 2 on the wall of Clean Wave Laundry located in the Centro Norcross Plaza at 5720 Buford Highway, with all associated costs to be financed by King Retail Group.

5. **24-7002: Award of Contract for Replacement of Pergola Structures**

Motion

A motion to Approve a contract between the City of Norcross and CGS, LLC. For replacement of pergola structures at Lillian Webb Park at a cost of \$38,329.21, to be funded by 2017 SPLOST.

6. **24-7003: Award of Contracts for On-Call Professional Engineering & Design Services**

Motion

A motion to Approve contracts for several firms to provide a number of on-call professional engineering & design services.

7. **24-7004: Pinnacle Park Dredging**

Motion

A motion to Approve an agreement to receive funds from Agellan Capital Management to remove sediment from the Pinnacle Park Pond, authorize and Invitation to Bid (ITB), and approve a budget amendment.

8. **24-7005: Boards, Commissions, and Authorities (BCA) Manual Updates**

Motion

A motion to Approve the proposed updates to the City of Norcross' Boards, Commissions, and Authorities (BCAs) Policies and Procedures Manual.

M. Items for Discussion

1. **24-7009: Sidewalk Safety - Bicycles**

Motion

A motion to Approve an Amendment to Article I of Chapter 34, "Entitled Traffic and Vehicles," of The City Code of Ordinances, by adding a new Sec. 34-7, and include the following enacting clause:

The Mayor and City Council of the City of Norcross, Georgia, hereby ordains that the adopted Code of Ordinances, is hereby amended as more particularly set forth below. It is the intention of the Mayor and City Council, and it is hereby ordained that the following provisions shall become and be made a part of the Code of the City of Norcross, and the Sections in the Code in the Ordinance be renumbered to accomplish that intention.

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Andrew Hixson, Councilmember
SECONDER:	Marshall Cheek, Councilmember
AYES:	Andrew Hixson, Josh Bare, Marshall Cheek
ABSENT:	Bruce Gaynor, Matt Myers

2. **24-7026: 2014 SPLOST Change Order No. 2 Agreement**

Motion

A motion to Approve Change Order No. 2, an Agreement to receive Gwinnett County 2014 SPLOST funding dedicated to resurfacing streets within the City of Norcross, authorize the release of an Invitation to Bid (ITB), and approve a budget amendment.

[Agenda Report - 2014 SPLOST Change Order No. 2 Agreement](#)

[2014 SPLOST Original Agreement with Change Order No. 1](#)

[2014 SPLOST Change Order No. 2 for Approval](#)

[Budget Amendment 2014 SPLOST Change Order No 2](#)

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Josh Bare, Councilmember
SECONDER:	Andrew Hixson, Councilmember
AYES:	Andrew Hixson, Josh Bare, Marshall Cheek
ABSENT:	Bruce Gaynor, Matt Myers

3. **24-6999: Selection of Construction Manager at Risk (CMR) / General Contractor (CM/GC) for the City of Norcross Public Safety Building**

Motion

A motion was made by Councilmember Bare, seconded by Councilmember Cheek to open the Consent agenda and move this item to discussion. The vote was unanimous

RESULT:	APPROVED WITH CONDITIONS [UNANIMOUS]
MOVER:	Josh Bare, Councilmember
SECONDER:	Marshall Cheek, Councilmember
AYES:	Andrew Hixson, Josh Bare, Marshall Cheek
ABSENT:	Bruce Gaynor, Matt Myers

Motion

A motion to Approve Reeves Young as the Construction Manager at Risk (CMR) / General Contractor (CM/GC) for the Public Safety Building project and the attached contract with Reeves Young for those services, subject to the five conditions stated into the record and final approval by the City Attorney.

[Agenda Report - Selection of Construction Manager at Risk \(CMR\) / General Contractor \(CM/GC\) for the City of Norcross Public Safety Building](#)

[A133-2019 - CMR Contract - Norcross Public Safety Building](#)

[A201-2017 - CMR Contract - Norcross Public Safety Building](#)

[Exhibit A Reeves Young Cost Proposal](#)

RESULT:	APPROVED WITH CONDITIONS [UNANIMOUS]
MOVER:	Marshall Cheek, Councilmember
SECONDER:	Josh Bare, Councilmember
AYES:	Andrew Hixson, Josh Bare, Marshall Cheek
ABSENT:	Bruce Gaynor, Matt Myers

N. **Adjourn in memory of**

O. **Adjourn to Executive Session for Personnel, Real Estate or Legal**

A motion was made by Councilmember Hixson, seconded by Councilmember Bare, vote was unanimous. The meeting closed at 8:26 PM.

Signed by _____ Mayor, Craig Newton

Attest _____ Monique Philip, City Clerk



Mayor: Craig Newton • **Mayor Pro Tem:** Bruce Gaynor • **Councilmember:** Andrew Hixson • **Councilmember:** Josh Bare
Councilmember: Matt Myers • **Councilmember:** Marshall Cheek • **City Manager:** Eric Johnson • **City Clerk:** Monique Philip

Agenda Report

To: Mayor and Council

From: Len Housley, Director, Public Works Department

Meeting Date: June 3, 2024 – Regular Council Meeting (RCM)

Item No.:

Title: 2014 SPLOST Change Order No. 2 Agreement

CC: Eric Johnson, City Manager

Recommendation

Approval of Change Order No. 2 Agreement to receive Gwinnett County 2014 SPLOST funding dedicate resurfacing streets within the City of Norcross and authorize Invitation to Bid (ITB) release.

Background:

-This Change Order amends the Original Agreement and change order 1 by adding a sub-project to resurface the streets located within the City of Norcross. Any remaining funds, net any and all further costs for the original subprojects as outlined in the Original Agreement, will be available for use in the resurfacing of streets located within the City of Norcross. The total funding of the City-Managed Project as listed in the Original Agreement and change order 1 will remain the same. 2014 SPLOST Funding from Gwinnett County will not exceed \$564,272.81 for repaving. This amount must be City matched by 19%, or \$101,600.00

-Except as explicitly stated in Section 1 of this Change Order No. 2, the sub projects shall remain as stated the Original Agreement and Change Order No. 1., with the addition of adding resurfacing of streets.

-Roads to be repaved listed in attachment.

Financial Impact:

\$665,874.81 = (\$564,274.81 County/\$101,600.00 City)

Consistent with Comprehensive Plan?

1. Continues to define Norcross' sense of place
2. Continues to Strengthen Norcross as a Livable, Inclusive, and Safe Environment
3. Increases Opportunities for Travel via Different Modes within and Outside the Community



Mayor: Craig Newton • **Mayor Pro Tem:** Bruce Gaynor • **Councilmember:** Andrew Hixson • **Councilmember:** Josh Bare
Councilmember: Matt Myers • **Councilmember:** Marshall Cheek • **City Manager:** Eric Johnson • **City Clerk:** Monique Philip

Attachments

- 2014 SPLOST Original Agreement with Change Order No. 1
- List of Roads for Repaving
- 2014 SPLOST Change Order No. 2 for Approval

Next Steps

M&C Approve and Mayor sign 2014 SPLOST Change Order No. 2 Agreement with Gwinnett County and approve an ITB solicitation.

Update

INTERGOVERNMENTAL AGREEMENT BETWEEN GWINNETT COUNTY
AND THE CITY OF NORCROSS REGARDING
JOINTLY FUNDED 2014 SPLOST PROJECT(S)
(COUNTY MANAGED PROJECT: PROJECT # F-1068)

This agreement made by and between the City of Norcross, a municipal corporation chartered by the State of Georgia and headquartered at 65 Lawrenceville Street, Norcross, Georgia 30071 (hereinafter referred to as "City") and Gwinnett County, Georgia, a political subdivision of the State of Georgia headquartered at 75 Langley Drive, Lawrenceville, Georgia 30046 (hereinafter referred to as "County") each of whom has been duly authorized to enter into this Agreement.

WITNESSETH

WHEREAS, the parties to this agreement are governmental units located within Gwinnett County, Georgia and authorized by law to enter into intergovernmental agreements; and

WHEREAS, the parties hereto desire to serve the needs of the citizens of Gwinnett County by providing a safe and efficient roadway improvement within Gwinnett County; and

WHEREAS, on August 13, 2013, the parties entered into an Intergovernmental Agreement for the use and distribution of proceeds generated by the 2014 Special Purpose Local Option Sales Tax (SPLOST) Program which was approved in a referendum by the voters of Gwinnett County on November 5, 2013 (hereinafter referred to as "SPLOST Intergovernmental Agreement"); and

WHEREAS, in recognition of the need for transportation improvements across the County and its Cities, the County and Cities agreed pursuant to the SPLOST Intergovernmental Agreement to utilize a minimum of sixty-five percent of their respective shares of total net proceeds of the 2014 SPLOST Program for transportation projects; and

WHEREAS, to further provide for transportation improvements and encourage partnership projects between the County and the Cities, the County agreed to set aside twenty-five million dollars (\$25,000,000.00) from its allocated share of the net proceeds of the 2014 SPLOST Program for the purpose of funding transportation projects jointly with the Cities; and

WHEREAS, the Parties agreed that each sponsoring City shall provide at least 19% matching funds from its own sources to the County's allocation for the City from the twenty-five million dollar (\$25,000,000.00) set aside for County/City joint projects for any joint project proposed and approved in accordance with the SPLOST Intergovernmental Agreement; and

WHEREAS, the SPLOST Intergovernmental Agreement requires that separate Intergovernmental Agreements containing specific provisions and funding arrangements be executed for each joint project between the County and a City where a portion of the twenty-five million dollars (\$25,000,000.00) set aside by the County is sought to be used; and

WHEREAS, pursuant to the SPLOST Intergovernmental Agreement, the City of Norcross has proposed a transportation project located within the corporate limits of the City of Norcross which includes "Sub-projects" further specified and defined on Exhibit A attached

hereto for the purposes of making transportation improvements that will jointly benefit residents of unincorporated and incorporated Gwinnett County.

WHEREAS, both parties to this Agreement have certain funds allocated for use in connection with the project described in the paragraph above, further identified as Jointly Funded 2014 SPLOST Project (hereinafter referred to as the "Norcross County-Managed Project"); and

WHEREAS, both parties believe that the Norcross County-Managed Project proposed will further the purposes of meeting the transportation improvement needs of the County and the City in accordance with the SPLOST Intergovernmental Agreement; and

WHEREAS, both parties believe that it would be in the interest of the health, safety and welfare of the citizens of Gwinnett County to combine their resources and efforts to provide for the efficient design and construction of the Norcross County-Managed Project;

NOW, THEREFORE, in consideration of the mutual promises, covenants and undertakings set forth herein and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto do consent and agree as follows:

1. The Norcross County-Managed Project description and limits are as follows and as outlined in Exhibit A attached hereto: A portion of the cost to acquire right of way for an intersection improvement project at SR 13/US 23/Buford Highway and SR 140/Jimmy Carter Boulevard. The total SR 13/US 23/Buford Highway intersection improvement right-of-way cost is estimated to be \$10,000,000, of which the Norcross County-Managed Project is a Sub-project.
2. Project Costs:
 - a) The total 2014 SPLOST Norcross County-Managed Project cost is estimated to be \$2,000,000.
 - b) The County will contribute a maximum of \$1,000,000 toward the total Norcross County-Managed Project cost. In no event shall the County's contribution exceed fifty percent (50%) of the total Norcross County-Managed Project cost, which is less than the maximum 81% allowed match. The \$1,000,000 County contribution and the matching funds by the City in the amount of \$1,000,000, or 50% of the Norcross County-Managed Project cost, which exceeds the City's minimum 19% required match, equals a total County and City contribution to the project of \$2,000,000. Both parties acknowledge that this sum represents a portion of the total amount, currently estimated to be \$10,000,000, that will be needed to complete the right-of-way phase for this intersection improvement. The County and City will work together with other potential project partners to obtain future funds, including possible state and/or federal funds, for the right-of-way phase and subsequent phases of the project.
 - c) The parties further agree that should the final cost of the Norcross County-Managed Project be less than the estimated cost, the City's portion of the final cost shall in no event be less than 50% of the local share of the final cost of the Norcross County-Managed Project.

- d) Both parties agree that the estimated cost shown (under 2.b) is a reasonable, good faith estimate based on two preliminary cost estimates for the right-of-way phase of this intersection improvement. The estimated cost shown includes all costs necessary to complete the right-of-way phase, including, but not limited to, land costs (right of way and easements), title searches, appraisals, acquisition services, legal services, and court costs, as well as jury verdicts and negotiated settlements. County information regarding right-of-way appraisals, negotiations, and condemnation cases will remain confidential during acquisitions, and only final costs of right-of-way acquisitions will be made available after all acquisitions have closed.
- e) If, prior to the County closing on or filing condemnation on any parcel acquisitions, both parties determine that the Norcross SR 13/US 23/Buford Highway Sub-project, as described in Exhibit A, is no longer feasible or is no longer in the best interest of the City and the County, any unspent funds may, by subsequent mutual agreement, be reallocated to a new Sub-project(s). Any new Sub-project(s) identified shall comply with all provisions as contained in the City/County Intergovernmental Agreement dated August 13, 2013 that pertain to project selection and funding share.
- f) Both parties acknowledge that on the date of execution of this agreement, funding obligations for the intersection improvement project at SR 13/US 23/Buford Highway and SR 140/Jimmy Carter Boulevard from other sources not party to this agreement are expected but may not be secured. If, prior to the County letting the intersection improvement project at SR 13/US 23/Buford Highway and SR 140/Jimmy Carter Boulevard for construction, contributions from additional sources not party to this agreement either do not materialize or are less than required to complete the intersection improvement at SR 13/US 23/Buford Highway and SR 140/Jimmy Carter Boulevard, then the County may determine that the intersection improvement project at SR 13/US 23/Buford Highway and SR 140/Jimmy Carter Boulevard is not feasible with the available funding. The County and City would then by subsequent mutual agreement reallocate any unspent funds in the Norcross SR 13/US 23/Buford Highway Sub-project to a new Sub-project(s). Any new Sub-project(s) identified shall comply with all provisions as contained in the City/County Intergovernmental Agreement dated August 13, 2013 that pertain to project selection and funding share.

3. County Responsibilities:

- a) The County shall be responsible for the management of all aspects of the Norcross County-Managed Project as specified in Exhibit A.
- b) The County shall process and pay all invoices from vendors/contractors through its Department of Transportation.

4. City Responsibilities:

- a) The City's payment to the County shall be in the form of a reimbursement.
- b) Upon receipt of an invoice from the County for qualified Norcross County-Managed Project expenses, the City shall pay 50% of the invoiced expenses within thirty (30) days by check or electronic transfer.

5. As to the Norcross County-Managed Project, the parties agree that neither the County nor the City shall indemnify or hold harmless the other party's agents, inspectors, servants and employees, past and present. Both the City and the County, if requested, shall assume and defend at their own cost, any suit, action or other legal proceeding arising therefrom for the Norcross County-Managed Project.
6. All notices pursuant to this agreement shall be served as follows: As to the County, Chairman, Gwinnett County Board of Commissioners, 75 Langley Drive, Lawrenceville, Georgia 30046. As to the City, Mayor, City of Norcross, 65 Lawrenceville Street, Norcross, Georgia 30071.
7. This agreement constitutes the entire written agreement between the parties hereto as to all matters contained herein. All subsequent changes to this contract must be in writing and signed by both parties. This agreement is for the benefit of the parties hereto only and is not intended to benefit any third party or to give rise to any duty or causes of action for any third party, and no provisions contained within this agreement are intended to nor shall they in any way be construed to relieve any contractor performing services in connection with the Project of any liability or to complete the work in a good, substantial and workmanlike manner. No provision in this agreement is intended to nor shall it be construed to in any way waive immunities or protections provided to either the County or to the City by the Constitution and laws of the State of Georgia.

IN WITNESS WHEREOF, the parties hereto acting through their duly authorized agents have caused this agreement to be signed and delivered on the date set forth below.

This 8 day of January, 2014.

WINNETT COUNTY, GEORGIA

CITY OF NORCROSS, GEORGIA

By: Charlotte J. Nash
CHARLOTTE J. NASH

By: [Signature]

Title: CHAIRMAN

Title: MAYOR

ATTEST:

ATTEST:

By: Diane Kemp

Monique Lang

Title: County Clerk/Deputy County Clerk (SEAL)

Title: City Clerk (SEAL)



APPROVED AS TO FORM:

[Signature]
County Attorney

EXHIBIT A – CITY OF NORCROSS/GWINNETT COUNTY IGA – COUNTY MANAGED PROJECT**PROJECT # F-1068**

SUB-PROJECT NAME	IMPROVEMENT TYPE	DESCRIPTION	COUNTY CONTRIBUTION	CITY CONTRIBUTION
SR 13/US 23/Buford Highway at SR 140/Jimmy Carter Boulevard	Intersection Improvement (ROW Phase)	A portion of the cost to acquire right of way for intersection project.	\$1,000,000	\$1,000,000

CHANGE ORDER NO. 1 BETWEEN GWINNETT COUNTY
AND THE CITY OF NORCROSS REGARDING
JOINTLY FUNDED 2014 SPLOST PROJECT(S)
(COUNTY MANAGED PROJECT # F-1068)

This Change Order (hereinafter referred to as "Change Order No. 1"), made by and between the City of Norcross, a municipal corporation chartered by the State of Georgia and headquartered at 65 Lawrenceville Street, Norcross, Georgia 30071 (herein referred to as "CITY") and Gwinnett County, Georgia, a political subdivision of the State of Georgia headquartered at 75 Langley Drive, Lawrenceville, Georgia 30046 (hereinafter referred to as "COUNTY") each of whom has been duly authorized to enter into this Change Order No. 1.

WITNESSETH

WHEREAS, the COUNTY entered into an agreement (hereinafter referred to as "ORIGINAL AGREEMENT") with the CITY dated January 8, 2015 to jointly fund a transportation project to be managed by the COUNTY (County-managed Project);

WHEREAS, the ORIGINAL AGREEMENT specifies that the COUNTY'S contribution to jointly fund 2014 SPLOST projects is limited to the maximum COUNTY contribution as shown in the ORIGINAL AGREEMENT; and

WHEREAS, the ORIGINAL AGREEMENT specifies that the COUNTY'S contribution to jointly fund 2014 SPLOST projects is limited to the projects as shown in each ORIGINAL AGREEMENT; and

WHEREAS, the COUNTY and CITY wish to include a County-managed Sub-project not listed in the ORIGINAL AGREEMENT;

NOW, THEREFORE, the COUNTY and the CITY, in consideration of the mutual promises and agreements set forth herein, do agree as follows:

1. This Change Order amends the ORIGINAL AGREEMENT between the COUNTY and CITY as follows:
 - a) The County-managed Project will now include a Holcomb Bridge at Thrasher Street Sub-project. The Sub-project will be a safety and alignment project at the Norfolk Southern Railroad crossing. The cost of this Sub-project for the 2014 SPLOST is estimated to be \$38,142.50. Funding for this Sub-project will be transferred from the Beaver Ruin Road Sub-project in the 2014 SPLOST City-managed agreement.
 - b) From the 2014 SPLOST, the COUNTY will contribute \$30,895.42 to the Holcomb Bridge at Thrasher Street Sub-project and will reduce its contribution to the Beaver Ruin Road Sub-project by \$30,895.42. In no event shall the COUNTY'S contribution to the Sub-project exceed eighty-one percent (81%) of the total Sub-project cost.
 - c) The CITY will be responsible for no less than 19% of the final project costs which is estimated to be at least \$7,247.08. The CITY'S payment to the County will be in the form of a reimbursement. The CITY shall pay all qualified Holcomb Bridge at Thrasher Street Sub-project expenses within 30 days of receipt of invoice.
2. The revised maximum COUNTY contribution and minimum CITY contribution for the Holcomb Bridge at Thrasher Street Sub-project is outlined in Exhibit A attached hereto.

3. Except as explicitly stated in Section 1 of this Change Order No.1, the existing projects shall not be updated, amended, or altered in any way.
4. All notices pursuant to this agreement shall be served as follows: As to the COUNTY, Chairman, Gwinnett County Board of Commissioners, 75 Langley Drive, Lawrenceville, Georgia 30046. As to the CITY, Mayor, City of Norcross, 65 Lawrenceville Street, Norcross, Georgia 30071.

Except as herein supplemented, modified and amended, the original County-managed Project, dated 8th January, 2015, will remain in full force and effect and shall in all respects govern and control.

It is expressly agreed by the parties that this Change Order No. 1 is supplemental to the original County-managed Project of 8th January, 2015, and all previous Agreements which are by reference made a part hereof. All terms, conditions, and provisions thereof unless specifically modified herein are to apply to this Change Order No. 1, and are made a part hereof as though they were expressly rewritten, incorporated, and included herein.

IN WITNESS WHEREOF, the parties hereto acting through their duly authorized agents have caused this agreement to be signed and delivered on the date set forth below.

This 13th day of Dec, 2018.

WINNETT COUNTY, GEORGIA

By: Charlotte J. Nash
CHARLOTTE J. NASH

Title: CHAIRMAN

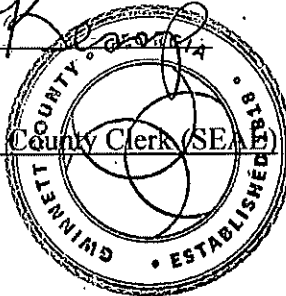
CITY OF NORCROSS, GEORGIA

By: [Signature]

Title: MAYOR

ATTEST:

By: [Signature]
Title: County Clerk/Deputy County Clerk (SEAL)



ATTEST:

By: Monique Lang
Title: City Clerk (SEAL)



APPROVED AS TO FORM:

[Signature]
Gwinnett County Staff Attorney

Exhibit A – 2014 SPLOST Jointly Funded Transportation Projects

County-managed Project

Project Name	Improvement Type	Description	Maximum County Contribution	Minimum City Contribution
SR 13/US 23/Buford Highway at SR 140/Jimmy Carter Boulevard	Intersection Improvement (ROW Phase)	A portion of the cost to acquire right of way for intersection project	\$1,000,000.00	\$1,000,000.00
Holcomb Bridge at Thrasher Street	Safety and Alignment	At Norfolk Southern Railroad crossing	\$30,895.42	\$7,247.08

INTERGOVERNMENTAL AGREEMENT BETWEEN GWINNETT COUNTY
AND THE CITY OF NORCROSS REGARDING
JOINTLY FUNDED 2014 SPLOST PROJECT(S)
(CITY MANAGED PROJECT: PROJECT # F-1068)

This agreement made by and between the City of Norcross, a municipal corporation chartered by the State of Georgia and headquartered at 65 Lawrenceville Street, Norcross, Georgia 30071 (hereinafter referred to as "City") and Gwinnett County, Georgia, a political subdivision of the State of Georgia headquartered at 75 Langley Drive, Lawrenceville, Georgia 30046 (hereinafter referred to as "County") each of whom has been duly authorized to enter into this Agreement.

WITNESSETH

WHEREAS, the parties to this agreement are governmental units located within Gwinnett County, Georgia and authorized by law to enter into intergovernmental agreements; and

WHEREAS, the parties hereto desire to serve the needs of the citizens of Gwinnett County by providing a safe and efficient roadway improvement within Gwinnett County; and

WHEREAS, on August 13, 2013, the parties entered into an Intergovernmental Agreement for the use and distribution of proceeds generated by the 2014 Special Purpose Local Option Sales Tax (SPLOST) Program which was approved in a referendum by the voters of Gwinnett County on November 5, 2013 (hereinafter referred to as "SPLOST Intergovernmental Agreement"); and

WHEREAS, in recognition of the need for transportation improvements across the County and its Cities, the County and Cities agreed pursuant to the SPLOST Intergovernmental Agreement to utilize a minimum of sixty-five percent of their respective shares of total net proceeds of the 2014 SPLOST Program for transportation projects; and

WHEREAS, to further provide for transportation improvements and encourage partnership projects between the County and the Cities, the County agreed to set aside twenty-five million dollars (\$25,000,000.00) from its allocated share of the net proceeds of the 2014 SPLOST Program for the purpose of funding transportation projects jointly with the Cities; and

WHEREAS, the Cities agree that each sponsoring City shall provide at least nineteen percent (19%) matching funds from its own sources for any joint project proposed and approved in accordance with the SPLOST Intergovernmental Agreement; and

WHEREAS, the SPLOST Intergovernmental Agreement requires that separate Intergovernmental Agreements containing specific provisions and funding arrangements be executed for each joint project between the County and a City where a portion of the twenty-five million dollars (\$25,000,000.00) set aside by the County is sought to be used; and

WHEREAS, pursuant to the SPLOST Intergovernmental Agreement, the City of Norcross has proposed a transportation project located within or adjacent to the corporate limits of the City of Norcross which includes "Sub-projects" as further specified and defined on Exhibit A attached hereto for the purposes of making transportation improvements that will jointly benefit residents of unincorporated and incorporated Gwinnett County.

WHEREAS, both parties to this Agreement have certain funds allocated for use in connection with the project described in the paragraph above, further identified as Jointly Funded 2014 SPLOST Project (hereinafter referred to as the "Norcross Project"); and

WHEREAS, both parties believe that the Norcross Project proposed will further the purposes of meeting the transportation improvement needs of the County and the City in accordance with the SPLOST Intergovernmental Agreement; and

WHEREAS, both parties believe that it would be in the interest of the health, safety and welfare of the citizens of Gwinnett County to combine their resources and efforts to provide for the efficient design and construction of the Norcross Project;

NOW, THEREFORE, in consideration of the mutual promises, covenants and undertakings set forth herein and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto do consent and agree as follows:

1. The Norcross Project consists of the following Sub-projects which are more particularly described in Exhibit A attached hereto:

- Beaver Ruin Road Multi-use trail - from US 23/Buford Highway to Indian Trail Road

2. Project Cost:

- a. The total Norcross Project cost, including Sub-projects, is estimated to be \$2,757,956.
- b. The County will contribute a maximum of \$819,567 toward the total Norcross Project cost. In no event shall the County's contribution exceed eighty one percent (81%) of the total Norcross Project cost. The County's contribution to the project will be limited to pay items necessary to construct a public multi-use trail improvement, including concrete, curb and gutter, grading, drainage, intersection and traffic signal upgrades (crosswalks, pedestrian actuated countdown timers, and handicap ramps). The County's contribution to the project will not include pay items considered by the County to be enhancements, such as landscaping, decorative lighting, wayfinding signage and benches.
- c. The City agrees that it will be responsible for the remaining amount of the estimated and final Project cost, which shall constitute at least nineteen percent (19%) of the total Norcross Project cost. The City's portion of the final cost shall in no event be less than nineteen percent (19%) of the final cost of the Norcross Project.
- d. Both parties agree that the estimated cost shown (under 2.a) is a reasonable, good faith estimate based on the total scope of the Norcross Project including Sub-projects. The estimated cost shown also includes all costs necessary to complete all phases of a typical, complex transportation project, including design, right-of-way acquisition and related professional services, and construction. The Norcross Project shall be considered

complete when all Sub-projects are completed in accordance with Exhibit A. A Sub-project is considered complete when it is open to traffic, operational, or otherwise useable to the public. The City agrees that the County's contribution is to be used only for sub-projects where the City has a reasonable expectation that funding is available to complete the sub-project. To the extent that the County's contribution combined with the City's minimum contribution is not sufficient to complete the Norcross Project, the County and the City agree that the City will provide additional funding to complete the Norcross Project or the City and County may by subsequent mutual agreement revise the scope of the Norcross Project to fall within the available funding.

3. City Responsibilities:

- a. The City shall be responsible for all project management responsibility to include all applicable design, ROW acquisition, and construction of the Sub-projects of the Norcross Project.
- b. The City shall submit invoices from vendors/contractors to the Director of the Gwinnett County Department of Transportation or his designee to be processed for reimbursement.
- c. To the extent any ROW acquisition or easements on County roads is necessary, the City agrees to file a quit claim deed and transfer any right and claim to the property to the County. To the extent any ROW acquisition or easements on state roads is necessary, the City agrees to coordinate with the Georgia Department of Transportation regarding any necessary transfer of property from the City to the state.
- d. If the Sub-project is located on city-maintained roads, the City accepts responsibility for review and final inspection of the Sub-project. Gwinnett County reserves the right to request copies of inspection reports, test results and field notes.
- e. If the Sub-project is on, along or crosses a County-maintained roadway, then the City shall submit plans to the County for review. Design and construction plans shall be prepared under the guidance of a professional engineer and shall be in accordance with AASHTO and Georgia Department of Transportation Design Policies unless otherwise agreed.
- f. If the Sub-project is on, along or crosses a state route, then the City shall submit plans to the County for review and to the Georgia Department of Transportation for review and encroachment permit. Design and construction plans shall be prepared under the guidance of a professional engineer and shall be in accordance with AASHTO and Georgia Department of Transportation Design Policies unless otherwise agreed.
- g. The City shall be responsible for ensuring the completion of the multi-use trail improvement Sub-projects once design and engineering has begun. The City agrees that construction of the multi-use trail improvement Sub-projects shall be completed no later than December 31, 2017 unless otherwise agreed by the parties.

4. County Responsibilities:

- a. The County's payment to the City shall be in the form of a reimbursement.
- b. Upon receipt of an invoice from the City for qualified Norcross Project expenses, the County shall pay 81% of the approved qualified expenses within thirty (30) days.

5. The parties further agree that the City will maintain a record of all Sub-projects showing the original estimated cost, the current estimated cost if different, amounts expended in prior years,

amounts expended in the current years, and any excess proceeds which have not been expended on the Sub-project.

6. As to the Sub-projects, the City hereby assumes the responsibility and liability for design, construction, installation or performance of each Sub-project. Both the City and the County shall assume and defend at their own cost, any suit, action or other legal proceeding brought against it arising therefrom.
7. During the design and construction or performance of the Sub-projects, the City agrees that it will add the County as an additional insured to any and all liability policies that it has or obtains related to the Sub-projects.
8. As to the Norcross Project and to the extent permitted by law, if any, the City hereby assumes the responsibility and liability for damages, injury, death or destruction of any person or property resulting from or arising out of any act or omission in connection with this Agreement or the prosecution of the work caused by the Norcross Project, if caused by the City or its agents, servants, or employees. Neither the County nor the City shall indemnify or hold harmless the other party's agents, inspectors, servants and employees, past and present. Both the City and the County shall assume and defend at their own cost, any suit, action or other legal proceeding brought against it arising therefrom.
9. All notices pursuant to this agreement shall be served as follows: As to the County, Chairman, Gwinnett County Board of Commissioners, 75 Langley Drive, Lawrenceville, Georgia 30046. As to the City, Mayor, City of Norcross, 65 Lawrenceville Street, Norcross, GA 30071.
10. This agreement constitutes the entire written agreement between the parties hereto as to all matters contained herein. All subsequent changes to this contract must be in writing and signed by both parties. This agreement is for the benefit of the parties hereto only and is not intended to benefit any third party or to give rise to any duty or causes of action for any third party, and no provisions contained within this agreement are intended to nor shall they in any way be construed to relieve any contractor performing services in connection with the Project of any liability or to complete the work in a good, substantial and workmanlike manner. No provision in this agreement is intended to nor shall it be construed to in any way waive immunities or protections provided to either the County or to the City by the Constitution and laws of the State of Georgia.

IN WITNESS WHEREOF, the parties hereto acting through their duly authorized agents have caused this agreement to be signed and delivered on the date set forth below.

This 5th day of November, 2014.

WINNETT COUNTY, GEORGIA

By: Charlotte J. Nash
CHARLOTTE J. NASH

Title: CHAIRMAN

CITY OF NORCROSS, GEORGIA

By: [Signature]
Title: MAYOR

ATTEST:

By: [Signature]
Title: County Clerk/Deputy County Clerk (SEAL)



ATTEST:

By: [Signature]
Title: City Clerk (SEAL)



APPROVED AS TO FORM:

[Signature]
County Attorney

EXHIBIT A – CITY OF NORCROSS/GWINNETT COUNTY IGA – CITY MANAGED PROJECTS

PROJECT # F-1068

SUB-PROJECT NAME	IMPROVEMENT TYPE	LOCATION	DESCRIPTION	MAXIMUM COUNTY CONTRIBUTION
Beaver Ruin Road	Multi-use Trail	From US 23/SR 13/Buford Highway to Indian Trail Road	City shall perform all phases necessary to complete multi- use trail construction.	\$819,567

CHANGE ORDER NO. 1 BETWEEN GWINNETT COUNTY
AND THE CITY OF NORCROSS REGARDING
JOINTLY FUNDED 2014 SPLOST PROJECT(S)
(CITY MANAGED PROJECT # F-1068)

This Change Order (hereinafter referred to as "Change Order No. 1"), made by and between the City of Norcross, a municipal corporation chartered by the State of Georgia and headquartered at 65 Lawrenceville Street, Norcross, Georgia 30071 (herein referred to as "CITY") and Gwinnett County, Georgia, a political subdivision of the State of Georgia headquartered at 75 Langley Drive, Lawrenceville, Georgia 30046 (hereinafter referred to as "COUNTY") each of whom has been duly authorized to enter into this Change Order No. 1.

WITNESSETH

WHEREAS, the COUNTY entered into an agreement (hereinafter referred to as "ORIGINAL AGREEMENT") with the CITY dated November 5, 2014 to jointly fund a transportation project to be managed by the CITY (City-managed Project); and

WHEREAS, the agreement specifies that the COUNTY'S contribution to jointly fund 2014 SPLOST projects is limited to the maximum COUNTY contribution as shown in the ORIGINAL AGREEMENT; and

WHEREAS, the COUNTY and CITY wish to reallocate funding as described in the ORIGINAL AGREEMENT;

NOW, THEREFORE, the COUNTY and the CITY, in consideration of the mutual promises and agreements set forth herein, do agree as follows:

1. This Change Order amends the ORIGINAL AGREEMENT between the COUNTY and CITY as follows: The COUNTY'S contribution for the Beaver Ruin Road City-managed project will be reduced by \$30,895.42. The total maximum COUNTY contribution of \$819,567.00, as outlined in the ORIGINAL AGREEMENT, will now be \$788,671.58. In no event shall the COUNTY'S contribution to the Sub-project exceed eight-one percent (81%) of the total Sub-project cost.
2. The revised maximum COUNTY contribution for the project is outlined in Exhibit A attached hereto.
3. Except as explicitly stated in Section 1 of this Change Order No.1, the existing projects shall not be updated, amended, or altered in any way.
4. All notices pursuant to this agreement shall be served as follows: As to the COUNTY, Chairman, Gwinnett County Board of Commissioners, 75 Langley Drive, Lawrenceville, Georgia 30046. As to the CITY, Mayor, City of Norcross, 65 Lawrenceville Street, Norcross, Georgia 30071.

Except as herein supplemented, modified and amended, the original City-managed Project, dated 5th November, 2014 will remain in full force and effect and shall in all respects govern and control.

It is expressly agreed by the parties that this Change Order No. 1 is supplemental to the original City-managed Project of 5th November, 2014 and all previous Agreements which are by reference made a part hereof. All terms, conditions, and provisions thereof unless specifically modified herein are to apply to this Change Order No. 1, and are made a part hereof as though they were expressly rewritten, incorporated, and included herein.

IN WITNESS WHEREOF, the parties hereto acting through their duly authorized agents have caused this agreement to be signed and delivered on the date set forth below:

This 13th day of Dec, 2018.

GWINNETT COUNTY, GEORGIA

By: Charlotte J. Nash

CHARLOTTE J. NASH

Title: CHAIRMAN

CITY OF NORCROSS, GEORGIA

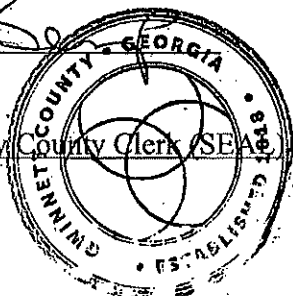
By: G. H. B.

Title: MAYOR

ATTEST:

By: Diane K. ...

Title: County Clerk/Deputy County Clerk (SEA)



ATTEST:

By: Monique Lang

Title: City Clerk (SEA)



APPROVED AS TO FORM:

James G. ...
Gwinnett County Staff Attorney

Exhibit A – 2014 SPLOST Jointly Funded Transportation Projects

City-managed Project

Project Name	Improvement Type	Description	Maximum County Contribution	Minimum City Contribution
Beaver Ruin Road	Multi-use Trail	From US 23/SR13/Buford Highway to Indian Trail Road	\$788,671.58	Not less than 19% of the total Norcross Project cost

CHANGE ORDER NO. 2 BETWEEN GWINNETT COUNTY
AND THE CITY OF NORCROSS REGARDING
JOINTLY FUNDED 2014 SPLOST PROJECT(S)

(CITY MANAGED PROJECT # F-1068)

This Change Order (hereinafter referred to as “Change Order No. 2”), made by and between the City of Norcross, a municipal corporation chartered by the State of Georgia and headquartered at 65 Lawrenceville Street, Norcross, Georgia 30071 (hereinafter referred to as “CITY”) and Gwinnett County, Georgia, a political subdivision of the State of Georgia headquartered at 75 Langley Drive, Lawrenceville, Georgia 30046 (hereinafter referred to as “COUNTY”) (both CITY and COUNTY collectively referred to as “Parties”) each of whom has been duly authorized to enter into this Change Order No. 2.

WITNESSETH

WHEREAS, the COUNTY and the CITY have previously entered into an agreement (hereinafter referred to as “ORIGINAL AGREEMENT”) regarding the Norcross Project funded by City of Norcross’ portion of the 2014 SPLOST (hereinafter referred to as “Project”); and

WHEREAS, the COUNTY and the CITY previously entered into Change Order No. 1 by reducing the COUNTY’s financial contribution to the Beaver Ruin Road City-managed-project; and

WHEREAS, the parties desire to supplement and amend the ORIGINAL AGREEMENT;

NOW, THEREFORE, the COUNTY and the CITY, in consideration of the mutual promises and agreements set forth herein, do agree as follows:

1. This Change Order amends the ORIGINAL AGREEMENT by adding a sub-project to resurface the streets located within the City of Norcross. Any remaining funds, net any and all further costs for the original subprojects as outlined in the ORIGINAL AGREEMENT, will be available for use in the resurfacing of streets located within the City of Norcross. The total funding of the City-Managed Project as listed in the ORIGINAL AGREEMENT and subsequent change order will remain the same.
2. Except as explicitly stated in Section 1 of this Change Order No. 2, the sub projects shall remain as stated in the ORIGINAL AGREEMENT and Change Order No. 1.
3. All notices pursuant to this agreement shall be served as follows: As to the County, Chairwoman, Gwinnett County Board of Commissioners, 75 Langley Drive, Lawrenceville, Georgia 30046. As to the City, Mayor, 65 Lawrenceville Street, Norcross, Georgia 30071.

Except as herein supplemented, modified and amended, the ORIGINAL AGREEMENT dated 5th November, 2014 will remain in full force and effect and shall in all respects govern and control.

It is expressly agreed by the parties that this Change Order No. 2 is supplemental to the ORIGINAL AGREEMENT and all previous Agreements which are by reference made a part hereof. All terms, conditions, and provisions thereof unless specifically modified herein are to apply to this Change Order No. 2 and are made a part hereof as though they were expressly rewritten, incorporated, and included herein.

IN WITNESS WHEREOF, the parties hereto acting through their duly authorized agents have caused this agreement to be signed and delivered on the date set forth below.

This _____ day of _____, 2024.

GWINNETT COUNTY, GEORGIA

CITY OF NORCROSS, GEORGIA

By: _____
NICOLE L. HENDRICKSON

By: _____
CRAIG NEWTON

Title: CHAIRWOMAN

Title: MAYOR

ATTEST:

ATTEST:

By: _____

By: _____

Title: County Clerk/Deputy County Clerk (SEAL) Title: City Clerk (SEAL)

APPROVED AS TO FORM:

Gwinnett County Staff Attorney

Attachment: 2014 SPLOST Change Order No. 2 for Approval (24-7026 : 2014 SPLOST Change Order No. 2 Agreement)

Finance Department
Budget Adjustment Entry

Purpose: _____ To recognize money to be received from Gwinnett County for resurfacing _____

Effective Date: _____ 6/3/2024 _____

Description	Account Number	Increase	Decrease
Intergovernmental Revenue Gwinnett	340-336100	564,275	
Roads & Streets	340-5.4220.541433	564,275	
	Totals	<u>1,128,550</u>	<u>-</u>

This budget amendment increases both a revenue and expenditure account so there is a net zero impact to budget.



Mayor: Craig Newton • **Mayor Pro Tem:** Bruce Gaynor • **Councilmember:** Andrew Hixson • **Councilmember:** Josh Bare
Councilmember: Matt Myers • **Councilmember:** Marshall Cheek • **City Manager:** Eric Johnson • **City Clerk:** Monique Philip

Agenda Report

To: Mayor and Council

From: Bill Grogan, Chief of Police

Meeting Date: June 3, 2024 – Mayor and Council

Item No.: 24-6999

Title: Selection of Construction Manager at Risk (CMR) / General Contractor (CM/GC) for the City of Norcross Public Safety Building

CC: Eric Johnson, City Manager

Recommendation (updated)

Approve Reeves Young as our Construction Manager at Risk (CMR) / General Contractor (CM/GC) for the Public Safety Building project and the attached contract with Reeves Young for those services.

Background (updated)

In April, the City received seven (7) responses to the Construction Manager at Risk (CMR) / General Contractor (CM/GC) request for qualifications (RFQ). Members of an evaluation committee reviewed and scored the submissions and narrowed the list to four (4) firms to be interviewed. The firms are:

Barnsley Construction Group
 Hogan Construction Group
 Reeves Young
 Winter Construction

Those firms were required to provide sealed bids with costs for General Conditions and Contractor Fees May 14th and to attend an interview with the evaluation committee on May 23rd.

On May 23rd, the evaluation committee established the ranking of the four (4) shortlisted firms based on their response to the RFQ, their cost of General Conditions and their Contractor Fee, and their Interview.

Reeves Young was the highest scoring firm and is the selection committee's recommendation.

The attached contract has been negotiated with Reeves Young by way of City legal and staff.

Attachment: Agenda Report - Selection of Construction Manager at Risk (CMR) / General Contractor (CM/GC) for the City of Norcross Public

Financial Impact: (updated)

Funding for this contract will be included in project funding, which is currently estimated at a total of \$25 million, net of the cost of parcels previously acquired for the site. Funding sources include a dedication of 2 SPLOST administrative facilities funds, as well as funding from the Special Investigations Fund through a combination of cash and long-term debt.

Reeves Youngs' General Conditions and Contractor Fees can be found in the contract.

Consistent with Comprehensive Plan?

(Select the appropriate goal(s).

2. Continues to Strengthen Norcross as a Livable, Inclusive, and Safe Environment
6. Furthers the City's Tradition of Strong Leadership and High Level of Quality Services

Attachments

Contract between City of Norcross and Reeves Young

Next Steps

Execution of contract upon Mayor and Council approval.

Updates

The May 23rd interviews of the 4 shortlisted firms resulted in Reeves Young being the top scoring firm by a large margin.

Since May 23rd, staff, City legal, and Reeves Young have worked diligently to develop a contract that meets both parties' needs.



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Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the day of in the year
(In words, indicate day, month, and year.)

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

City of Norcross
65 Lawrenceville Street
Norcross, Georgia 30071

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

Reeves Young, LLC
45 Peachtree Industrial Blvd
Sugar Hill, Georgia 30514

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

City of Norcross Public Safety Building
6025 Buford Highway
Norcross, Georgia 30071

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

Croft & Associates
3380 Blue Springs Road
Kennesaw, Georgia 30144

The Owner and Construction Manager agree as follows.

ADDITIONS AND DELETIONS:

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

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

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

Init.

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User Notes:

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3	CONSTRUCTION MANAGER'S RESPONSIBILITIES
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5	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
6	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
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EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

EXHIBIT B INSURANCE AND BONDS

ARTICLE 1 INITIAL INFORMATION

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

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

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

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

The project consists of the construction of a new two-story public safety building in Norcross, Georgia. The facility will have dedicated spaces for the Norcross police department, a courtroom with support spaces, a community multipurpose area, and a garage/shop area. The second floor will include a space for E911 dispatch offices, along with storage spaces for evidence. The new total building plan interior is approximately 40,000 square feet.

§ 1.1.2 The Project's physical characteristics:

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

See 1.1.1

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

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

\$22,000,000

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

.1 Design phase milestone dates, if any:

TBD

.2 Construction commencement date:

TBD

.3 Substantial Completion date or dates:

395 days from the issuance of the Notice to Proceed

.4 Other milestone dates:

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

Not Applicable

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

Not Applicable

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Construction Manager shall complete and incorporate AIA Document E234™–2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E234–2019 is incorporated into this agreement, the Owner and Construction Manager shall incorporate the completed E234–2019 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

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

Not Applicable

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

Chief Bill Grogan
65 Lawrenceville Street
Norcross, Georgia 30071

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

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User Notes:

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Croft & Associates

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

.1 Geotechnical Engineer:

United Consulting
625 Holcomb Bridge Road
Norcross, Georgia 30071

.2 Civil Engineer:

Croft & Associates
3380 Blue Springs Road
Kennesaw, Georgia 30144

.3 Other, if any:

(List any other consultants retained by the Owner, such as a Project or Program Manager.)

Not Applicable

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

Allison Hardy
Croft & Associates
3380 Blue Springs Road
Kennesaw, Georgia 30144

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

Mike Iezzi
Reeves Young, LLC
45 Peachtree Industrial Blvd
Sugar Hill, Georgia 30514

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:
(List any Owner-specific requirements to be included in the staffing plan.)

See Exhibit A – Reeves Young Fee Proposal

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

Init.

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User Notes:

Not Applicable

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

Not Applicable

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

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

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of this Agreement, General Conditions of the Contract A201-2017 as modified by the Parties, Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. **If, and to the extent of, any inconsistency, ambiguity, or discrepancy in the Contract Documents, precedence shall be given to the Contract Documents in the following order of priority: (1) written Modifications issued after execution of this Agreement, including the GMP Amendment, with the Modification bearing the latest date taking precedence; (2) this Agreement, including the exhibits attached hereto and incorporated hilly herein, but not including the General Conditions; (3) the General Conditions; and the (4) the Drawings and Specifications identified in and incorporated into the Contract Documents, with those addenda and revisions bearing the latest date taking precedence. Without limiting the foregoing, the terms of the Agreement and the General Conditions shall control over any terms in the Drawings or Specifications inconsistent therewith. An enumeration of the Contract Documents, other than a Modification, appears in Article 15**

§ 2.1.1 A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, (4) or a Minor Change Directive issued by the Owner in accordance with Section 7.4 of the General Conditions. Unless specifically enumerated in this Article 1 above, 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 Construction Manager's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 2.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner consistent with the terms of this Agreement and Contract Documents. Construction Manager shall furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. **Notwithstanding the foregoing or any other provision of the Contract Documents, Construction Manager shall not be deemed a trustee or fiduciary of the Owner. Except as expressly authorized herein. Construction Manager has no right or authority of any kind to act as the representative of or on behalf of Owner. Construction Manager is an independent contractor and not an agent of Owner.**

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§ 2.3 General Conditions

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.4 Written Consents

Whenever any delivery, approval, assent, consent, or commitment of the Owner is specifically required or implied anywhere in this Agreement or any other Contract Document, such approval, assent, consent, or commitment must be in writing and signed by the Owner to be effective.

ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

§3.1 The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201–2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§3.1.1 Construction Manager shall be fully qualified and licensed to perform the services under this Agreement in accordance with Georgia law. Construction Manager shall also assure that all Contractors and all Subcontractors (including, without limitation, all architects, design professionals, engineers, and construction used by Construction Manager or otherwise employed in the Work) are fully licensed in accordance with this law. Construction Manager represents and warrants to Owner that Construction Manager, Contractor and its Subcontractors are fully qualified and licensed to perform the work of a contractor in accordance with Georgia law.

§3.1.2 Construction Manager is engaged as an independent business, and agrees to perform the Work as an independent construction manager and not as the agent, employee, or servant of Owner. Subject to approvals from the Owner, Construction Manager has and hereby retains the right to exercise full control and supervision of the Work. Construction Manager agrees to be fully responsible for all such matters. Construction Manager agrees to be responsible for its own acts and those of its subordinates, employees, and Subcontractors during the term of this Agreement. Nothing contained herein or inferable here from shall be construed to make Construction Manager the agent, servant or employee of Owner, or create any partnership, joint venture, or other association between Construction Manager and Owner. Any direction or instruction by Owner of any of its authorized representatives with respect to the Work shall relate to the results the Owner desires to obtain from the Work and shall in no way affect Construction Manager's independent contractor status.

§3.1.3 STANDARD OF CARE IN PERFORMING THE WORK

For purposes of this Agreement, the term "Standard of Care" shall mean the exercise of a degree of care in performing the Work and to the best of the Construction Manager's ability in a manner consistent with the same level of care and skill exercised by knowledgeable and experienced professional construction managers competent in the construction of similar facilities, in accordance with customarily accepted good and sound professional practices and procedures. In performing the Work hereunder, Construction Manager represents and warrants to the Owner the following: (a) Construction Manager, Key Personnel, and Subcontractors are knowledgeable and experienced in providing services comparable to those necessary to complete the Work and with the needs and requirements for this type of Project; (b) Construction Manager, Key Personnel, and Subcontractors performing Work under this Agreement shall perform every part of the Work hereunder in accordance with this Agreement and the Contract Document. It is not Construction Manager's responsibility to ascertain that the Specifications, Plans, and Drawings are in accordance with Applicable Law except for design-build scopes of Work which are the responsibility of Construction Manager, but the Construction Manager shall promptly (and no more than seven (7) days) inform the Architect and Owner if Construction Manager has knowledge, recognizes, or discovers that the Specifications, Plans, Drawings or other

Contract Documents, are not in accordance with Applicable Laws; and (c) Construction Manager, as well as its Subcontractors as necessary, are licensed and registered to perform the Work hereunder as may be required by the authority having jurisdiction over the Project.

§ 3.1.4 CONSTRUCTION MANAGER SHALL BE RESPONSIBLE FOR THE PROPER PERFORMANCE OF THE WORK.

Construction Manager shall be responsible for the construction of the Project and the Work based on the Specifications, Plans, and Drawings, determining the scope of all subcontracts and for all the bidding of all Work necessary for Construction Manager to complete the Work in accordance with the Contract Documents and fully perform hereunder. Construction Manager remains responsible for the complete and integrated operations of the Work notwithstanding the allocations of scopes of the Work among.

§ 3.1.5 The Construction Manager shall perform the services described in this Article, the General Conditions, and elsewhere in the Contract Documents. At the Owner's option, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases shall proceed concurrently. The Construction Manager's Preconstruction Phase responsibilities are set forth herein below.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

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

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. Construction Manager shall assist and coordinate with the Architect on the balance of the design, advise the Owner on best materials and practice and advise on allowance budget variances on a weekly basis.

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

§ 3.1.3.3 The Construction Manager shall also identify to Owner and Architect any inconsistencies and omissions in the design documents that it discovers. The Construction Manager may render opinions, advice, and recommendations to the Owner and the Architect in order to help reduce the overall cost. By doing so, the Construction Manager has not assumed any of the duties or obligations of the Owner or Architect. The final decision as to the use of any opinions, advice, or recommendations supplied by the Construction Manager is, and remains, the responsibility of the Owner. Nothing in this Agreement shall be deemed to require, or authorize, or permit Construction Manager to perform any act which would constitute design services, laboratory testing, inspection services, investigations, or the practice of architecture, professional engineering, certified public accounting or law. Notwithstanding the foregoing. Construction Manager shall exercise Professional Efforts when rendering opinions, advice and recommendations to the Owner.

§ 3.1.3.4 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using 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.

§ 3.1.4 Project Schedule

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

§ 3.1.5 Phased Construction

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

§ 3.1.6 Cost Estimates

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

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

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

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

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

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

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

§ 3.1.11 Subcontractors and Suppliers

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

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

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

§ 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 3.1.13 Compliance with Laws

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

(Paragraphs deleted)

§3.1.14 Business Ethics and Conduct.

Construction Manager acknowledges that Owner is committed to having the Work performed in accordance with the highest ethical standards applicable to, or governing, the conduct of construction practice. In furtherance thereof, Construction Manager hereby agrees to comply with and observe all Applicable Laws including Anti-Corruption Laws, and all other professional and ethical guidelines governing performance of the Work. Construction Manager shall explicitly include the obligations in this Section in all subcontracts entered into by Construction Manager under this Agreement.

§ 3.1.15 Other Preconstruction Services

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

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

The Contractor acknowledges that as part of its services under the Preconstruction Agreement it will review drawings and specifications for constructability. To this end, it will notify Owner of any discrepancies, omissions, ambiguities in the Contract Documents. It further acknowledges that the execution of any GMP Amendment will be premised in part on the provision of such services.

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.

§ 3.2.2 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

§ 3.2.3 The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;

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- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price; and
- .6 A detailed critical path method ("CPM") schedule as provided in Section 2.3.2.6; and .7 A Schedule of Values which divides the GMP Price into the prices of trade contractors, other specified costs and the Contractor's Fee. The Schedule of Values to be revised as requested by the Owner's Representative in order to have the proper evaluation of the monthly Payment Applications.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The Contingency sum established shall not exceed two percent (2%) of the cost of the work less adjusted project cost deductions. **Subject to the provisions set forth in this Section 3.2.4, the Contingency may be used only for the purpose of defraying the following unanticipated charges and additional expense:**

1. refinement of details of design reasonably inferable from the Contract Documents listed in the GMP Amendment (such refinements shall not include material changes in scope or systems, or kinds, quality, or quantities of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order);
2. casualty losses and related expenses not compensated by insurance or otherwise and sustained by

Construction Manager in connection with the Work not successfully backcharged to Subcontractors after good faith diligent effort (excluding resorting to litigation), except to the extent such losses or expenses are attributable to the gross negligence or willful misconduct of the Construction Manager or any of its Subcontractors;

3. additional costs incurred as a result of the breach or default by bidders or Subcontractors (provided, however, the Contingency shall be replenished if used for such purposes to the extent Construction Manager is able to recover such amount from the defaulting Subcontractor after good faith diligent efforts to do so (excluding resorting to litigation));
4. costs associated with overtime to maintain the Construction Schedule (other than acceleration requested by the Owner not based, in whole or in part, on any failure of Construction Manager or its subcontractors) arising from unforeseen events or conditions directly affecting the critical path, or costs associated with overtime for allowable time extensions to the extent not separately compensated as a Change Order pursuant to this Agreement and not successfully backcharged to Subcontractors after good faith diligent effort (excluding resorting to litigation);
5. costs to the extent that the sum of actual Cost of the Work exceeds the Cost of the Work upon which the GMP is based due to Construction Manager's procurement omissions;
6. correction of defects in the Work not successfully backcharged to Subcontractors after good faith diligent effort (excluding resort to litigation), unless arising due to any grossly negligent act or omission or intentional misconduct on the part of Construction Manager or any of its Subcontractors; and
7. payment of fines and / or violations not successfully backcharged to Subcontractors after diligent effort (excluding resort to litigation), unless arising due to any negligent act or omission or intentional misconduct on the part of Construction Manager or any of its Subcontractors.

No payment out of the Contingency shall be available in respect of any losses or expenses for which Construction Manager would have been indemnified or compensated by insurance, if not for the failure of Construction Manager to procure and maintain such insurance in accordance with the requirements of this Agreement, or the failure of Construction Manager to comply with any requirements of any insurance carriers providing coverage for the Project. Notwithstanding the foregoing or any provision hereof to the contrary, no sums may be charged to the Contingency for costs which arise out of Construction Manager's or any of its Subcontractors' default, material breach, intentional misconduct, or gross negligence. Construction Manager shall replenish the Contingency to the extent such sums are successfully recovered from a Subcontractor or other responsible entity

without resort to litigation. Construction Manager shall not be entitled to payment of sums which otherwise are properly chargeable to the Contingency if (A) Construction Manager failed to notify Owner or Construction Manager's insurance carrier, if applicable, of an event which resulted in a claim to the Contingency within the time required for coverage, or (B) such sums exceed the available Contingency. Until the date of Final Completion, the Contingency shall be available to Construction Manager for its sole and exclusive use (subject to the limitations in this Section) and shall not be available for items of cost. Owner-directed Change Orders, material scope changes, or other items which are the Owner's responsibility under this Agreement. Notwithstanding the foregoing or any provision hereof to the contrary, the Construction Manager shall obtain Owner's prior written consent, not to be unreasonably withheld, to use any portion of the Contingency in excess of \$25,000. The Construction Manager shall provide a description of all uses of Contingency on a monthly basis. The Construction Manager shall furnish documentation evidencing expenditures charged to the Contingency and the reasons therefor in such form and detail as the Owner may reasonably request from time to time. Any remaining Contingency funds shall be returned to the Owner at Substantial Completion. Additionally, as the project progresses and the cost of work becomes more certain, the Owner and Contractor shall negotiate the release of anticipated surplus Contingency funds so that the Owner may use those funds to pay for enhancements to the project if desired. Any such release shall be confirmed by Change Order.

§ 3.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, **the form and substance of which shall be acceptable to Owner and Construction Manager**, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs. **Any costs incurred by Construction Manager prior to the commencement of the Construction Phase and not authorized by Owner will be at Construction Manager's risk and peril and Owner will not be responsible for those costs.**

§ 3.2.8 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

§ 3.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of A201-2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment

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§3.3.1.3 The Contract Time shall be measured from the date of commencement. At all times during this Project, time is of the essence for Construction Manager's performance of the Work.

§ 3.3.1.4 Delay Damages. Construction Manager agrees that Construction Manager shall pay to Owner liquidated damages in the amounts for each day that Substantial Completion is delayed beyond the applicable date for Substantial Completion set forth in the Guaranteed Maximum Price Amendment, as such date(s) may be amended in accordance with the terms and conditions of the Contract Documents, provided however, that the total amount of liquidated damages for which the Construction Manager shall be liable shall not exceed an amount equal to fifty percent (50%) of the Construction Manager's Fee as set forth in the Schedule of Values (as adjusted by Change Orders); Liquidated Damages calculations are set forth in Section 6.1.6. below.

The Owner may deduct liquidated damages described herein from any unpaid amounts then or thereafter due the Construction Manager under this Agreement. Any liquidated damages not so deducted from any unpaid amounts due the Construction Manager shall be payable to the Owner, at the demand of the Owner, together with interest from the date of the demand at a rate equal to the lower of (i) the prime rate of interest as published in *The Wall Street Journal* or (ii) the highest lawful rate of interest under Applicable Law. The parties acknowledge that (i) it would be impossible or impracticable to fix the actual damages suffered by the Owner as a result of a delay in Substantial Completion; (ii) the amount of the liquidated damages represents a fair and reasonable compensation to Owner for such delays; (iii) the liquidated damages set forth in this Section 3.3.1.4 do not constitute a penalty, and (iv) recovery of such liquidated damages shall be the Owner's sole and exclusive remedy for the Construction Manager's unexcused delay in achieving Substantial Completion.

§ 3.3.2 Administration

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

§ 3.3.2.2 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

§ 3.3.2.3 Monthly Report

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

§ 3.3.2.4 Daily Logs

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

§ 3.3.2.5 Cost Control

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

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

§ 4.1.1 The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

§ 4.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

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

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

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

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

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

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

§ 4.2 Owner's Designated Representative

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

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

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™-2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the

Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

\$29,575 lump sum

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Individual or Position	Rate
Director of Preconstruction	\$135.00
Senior Preconstruction Manager	\$95.00
Preconstruction Engineer	\$65.00

§ 5.1.2.1 Hourly billing rates for Preconstruction Phase services include all costs to be paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, and shall remain unchanged unless the parties execute a Modification.

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within six (6) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 5.2 Payments

§ 5.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

(Insert rate of monthly or annual interest agreed upon.)

1.5 %

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

§ 6.1.1 The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

§ 6.1.2 The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

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Construction Manager's Fee shall be established as a lump sum upon establishment of the Guaranteed Maximum Price in an amount equal to two and seventy five hundredths percent (2.75%) of the Cost of the Work in accordance with the terms and conditions of the Contract Documents.

§ 6.1.3 The method of adjustment of the Construction Manager's Fee for changes in the Work:

5%

§ 6.1.4 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

15%

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed ninety five percent (95 %) of the standard rental rate paid at the place of the Project.

§ 6.1.6 Liquidated damages, if any:

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

\$1,500/day

§ 6.1.7 Other:

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

Not Applicable

§ 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

§ 6.3 Changes in the Work

§ 6.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

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§ 6.4. CONTRACT TIME AND PROJECT SCHEDULE

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost. **The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.**

§ 7.1.3 Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

See Exhibit A – Reeves Young Cost Proposal

§ 7.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

§ 7.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction, **as shown on receipted bills or bills for which payment is otherwise substantiated.**

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, **shall be properly stored during the performance of the Work and** shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ 7.5.1 Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

§ 7.5.2 Rental charges of all necessary machinery and equipment, exclusive of hand tools, used at the site of the Work, whether rented from the Construction Manager or others, including installation, minor repairs, and replacements, dismantling, removal, transportation, and delivery costs thereof. Such rental charges shall be consistent with those generally prevailing in the location of the Project. The Construction Manager shall, with the advice of the Owner, determine which bid is to be accepted. In no event shall the Construction Manager be entitled to reimbursement for any cumulative total of rental charges in connection with any single piece of machinery or equipment in excess of eighty-five percent (85%) of its fair market value as of the date that such machinery or equipment is first put into service in connection with the Work. The Construction Manager shall pay any excess rental charges.

§ 7.5.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ 7.5.4 Costs of the Construction Manager's site office, including general office equipment and supplies.

§ 7.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

§ 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

§ 7.6.2 Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

§ 7.6.3 Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

§ 7.6.5 Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

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§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

§ 7.6.8 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201-2017.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered after good faith efforts by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others; **provided that any absence of collectible insurance is not due to the Construction Manager's breach of contract for insurance or failure to carry insurance coverage as required herein (subject to Construction Manager's right to use of the Contingency with respect to such costs incurred due to the negligence or failure to fulfill a specific responsibility by any Subcontractor or any one for whom such Subcontractor is responsible, to the extent available.). Notwithstanding anything contained in this Agreement to the contrary, costs due to the breach, negligence or willful misconduct of Construction Manager or its Subcontractors or suppliers, including but not limited to costs for the correction of damaged, defective or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good for damage to property not formerly part of the Work, may be paid for by Construction Manager prior to Final Completion of the Work from the Contingency and subsequent to Final Completion of the Work, from the Savings. Construction Manager shall replenish the Contingency to the extent such sums are successfully recovered from a Subcontractor or other responsible entity (without resort to litigation). When all such sums are exhausted, Construction Manager shall bear any remaining liability for the above.**

§ 7.7.4 The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

§ 7.8 Related Party Transactions

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

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the

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identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

§ 7.9 Costs Not To Be Reimbursed

§ 7.9.1 The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the

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difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

ARTICLE 10 ACCOUNTING RECORDS

§ 10.2 The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

§ 10.2 Cost Accounting and Reporting. Construction Manager shall implement and administer a cost accounting system for the Project and prepare and submit monthly reports to Owner. The reports shall reflect the current total Guaranteed Maximum Price, amounts committed to date, Cost of the Work completed and balance to finish, and will compare the amount of the Guaranteed Maximum Price not yet committed with an evaluation of the estimated Cost of the Work yet to be awarded. Construction Manager shall perform regular monitoring of the Guaranteed Maximum Price and maintain records of actual costs for activities in progress and estimates for uncompleted tasks.

§ 10.3 Owner's Audit Rights. Owner has the right under this Agreement to audit and review the Records and all other information, materials, and data of every kind and character that may reasonably pertain to any matters, rights, duties and obligations under any Contract Documents. Construction Manager shall make the Records and all such material available during normal business hours for inspection and subject to audit and reproduction by Owner and/or its auditors. In those situations where the Records or other material have been generated from computerized data, Construction Manager agrees to provide Owner with extracts of data files in computer readable format on data disks or other suitable alternative computer data exchange formats. Construction Manager shall be compensated, as a cost of the Work, for the costs related to a three or more audits. Construction Manager shall include flow-down audit provisions consistent with this Section 6.13 in all agreements with Subcontractors and Suppliers, except to the extent such agreement is on a lump sum basis. Whenever requested by Owner or its auditors, Construction Manager shall cooperate fully and expeditiously and use commercially reasonable efforts to cause all Subcontractors and Suppliers to cooperate fully and expeditiously in furnishing or making available to Owner or its auditors all information, materials and data required by this Section 6.13.

§ 10.4 If Owner's audit discovers overcharges in excess of 2% of the amount billed to Owner for the Cost of the Work, Construction Manager shall, in addition to repaying Owner for the overcharges, reimburse Owner for the reasonable cost of Owner's audit. Any adjustments and/or payments which must be made as a result of any such audit or inspection of Construction Manager's invoices and/or records shall be made within thirty (30) days from presentation of Owner's audit findings to Construction Manager.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents. **In no event will Owner be required to make a Progress Payment to Construction Manager until Construction Manager shall have prepared and submitted its Application for Payment and the same, or portion thereof, shall have been certified for payment by Architect.**

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

Not Applicable

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 25th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

§ 11.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

§ 11.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 11.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 11.1.5.3 When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with AIA Document A201-2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 11.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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§ 11.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

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

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

Five Percent (5%)

§ 11.1.8.1.1 The following items are not subject to retainage:

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

Preconstruction Costs, General Conditions and Construction Managers Fee

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

(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

Retainage shall be held at 2.5% at 50% completion of the cost of work of the project at the Owner's discretion and if the project is on schedule and budget

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

Retainage will be held on costs associated with any incomplete work or punchlist items at the time of Substantial Completion.

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201–2017.

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

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of

the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

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

§ 11.2.4 If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

§ 11.3 Interest

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

(Insert rate of interest agreed upon, if any.)

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ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Initial Decision Maker

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

§ 12.1.2 The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

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

§ 12.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- ☒ [X] Arbitration pursuant to Article 15 of AIA Document A201–2017
- ☐ [] Litigation in a court of competent jurisdiction
- ☐ [] Other: *(Specify)*

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

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

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

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

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§ 13.1.5 If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

§ 13.2.2 Termination by the Owner for Cause

§ 13.2.2.1 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

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

§ 13.2.3 Termination by the Owner for Convenience

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

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

Owner shall pay Construction Manager for all Cost of Work, General Conditions and Fee incurred on the project up to the date of termination

§ 13.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 14.2 Successors and Assigns

§ 14.2.1 The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§11.7 Representations and Warranties

The Construction Manager represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents), as a material inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and the final completion of the Work: (i) The Construction Manager its Subcontractors are financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the Work and perform; (ii) The Construction Manager is authorized to do business in the jurisdiction where the Project is located and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Construction Manager and over the Work and the Project; (iii) The Construction Manager's execution of this Agreement and performance thereof is within the Construction Manager's duly authorized powers; (iv) The Construction Manager's duly authorized representative has visited the site of the Project, is familiar with the above-ground, reasonably discoverable local conditions under which the Work is to be performed, and has correlated observations with the requirements of the Contract Documents; and (v) The Construction Manager is a large, sophisticated, construction manager who possesses a high level of experience and expertise in the business administration, construction, construction management, and superintendence of projects of the size, complexity, and nature of this particular Project and will perform the Work with the Professional Efforts, care, skill, and diligence of such a construction manager.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

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§ 14.3.1.1 Commercial General Liability with policy limits of not less than two million dollars (\$ 2,000,000) for each occurrence and ten million dollars (\$ 10,000,000) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than one million dollars (\$ 1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than one million dollars (\$ 1,000,000) each accident, one million dollars (\$ 1,000,000) each employee, and one million dollars (\$ 1,000,000) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than one million dollars (\$ 1,000,000) per claim and five million dollars (\$ 5,000,000) in the aggregate.

§ 14.3.1.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage

Not Applicable

Limits

§ 14.3.1.7 **Additional Insured Obligations.** To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies and shall apply to both ongoing and completed operations.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

§ 14.3.2 Construction Phase

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

§ 14.4 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

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

Not Applicable

§ 14.5 Other provisions:

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Not Applicable

ARTICLE 15 SCOPE OF THE AGREEMENT

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

§ 15.2 The following documents comprise the Agreement:

- .1 AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™-2019, Exhibit B, Insurance and Bonds
- .4 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .5 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

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

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

☐ Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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- .7 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager’s bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

Exhibit A – Reeves Young’s Cost Proposal dated May 14, 2024

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

OWNER (Signature)

(Printed name and title)

CONSTRUCTION MANAGER (Signature)

Chad McLeod President

(Printed name and title)

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Additions and Deletions Report for AIA® Document A133® – 2019

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PAGE 1

City of Norcross
65 Lawrenceville Street
Norcross, Georgia 30071

...

Reeves Young, LLC
45 Peachtree Industrial Blvd
Sugar Hill, Georgia 30514

...

City of Norcross Public Safety Building
6025 Buford Highway
Norcross, Georgia 30071

...

Croft & Associates
3380 Blue Springs Road
Kennesaw, Georgia 30144

PAGE 2

The project consists of the construction of a new two-story public safety building in Norcross, Georgia. The facility will have dedicated spaces for the Norcross police department, a courtroom with support spaces, a community multipurpose area, and a garage/shop area. The second floor will include a space for E911 dispatch offices, along with storage spaces for evidence. The new total building plan interior is approximately 40,000 square feet.

...

See 1.1.1
PAGE 3

\$22,000,000

...

TBD

...

TBD

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395 days from the issuance of the Notice to Proceed

...

Not Applicable

...

Not Applicable

...

Not Applicable

...

Chief Bill Grogan
65 Lawrenceville Street
Norcross, Georgia 30071
PAGE 4

Croft & Associates

...

United Consulting
625 Holcomb Bridge Road
Norcross, Georgia 30071

...

Croft & Associates
3380 Blue Springs Road
Kennesaw, Georgia 30144

...

Not Applicable

...

Allison Hardy
Croft & Associates
3380 Blue Springs Road
Kennesaw, Georgia 30144

...

Mike Iezzi
Reeves Young, LLC
45 Peachtree Industrial Blvd
Sugar Hill, Georgia 30514

...

See Exhibit A – Reeves Young Fee Proposal

PAGE 5

Not Applicable

...

Not Applicable

...

The Contract Documents consist of this Agreement, ~~General Conditions of the Contract (General, Supplementary and other Conditions), A201-2017 as modified by the Parties,~~ Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. **If, and to the extent of, any inconsistency, ambiguity, or discrepancy in the Contract Documents, precedence shall be given to the Contract Documents in the following order of priority: (1) written Modifications issued after execution of this Agreement, including the GMP Amendment, with the Modification bearing the latest date taking precedence; (2) this Agreement, including the exhibits attached hereto and incorporated hilly herein, but not including the General Conditions; (3) the General Conditions; and the (4) the Drawings and Specifications identified in and incorporated into the Contract Documents, with those addenda and revisions bearing the latest date taking precedence. Without limiting the foregoing, the terms of the Agreement and the General Conditions shall control over any terms in the Drawings or Specifications inconsistent therewith.** An enumeration of the Contract Documents, other than a Modification, appears in Article ~~15-15~~

§ 2.1.1 A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, (4) or a Minor Change Directive issued by the Owner in accordance with Section 7.4 of the General Conditions. Unless specifically enumerated in this Article 1 above, 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 Construction Manager's bid or proposal, or portions of Addenda relating to bidding requirements.

...

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner ~~to consistent with the terms of this Agreement and Contract Documents.~~ Construction Manager shall furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. **Notwithstanding the foregoing or any other provision of the Contract Documents, Construction Manager shall not be deemed a trustee or fiduciary of the Owner. Except as expressly authorized herein. Construction Manager has no right or authority of any kind to act as the representative of or on behalf of Owner. Construction Manager is an independent contractor and not an agent of Owner.**

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§ 2.4 Written Consents

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User Notes:

Whenever any delivery, approval, assent, consent, or commitment of the Owner is specifically required or implied anywhere in this Agreement or any other Contract Document, such approval, assent, consent, or commitment must be in writing and signed by the Owner to be effective.

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§3.1.1 Construction Manager shall be fully qualified and licensed to perform the services under this Agreement in accordance with Georgia law. Construction Manager shall also assure that all Contractors and all Subcontractors (including, without limitation, all architects, design professionals, engineers, and construction used by Construction Manager or otherwise employed in the Work) are fully licensed in accordance with this law. Construction Manager represents and warrants to Owner that Construction Manager, Contractor and its Subcontractors are fully qualified and licensed to perform the work of a contractor in accordance with Georgia law.

§3.1.2 Construction Manager is engaged as an independent business, and agrees to perform the Work as an independent construction manager and not as the agent, employee, or servant of Owner. Subject to approvals from the Owner, Construction Manager has and hereby retains the right to exercise full control and supervision of the Work. Construction Manager agrees to be fully responsible for all such matters. Construction Manager agrees to be responsible for its own acts and those of its subordinates, employees, and Subcontractors during the term of this Agreement. Nothing contained herein or inferable here from shall be construed to make Construction Manager the agent, servant or employee of Owner, or create any partnership, joint venture, or other association between Construction Manager and Owner. Any direction or instruction by Owner of any of its authorized representatives with respect to the Work shall relate to the results the Owner desires to obtain from the Work and shall in no way affect Construction Manager's independent contractor status.

§3.1.3 STANDARD OF CARE IN PERFORMING THE WORK

For purposes of this Agreement, the term "Standard of Care" shall mean the exercise of a degree of care in performing the Work and to the best of the Construction Manager's ability in a manner consistent with the same level of care and skill exercised by knowledgeable and experienced professional construction managers competent in the construction of similar facilities, in accordance with customarily accepted good and sound professional practices and procedures. In performing the Work hereunder, Construction Manager represents and warrants to the Owner the following: (a) Construction Manager, Key Personnel, and Subcontractors are knowledgeable and experienced in providing services comparable to those necessary to complete the Work and with the needs and requirements for this type of Project; (b) Construction Manager, Key Personnel, and Subcontractors performing Work under this Agreement shall perform every part of the Work hereunder in accordance with this Agreement and the Contract Document. It is not Construction Manager's responsibility to ascertain that the Specifications, Plans, and Drawings are in accordance with Applicable Law except for design-build scopes of Work which are the responsibility of Construction Manager, but the Construction Manager shall promptly (and no more than seven (7) days) inform the Architect and Owner if Construction Manager has knowledge, recognizes, or discovers that the Specifications, Plans, Drawings or other Contract Documents, are not in accordance with Applicable Laws; and (c) Construction Manager, as well as its Subcontractors as necessary, are licensed and registered to perform the Work hereunder as may be required by the authority having jurisdiction over the Project.

§ 3.1.4 CONSTRUCTION MANAGER SHALL BE RESPONSIBLE FOR THE PROPER PERFORMANCE OF THE WORK.

Construction Manager shall be responsible for the construction of the Project and the Work based on the Specifications, Plans, and Drawings, determining the scope of all subcontracts and for all the bidding of all Work necessary for Construction Manager to complete the Work in accordance with the Contract Documents and fully perform hereunder. Construction Manager remains responsible for the complete and integrated operations of the Work notwithstanding the allocations of scopes of the Work among.

§ 3.1.5 The Construction Manager shall perform the services described in this Article, the General Conditions, and elsewhere in the Contract Documents. At the Owner's option, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases shall proceed concurrently. The Construction Manager's Preconstruction Phase responsibilities are set forth herein below.

PAGE 7

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. Construction Manager shall assist and coordinate with the Architect on the balance of the design, advise the Owner on best materials and practice and advise on allowance budget variances on a weekly basis.

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

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using 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, also identify to Owner and Architect any inconsistencies and omissions in the design documents that it discovers. The Construction Manager may render opinions, advice, and recommendations to the Owner and the Architect in order to help reduce the overall cost. By doing so, the Construction Manager has not assumed any of the duties or obligations of the Owner or Architect. The final decision as to the use of any opinions, advice, or recommendations supplied by the Construction Manager is, and remains, the responsibility of the Owner. Nothing in this Agreement shall be deemed to require, or authorize, or permit Construction Manager to perform any act which would constitute design services, laboratory testing, inspection services, investigations, or the practice of architecture, professional engineering, certified public accounting or law. Notwithstanding the foregoing, Construction Manager shall exercise Professional Efforts when rendering opinions, advice and recommendations to the Owner.

§ 3.1.3.4 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, using 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.

PAGE 8

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

PAGE 9

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

§ 3.1.14 Other Preconstruction Services

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

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

§3.1.14 Business Ethics and Conduct.

Construction Manager acknowledges that Owner is committed to having the Work performed in accordance with the highest ethical standards applicable to, or governing, the conduct of construction practice. In furtherance thereof, Construction Manager hereby agrees to comply with and observe all Applicable Laws including Anti-Corruption Laws, and all other professional and ethical guidelines governing performance of the Work. Construction Manager shall explicitly include the obligations in this Section in all subcontracts entered into by Construction Manager under this Agreement.

§ 3.1.15 Other Preconstruction Services

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

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

The Contractor acknowledges that as part of its services under the Preconstruction Agreement it will review drawings and specifications for constructability. To this end, it will notify Owner of any discrepancies, omissions, ambiguities in the Contract Documents. It further acknowledges that the execution of any GMP Amendment will be premised in part on the provision of such services.

PAGE 10

- .5 A date by which the Owner must accept the Guaranteed Maximum Price; and
- .6 **A detailed critical path method ("CPM") schedule as provided in Section 2.3.2.6: and .7 A Schedule of Values which divides the GMP Price into the prices of trade contractors, other specified costs and the Contractor's Fee. The Schedule of Values to be revised as requested by the Owner's Representative in order to have the proper evaluation of the monthly Payment Applications.**

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order. The Contingency sum established shall not exceed two percent (2%) of the cost of the work less adjusted project cost deductions. Subject to the provisions set forth in this Section 3.2.4, the Contingency may be used only for the purpose of defraying the following unanticipated charges and additional expense:

1. **refinement of details of design reasonably inferable from the Contract Documents listed in the GMP Amendment (such refinements shall not include material changes in scope or systems, or kinds, quality, or quantities of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order);**
2. **casualty losses and related expenses not compensated by insurance or otherwise and sustained by**

Construction Manager in connection with the Work not successfully backcharged to Subcontractors after good faith diligent effort (excluding resorting to litigation), except to the extent such losses or expenses are attributable to the gross negligence or willful misconduct of the Construction Manager or any of its Subcontractors;

3. additional costs incurred as a result of the breach or default by bidders or Subcontractors (provided, however, the Contingency shall be replenished if used for such purposes to the extent Construction Manager is able to recover such amount from the defaulting Subcontractor after good faith diligent efforts to do so (excluding resorting to litigation));
4. costs associated with overtime to maintain the Construction Schedule (other than acceleration requested by the Owner not based, in whole or in part, on any failure of Construction Manager or its subcontractors) arising from unforeseen events or conditions directly affecting the critical path, or costs associated with overtime for allowable time extensions to the extent not separately compensated as a Change Order pursuant to this Agreement and not successfully backcharged to Subcontractors after good faith diligent effort (excluding resorting to litigation);
5. costs to the extent that the sum of actual Cost of the Work exceeds the Cost of the Work upon which the GMP is based due to Construction Manager's procurement omissions;
6. correction of defects in the Work not successfully backcharged to Subcontractors after good faith diligent effort (excluding resort to litigation), unless arising due to any grossly negligent act or omission or intentional misconduct on the part of Construction Manager or any of its Subcontractors; and
7. payment of fines and / or violations not successfully backcharged to Subcontractors after diligent effort (excluding resort to litigation), unless arising due to any negligent act or omission or intentional misconduct on the part of Construction Manager or any of its Subcontractors.

No payment out of the Contingency shall be available in respect of any losses or expenses for which Construction Manager would have been indemnified or compensated by insurance, if not for the failure of Construction Manager to procure and maintain such insurance in accordance with the requirements of this Agreement, or the failure of Construction Manager to comply with any requirements of any insurance carriers providing coverage for the Project. Notwithstanding the foregoing or any provision hereof to the contrary, no sums may be charged to the Contingency for costs which arise out of Construction Manager's or any of its Subcontractors' default, material breach, intentional misconduct, or gross negligence. Construction Manager shall replenish the Contingency to the extent such sums are successfully recovered from a Subcontractor or other responsible entity without resort to litigation. Construction Manager shall not be entitled to payment of sums which otherwise are properly chargeable to the Contingency if (A) Construction Manager failed to notify Owner or Construction Manager's insurance carrier, if applicable, of an event which resulted in a claim to the Contingency within the time required for coverage, or (B) such sums exceed the available Contingency. Until the date of Final Completion, the Contingency shall be available to Construction Manager for its sole and exclusive use (subject to the limitations in this Section) and shall not be available for items of cost. Owner-directed Change Orders, material scope changes, or other items which are the Owner's responsibility under this Agreement. Notwithstanding the foregoing or any provision hereof to the contrary, the Construction Manager shall obtain Owner's prior written consent, not to be unreasonably withheld, to use any portion of the Contingency in excess of \$25,000. The Construction Manager shall provide a description of all uses of Contingency on a monthly basis. The Construction Manager shall furnish documentation evidencing expenditures charged to the Contingency and the reasons therefor in such form and detail as the Owner may reasonably request from time to time. Any remaining Contingency funds shall be returned to the Owner at Substantial Completion. Additionally, as the project progresses and the cost of work becomes more certain, the Owner and Contractor shall negotiate the release of anticipated surplus Contingency funds so that the Owner may use those funds to pay for enhancements to the project if desired. Any such release shall be confirmed by Change Order.

PAGE 11

§ 3.2.6 If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, the form and substance of which shall be acceptable to Owner and Construction Manager, a copy of which the Owner shall provide to the Architect. The Guaranteed

Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs. Any costs incurred by Construction Manager prior to the commencement of the Construction Phase and not authorized by Owner will be at Construction Manager's risk and peril and Owner will not be responsible for those costs.

...

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment. Amendment.

§3.3.1.3 The Contract Time shall be measured from the date of commencement. At all times during this Project, time is of the essence for Construction Manager's performance of the Work.

§ 3.3.1.4 Delay Damages. Construction Manager agrees that Construction Manager shall pay to Owner liquidated damages in the amounts for each day that Substantial Completion is delayed beyond the applicable date for Substantial Completion set forth in the Guaranteed Maximum Price Amendment, as such date(s) may be amended in accordance with the terms and conditions of the Contract Documents, provided however, that the total amount of liquidated damages for which the Construction Manager shall be liable shall not exceed an amount equal to fifty percent (50%) of the Construction Manager's Fee as set forth in the Schedule of Values (as adjusted by Change Orders); Liquidated Damages calculations are set forth in Section 6.1.6. below.

The Owner may deduct liquidated damages described herein from any unpaid amounts then or thereafter due the Construction Manager under this Agreement. Any liquidated damages not so deducted from any unpaid amounts due the Construction Manager shall be payable to the Owner, at the demand of the Owner, together with interest from the date of the demand at a rate equal to the lower of (i) the prime rate of interest as published in *The Wall Street Journal* or (ii) the highest lawful rate of interest under Applicable Law. The parties acknowledge that (i) it would be impossible or impracticable to fix the actual damages suffered by the Owner as a result of a delay in Substantial Completion; (ii) the amount of the liquidated damages represents a fair and reasonable compensation to Owner for such delays; (iii) the liquidated damages set forth in this Section 3.3.1.4 do not constitute a penalty, and (iv) recovery of such liquidated damages shall be the Owner's sole and exclusive remedy for the Construction Manager's unexcused delay in achieving Substantial Completion.

PAGE 14

\$29,575 lump sum

...

<u>Director of Preconstruction</u>	<u>\$135.00</u>
<u>Senior Preconstruction Manager</u>	<u>\$95.00</u>
<u>Preconstruction Engineer</u>	<u>\$65.00</u>

...

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within six (6) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

...

§ 5.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

...

1.5 %

PAGE 15

Construction Manager's Fee shall be established as a lump sum upon establishment of the Guaranteed Maximum Price in an amount equal to two and seventy five hundredths percent (2.75%) of the Cost of the Work in accordance with the terms and conditions of the Contract Documents.

...

5%

...

15%

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed ninety five percent (95 %) of the standard rental rate paid at the place of the Project.

...

\$1,500/day

...

Not Applicable

PAGE 16

§ 6.4. CONTRACT TIME AND PROJECT SCHEDULE

...

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost. **The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.**

...

See Exhibit A – Reeves Young Cost Proposal

...

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed ~~construction-construction~~, **as shown on receipted bills or bills for which payment is otherwise substantiated.**

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, **shall be properly stored during the performance of the Work and shall** become the Owner's property at the completion of the Work or, at the Owner's option, shall be

sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item of all necessary machinery and equipment, exclusive of hand tools, used at the site of the Work, whether rented from the Construction Manager or others, including installation, minor repairs, and replacements, dismantling, removal, transportation, and delivery costs thereof. Such rental charges shall be consistent with those generally prevailing in the location of the Project. The Construction Manager shall, with the advice of the Owner, determine which bid is to be accepted. In no event shall the Construction Manager be entitled to reimbursement for any cumulative total of rental charges in connection with any single piece of machinery or equipment in excess of eighty-five percent (85%) of its fair market value as of the date that such machinery or equipment is first put into service in connection with the Work. The Construction Manager shall pay any excess rental charges.

PAGE 18

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered after good faith efforts by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others or others; provided that any absence of collectible insurance is not due to the Construction Manager's breach of contract for insurance or failure to carry insurance coverage as required herein (subject to Construction Manager's right to use of the Contingency with respect to such costs incurred due to the negligence or failure to fulfill a specific responsibility by any Subcontractor or any one for whom such Subcontractor is responsible, to the extent available.). Notwithstanding anything contained in this Agreement to the contrary, costs due to the breach, negligence or willful misconduct of Construction Manager or its Subcontractors or suppliers, including but not limited to costs for the correction of damaged, defective or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good for damage to property not formerly part of the Work, may be paid for by Construction Manager prior to Final Completion of the Work from the Contingency and subsequent to Final Completion of the Work, from the Savings. Construction Manager shall replenish the Contingency to the extent such sums are successfully recovered from a Subcontractor or other responsible entity (without resort to litigation). When all such sums are exhausted, Construction Manager shall bear any remaining liability for the above.

PAGE 20

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law. **§ 10.2** The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall

preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

§ 10.2 Cost Accounting and Reporting. Construction Manager shall implement and administer a cost accounting system for the Project and prepare and submit monthly reports to Owner. The reports shall reflect the current total Guaranteed Maximum Price, amounts committed to date, Cost of the Work completed and balance to finish, and will compare the amount of the Guaranteed Maximum Price not yet committed with an evaluation of the estimated Cost of the Work yet to be awarded. Construction Manager shall perform regular monitoring of the Guaranteed Maximum Price and maintain records of actual costs for activities in progress and estimates for uncompleted tasks.

§ 10.3 Owner's Audit Rights. Owner has the right under this Agreement to audit and review the Records and all other information, materials, and data of every kind and character that may reasonably pertain to any matters, rights, duties and obligations under any Contract Documents. Construction Manager shall make the Records and all such material available during normal business hours for inspection and subject to audit and reproduction by Owner and/or its auditors. In those situations where the Records or other material have been generated from computerized data, Construction Manager agrees to provide Owner with extracts of data files in computer readable format on data disks or other suitable alternative computer data exchange formats. Construction Manager shall be compensated, as a cost of the Work, for the costs related to a three or more audits. Construction Manager shall include flow-down audit provisions consistent with this Section 6.13 in all agreements with Subcontractors and Suppliers, except to the extent such agreement is on a lump sum basis. Whenever requested by Owner or its auditors, Construction Manager shall cooperate fully and expeditiously and use commercially reasonable efforts to cause all Subcontractors and Suppliers to cooperate fully and expeditiously in furnishing or making available to Owner or its auditors all information, materials and data required by this Section 6.13.

§ 10.4 If Owner's audit discovers overcharges in excess of 2% of the amount billed to Owner for the Cost of the Work, Construction Manager shall, in addition to repaying Owner for the overcharges, reimburse Owner for the reasonable cost of Owner's audit. Any adjustments and/or payments which must be made as a result of any such audit or inspection of Construction Manager's invoices and/or records shall be made within thirty (30) days from presentation of Owner's audit findings to Construction Manager.

...

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents. **In no event will Owner be required to make a Progress Payment to Construction Manager until Construction Manager shall have prepared and submitted its Application for Payment and the same, or portion thereof, shall have been certified for payment by Architect.**

PAGE 21

Not Applicable

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the 25th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.

PAGE 22

Five Percent (5%)

...

Preconstruction Costs, General Conditions and Construction Managers Fee

...

Retainage shall be held at 2.5% at 50% completion of the cost of work of the project at the Owner's discretion and if the project is on schedule and budget

...

Retainage will be held on costs associated with any incomplete work or punchlist items at the time of Substantial Completion.

PAGE 24

1.5% %

...

☒ Arbitration pursuant to Article 15 of AIA Document A201-2017

PAGE 26

Owner shall pay Construction Manager for all Cost of Work, General Conditions and Fee incurred on the project up to the date of termination

...

§11.7 Representations and Warranties

The Construction Manager represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents), as a material inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement, and the final completion of the Work: (i) The Construction Manager its Subcontractors are financially solvent, able to pay all debts as they mature, and possessed of sufficient working capital to complete the Work and perform; (ii) The Construction Manager is authorized to do business in the jurisdiction where the Project is located and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Construction Manager and over the Work and the Project; (iii) The Construction Manager's execution of this Agreement and performance thereof is within the Construction Manager's duly authorized powers; (iv) The Construction Manager's duly authorized representative has visited the site of the Project, is familiar with the above-ground, reasonably discoverable local conditions under which the Work is to be performed, and has correlated observations with the requirements of the Contract Documents; and (v) The Construction Manager is a large, sophisticated, construction manager who possesses a high level of experience and expertise in the business administration, construction, construction management, and superintendence of projects of the size, complexity, and nature of this particular Project and will perform the Work with the Professional Efforts, care, skill, and diligence of such a construction manager.

PAGE 27

§ 14.3.1.1 Commercial General Liability with policy limits of not less than two million dollars (\$ 2,000,000) for each occurrence and ten million dollars (\$ 10,000,000) in the aggregate for bodily injury and property damage.

§ 14.3.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than one million dollars (\$ 1,000,000) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

...

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than one million dollars (\$ 1,000,000) each accident, one million dollars (\$ 1,000,000) each employee, and one million dollars (\$ 1,000,000) policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than one million dollars (\$ 1,000,000) per claim and five million dollars (\$ 5,000,000) in the aggregate.

...

Not Applicable

...

Not Applicable

PAGE 28

Not Applicable

...

Exhibit A – Reeves Young’s Cost Proposal dated May 14, 2024

...

Chad McLeod President

Certification of Document's Authenticity

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(Signed)

(Title)

(Dated)



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General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

City of Norcross Public Safety Building
6025 Buford Highway
Norcross, Georgia 30071

THE OWNER:

(Name, legal status and address)

City of Norcross
65 Lawrenceville Street
Norcross, Georgia 30071

THE ARCHITECT:

(Name, legal status and address)

Croft & Associates
3380 Blue Springs Road
Kennesaw, Georgia 30144

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between Owner and Contractor (hereinafter the "Agreement") and consist of the Agreement, the AIA Document A201-2017, 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.

§ 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 or reasonably inferred from the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. 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.

§ 1.2 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.

§ 1.2.5 The Contractor shall examine all Contract Documents and all Specifications and Drawings for the Project, including those that may primarily pertain to work that the Contractor normally does not perform with its own forces. The Contractor shall use all of the Project Drawings and Specifications for a complete understanding of the Project and its Work, to determine the type of construction and systems, for coordination, to determine what other work may be involved throughout, to anticipate and notify others when their coordinated efforts will be required, and all other relevant matters related to the Project and its Work.

§ 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

§ 1.4.1 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. "Include" means "include but is not limited to," "includes" means "includes but is not limited to" and "including" means "including but not limited to," whether or not expressly stated as such.

§ 1.4.2 Contractor shall be responsible to Owner in all respects for the proper performance of its Subcontractors. References in the Contract to the "fault" or "responsibility" of Contractor or problems "caused" by Contractor shall be deemed to include, but not be limited to, Contractor's responsibility to Owner for all negligence, errors, omissions, breaches of contract, breaches of warranty (express or implied), or other improper conduct of the Subcontractors and any other person or entity for whom Contractor or its Subcontractor is responsible.

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

§ 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 (except for any license given to the Owner for use on this Project). 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' 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. Notwithstanding anything to the contrary contained herein, the Owner shall have the right to unlimited use of the Drawings, Specifications and all other documents and computerized materials prepared by the Architect and its consultants with respect to the Project and for

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modifications and additions to the Project, and the Architect shall provide the Owner with a copy of the foregoing as often as reasonably requested by the Owner and, except for the copies required in Section 9.10.2, the cost of such copies will be the Owner's responsibility.

§ 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 address set forth on the cover page of the Agreement and shall be deemed to have been duly served if delivered in person, one (1) business day after having been deposited, properly addressed and prepaid for guaranteed next business day delivery, with a nationally recognized overnight courier service (e.g., UPS or FedEx), or by electronic transmission. E-mail notification is the only authorized form of electronic transmission. All such e-mail notifications shall come from and be sent to a business account. E-mail sent from and/or to personal e-mail accounts does not meet the requirements of electronic transmission. An e-mail notification shall be deemed to have been duly served one (1) business day after having been transmitted to the e-mail account set forth on the cover page of the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing to the address set forth on the cover page of the Agreement and shall be deemed to have been duly served one (1) business day after having been deposited, properly addressed and prepaid for guaranteed next business day delivery, with a nationally recognized overnight courier service (e.g., UPS or FedEx)..

§ 1.6.3 Where, pursuant to the Contract Documents, any item is subject to the Owner's approval or consent, the Contractor shall obtain such approval or consent in writing prior to taking the action subject to such approval or consent. Consent or approval given by e-mail shall constitute in writing for purposes of this Subparagraph 1.6.3 so long as the terms of Subparagraph 1.6.1 are otherwise complied with.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

§ 1.8 [Intentionally Omitted]

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 the authority to bind the Owner to any matter requiring the Owner's approval or authorization. The term "Owner" means the Owner or the Owner's authorized representative. The Owner's representative is acting solely as an agent of the Owner and is not a party to this Agreement.

§ 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. Lien rights will be in accordance with current Georgia lien law.

(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. Such financial arrangements shall include reasonable evidence of insurance required under the Contract. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

(Paragraphs deleted)

§ 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; or (2) 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 (2) 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 and documented costs of shutdown, delay (extended general conditions costs as provided in Section 8.3) and start-up.

§ 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.

(Paragraphs deleted)

§ 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' written 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. The Contractor shall require of the Subcontractors similar agreements to maintain the confidentiality of Project and Owner information. The confidentiality obligations contained in this Section 2.2.4 shall survive the complete performance of the Work or earlier termination of this Agreement.

§ 2.3 Information and Services Required of the Owner

(Paragraphs deleted)

§ 2.3.1 The responsibility for permits and fees is described in the Contract Documents..

(Paragraphs deleted)

§ 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 whose status under the Contract Documents shall be that of the Architect.

(Paragraphs deleted)

§ 2.3.4 The Owner shall furnish a survey for the site of the Project, and a legal description of the site. The Contractor shall be entitled to reasonably rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work, including confirming, prior to commencing the Work and to the best ability of the Contractor, the location of each utility indicated on the survey provided by Owner.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness after receiving the Contractor's written request for such information or services.

(Paragraphs deleted)

§ 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

(Paragraphs deleted)

§ 2.4.1 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 fails to carry out Work in accordance with the Contract Documents; or fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, materials or equipment in

accordance with the Contract Documents; or improperly fails to bond around or discharge in a timely manner, but no more than thirty (30) days after the filing of a lien, any lien improperly filed upon the Project property by anyone claiming by, through or under Contractor (i.e., Subcontractor files lien for work Owner has paid Contractor for); or disregards the instruction of Architect or Owner when based on the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

(Paragraphs deleted)

§ 2.4.2 If, after consultation with the Architect, suspension of the Work is warranted by reason of unforeseen conditions which may adversely affect the Work if such Work were continued, the Owner may suspend the Work by written notice to the Contractor. In such event, the Contract Time and the Contract Sum may be adjusted as provided in Section 8.3, below. If the Contractor believes, in its reasonable judgment, that a suspension is warranted by unforeseen circumstances that may adversely affect the Work if the Work were continued, then the Contractor shall immediately notify the Owner and the Architect of such belief in writing and describe in detail the particular reasons therefore.

(Paragraphs deleted)

§ 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 default or neglect. The Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15. The right of the Owner to correct deficiencies in the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. The right granted Owner in this Paragraph 2.5 shall be in addition to, and not in restriction of, all other rights that the Owner has under the Contract Documents.

(Paragraph deleted)

§ 2.6 Extent of Owner's Rights

(Paragraphs deleted)

§ 2.6.1 The rights stated in the Contract Documents are cumulative and not a limitation of any rights of Owner granted in the Contract Documents, at law, or in equity.

(Paragraphs deleted)

§ 2.6.2 In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

(Paragraphs deleted)

ARTICLE 3 CONTRACTOR

(Paragraph deleted)

§ 3.1 General

(Paragraphs deleted)

§ 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.

(Paragraphs deleted)

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

(Paragraphs deleted)

§ 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.

(Paragraphs deleted)

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

(Paragraphs deleted)

§ 3.2.1 The Contractor acknowledges and warrants that it visited the Project site prior to submitting its bid for this Project and executing this Agreement. Such site visit was for the purpose of generally familiarizing the Contractor with the above-ground conditions as they exist and the character of the operations to be carried on under the Contract Documents, including all existing visible site conditions, access to the Project site, above-ground physical characteristics of the Project site, and surrounding areas. Owner acknowledges that Contractor has not undertaken any independent subsurface or environmental investigations and is relying on the accuracy of the information provided by Owner.

(Paragraphs deleted)

§ 3.2.1.1 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. The Contractor represents that the Contractor, after examining and investigating the Project site and all other Contract Documents and after making all other reasonable investigations and requests that a prudent contractor would make for additional data, Contractor is familiar with (i) the Work required to complete the Project, (ii) the availability and the character, quality and approximate quantity of materials to be used, (iii) the character of construction equipment and facilities needed, (iv) the general and local weather conditions, (v) the condition of the soil and subsurface conditions of the Project site, as noted in the Contract Document and geotechnical report, and all improvements and structures located thereon, and (vi) anticipated labor supply and costs. The Contractor is not aware of any facts that make any information the Owner or Architect has furnished to the Contractor misleading or inaccurate in any material respect which would have a material adverse effect on the Contract Sum or Contract Time. The Contractor shall not be entitled to any adjustments in the Contract Sum or Contract Time as a consequence of matters discovered during performance of the Work that should reasonably have been discovered by the Contractor through the due diligence review required hereunder. Except for any errors, inconsistencies or omissions that the Contractor reports to the Architect and Owner pursuant to Paragraph 3.2 and concealed or unknown conditions as discussed in Subparagraph 3.7.4 and 3.7.5, the Contractor hereby represents that the Contract Documents are full and complete and are sufficient to enable the Contractor to construct the Work outlined therein and otherwise to fulfill all of the Contractor's obligations under the Contract Documents.

§ 3.2.1.1 In all cases of interconnection of its Work with existing or other work, the Contractor shall verify at the Project site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly corrected by the Contractor at no additional cost to Owner.

§ 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, Architect or Architect's Consultants 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 visible 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 and Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect and Owner may reasonably require. If the Contractor knowingly performs any construction activity involving such an error, inconsistency or omission in the Contract Documents without such notice to the Owner, then the Contractor shall be responsible for any costs and expenses that would have been avoided had Contractor provided said notice. 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, except those drawings

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prepared by the Contractor or its Subcontractors, but the Contractor shall promptly report in writing to the Architect and Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. If the Contractor performs any construction activity involving such nonconformity known to the Contractor at the time of said construction activity, without such notice to the Owner and Architect, then the Contractor shall be responsible for any costs and expenses that would have been avoided had Contractor provided said notice. Notwithstanding the foregoing, Contractor and its Subcontractors shall comply with all applicable laws, building codes, and governmental requirements as provided elsewhere in this Contract (e.g. Sections 3.5.1, 3.7.2, 3.7.3, 3.7.6, 9.3.1, etc.).

§ 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. Notwithstanding the immediately preceding sentence, if the Contractor performs any construction activity and if it knows or should have known, based on the terms and conditions set forth in Subparagraphs 3.2.1, 3.2.2, and 3.2.3 that any portion of the Contract Documents relating to such construction activity contains an error, inconsistency, or omission, the Contractor shall be responsible for such performance and shall bear the cost for correction thereof.

§ 3.3 Supervision and Construction Procedures

(Paragraph deleted)

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect within ten (10) days, 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.

§ 3.3.1.1 Nothing in these General Conditions shall be interpreted as imposing on the Owner, or its agents, employees, officers, directors or consultants, any duty, obligation or authority with respect to any items that are not intended to be incorporated into the completed Project, including but not limited to the following: shoring, scaffolding, hoists, weatherproofing, or any temporary facility or activity, because these are the sole responsibility of the Contractor.

§ 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.

(Paragraph deleted)

§ 3.3.4 The Contractor acknowledges that it is the Contractor's responsibility to hire all personnel for the proper and diligent performance of the Work and the Contractor shall use its best efforts to maintain labor peace for the duration of the Project.

(Paragraph deleted)

§ 3.3.5 The Contractor shall develop procedures acceptable to the Owner for implementing, documenting, reviewing and processing field questions and responses, field variance authorizations and directives, minor changes and Change

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Orders. The Contractor shall review requests for changes submitted by the Subcontractors, negotiate Subcontractor's proposal, submit recommendations to the Owner and, if they are accepted by the Owner in writing, prepare and submit Change Orders for the approval and signature of the Owner. All requests for information by the Contractor or any Subcontractor shall be submitted in good faith and shall contain the Contractor's or the Subcontractor's, as applicable, proposed solution, if applicable. If the Contractor, solely for its own convenience and not for any other purpose, proposes a substitution from materials or equipment specified in the Contract Documents that are otherwise available for incorporation into the Work, then, if such substituted material or equipment is accepted by the Owner, the Contractor shall pay for any design or re-engineering costs incurred to accommodate the substitution. Contractor has already selected, paid for and implemented Project Site as the software to be used by the Contractor, Subcontractors, Architect, Architect's consultants and Owner (as desired) for the project documentation, including submittals, RFIs, financials, etc., and for comprehensive close-out documentation at the end of the Project. Contractor shall not change the software without prior written approval of Owner.

§ 3.3.6 If any of the Work is required to be inspected or approved by any public authority, or by the Architect or any consultant, then the Contractor shall cause such inspection or approval to be performed. No inspection performed or failed to be performed by the Owner hereunder shall be a waiver of any of the Contractor's obligations hereunder or be construed as an approval or acceptance of the Work or any part thereof.

(Paragraph deleted)

§ 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.

(Paragraph deleted)

§ 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 Owner and in accordance with a Change Order or Construction Change Directive. If the Contractor submits proposed substitutions of materials, equipment or processes in lieu of what has been specified or shown in the Contract Documents, the following subprovisions apply:

§ 3.4.2.1 The Contractor shall submit to the Architect and the Owner in writing (1) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution; (2) a written explanation of the reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (3) the adjustment, if any, in the Contract Sum, in the event the substitution is acceptable; and (4) the adjustment, if any, in the Completion Date and the Construction Schedule in the event the substitution is acceptable. Proposals for substitutions shall be submitted to the Architect and Owner a minimum of sixty (60) days prior to the date of the commencement of that portion of the Work plus any required lead time for ordering and receiving such material. The Architect shall review proposed substitutions within a reasonable time. Contractor shall bear the risk of any delay in performance caused by submitting substitutions. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as required in this Section 3.4.2.1.

(Paragraph deleted)

§ 3.4.2.2 Substitutions and alternates may be rejected by the Owner or the Architect without explanation and will be considered only under one or more of the following conditions: (a) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (b) specified products are unavailable through no fault of the Contractor; (c) subsequent information discloses the inability of specified products to perform properly or to fit in the designated space; (d) the manufacturer/fabricator refuses to certify or guarantee the performance of the specified product as required; and (e) when in the judgment of the Owner or the Architect, a substitution would be substantially in the Owner's best interests, in terms of cost, time or other considerations.

§ 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.

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(Paragraph deleted)

§ 3.4.4 The Contractor shall use its best efforts to minimize the possibility of a strike, work stoppage or other labor disturbance.

(Paragraph deleted)

§ 3.4.5 VALUE ENGINEERING. Contractor may have provided certain value engineering recommendations.

Owner acknowledges that such recommendations are advisory only, not professional design services, and not to be considered substitutions. Owner acknowledges it is the Architect's responsibility to ensure that such recommendations are in compliance with all applicable codes and are consistent with design intent. Additional costs associated with value engineering, including additional costs to effectuate or implement such value engineering including design services, such costs are not the responsibility of Contractor and shall be borne by the Owner.

§ 3.4.6 INCIDENTAL SERVICES. To the extent the Owner requires any incidental services, construction consulting or value engineering, the Owner acknowledges that such services are advisory and are not professional design services. The Owner will, with due diligence, refer such questions, matters and inquiries to the design professionals, and the Contractor shall have no liability to the Owner or the Architect or its consultants for such services requested by the Owner and rendered hereunder. To be clear, the Contractor is not a design professional and makes no warranties concerning the Architect's drawings and/or performance of its services. Notwithstanding any terms herein to the contrary, this Section shall not be deemed or interpreted to modify the duties and responsibilities of the Contractor under Section 3.12.10 of these General Conditions.

(Paragraphs deleted)

§ 3.4.7 OWNER'S ACCEPTANCE OF INCIDENTAL SERVICES. To the extent the Contract Documents integrates or references Contractor's incidental services including proposed value engineer, Owner represents and warrants that it's design professionals has reviewed, accepted, and approved such recommendations and Owner has been fully advised by its design professionals of additional costs to implement or effectuate such recommendations.

§ 3.5 Warranty

(Paragraph deleted)

§ 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 or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

(Paragraph deleted)

§ 3.5.3 The Contractor shall and does hereby assign to the Owner the benefits of any warranties of all Subcontractors (which includes Sub-subcontractors, suppliers and manufacturers) to the extent the warranties are not initially issued directly to Owner, but such assignment does not relieve the Contractor of its warranty obligations to the Owner under the Contract Documents. Prior to and as condition to Final Payment, the Contractor shall deliver to the Owner all warranties on equipment and materials furnished by all manufacturers and suppliers with duly executed instruments assigning the warranties to the Owner, as applicable.

(Paragraph deleted)

§ 3.5.4 If the Contractor uses any of the Owner's other property prior to Final Completion of the Work, the Contractor shall restore such property to the condition it was in at the time of executing this Contract or as specified in the Contract Documents. The Contractor's warranty and agreement to correct defective Work shall specifically include the Contractor's obligations under this Subparagraph.

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(Paragraphs deleted)

§ 3.6 Taxes

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

3.7 Permits, Fees, Notices and Compliance with Laws

(Paragraph deleted)

§ 3.7.1 Unless otherwise provided in the Contract Documents, Owner shall secure and pay for the master building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for the commencement of the Work. Contractor shall secure and pay for building department trade permits required for proper execution and completion of the Work, if required by the building department to be paid separately by each trade subcontractor at the time bids are received. Original certificates of inspection and occupancy shall be delivered to the Owner upon completion of the Work in sufficient time for occupancy of the Project in accordance with the approved schedule for the Work.

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

(Paragraphs deleted)

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders and all other requirements of public authorities, the Contractor shall assume responsibility for such Work and shall bear the costs attributable to the correction thereof. Unless otherwise authorized by appropriate authorities, the Contractor shall not perform any Work or conduct any construction activities outside of the hours permitted by local ordinance.

§ 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 fourteen (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. No adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition (including those described in Subparagraph 3.7.5 below) that does not differ materially from those conditions disclosed or that reasonably should have been disclosed by the Contractor's (i) prior inspections, tests, reviews or preconstruction services for the Project, or (ii) inspections, tests, reviews or preconstruction services that the Contractor had the opportunity to make or should have performed in connection with the Project. The Contractor hereby acknowledges that the Contractor shall not have any right to and the Owner will not consider any requests for an increase in the Contract Sum or for additional time under Subparagraphs 3.7.4 and 3.7.5 that is not submitted in compliance with the foregoing requirements.

§ 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.

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§ 3.7.6 Contractor and the Subcontractors shall comply with all applicable federal, state and local laws, statutes, ordinances, codes, rules, regulations and lawful orders of public agencies and public officials.

§ 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.

(Paragraph deleted)

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

§ 3.9 Superintendent/Project Manager

(Paragraphs deleted)

§ 3.9.1 The Contractor shall employ a competent superintendent, among other staff, who shall be in attendance at the Project site during performance of the Work. The Project manager shall not be removed without prior written notice to Owner. Only communications in writing to the Project manager shall be considered valid as if given to the Contractor. The Project manager and lead superintendent proposed by Contractor shall, at minimum, have a tenure with Contractor of at least two years. The Contractor's Project superintendent and Project manager shall be satisfactory to the Owner in all respects, and Owner shall have the right to require Contractor to dismiss from the Project any Project superintendent or Project manager whose performance is not reasonably satisfactory to Owner, and to replace such Project superintendent or Project manager with a Project superintendent or Project manager satisfactory to Owner.

§ 3.9.1.1 Prior to the commencement of construction, the Contractor shall provide the Owner and the Architect with a list of the key personnel and employees assigned to this Project, including, but not limited to the name of the Project superintendent, and the hourly rates for such key personnel and employees assigned to this Project, which list, upon receipt by Owner, shall be deemed Exhibit J to the Contract.

§ 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 and Project manager. Within 14 days of receipt of the information, the Architect or Owner may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent and Project manager or (2) requires additional time for review. Failure of the Architect and/or Owner 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 or Project manager to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent or Project manager without Owner's consent.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 Within thirty (30) days after the effective date of this Contract, Contractor shall provide an updated and detailed Construction Schedule appropriate for the Project, including (1) the Date of Commencement of the Work, interim schedule milestone dates, if any, 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 Construction Schedule shall be in a form satisfactory to the Owner and the Architect and shall, at a minimum, include detail of the tasks to be performed, the Commencement Date, the Substantial Completion dates and any other milestone dates requested by the Owner or the Architect. The tasks shall be broken down by trade

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for each phase of the Work, by building, if the Project includes multiple buildings, and by floor for each building in the Project that contains more than four stories. The schedule, once approved by the Owner and Architect ("Approved Project Schedule"), shall be attached to the Contract as Exhibit [B] and shall not be extended without the written approval of Owner in each instance. Contractor shall have discretion to manipulate the schedule, including sequencing and float, without Owner's consent or approval to the extent that any changes made by Contractor do not impact the Critical Path (as defined in Section 8.3.6 herein) and Substantial Completion dates set forth in Section 4.3.1 of the Agreement.

§ 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 and Owner's approval. The Architect's and Owner'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 Approved Project Schedule and submittal schedule submitted to the Owner and Architect and approved by the Owner by Change Order.

(Paragraph deleted)

§ 3.10.4 The Contractor shall monitor the progress of the Work for conformance with the requirements of the Approved Project Schedule and shall promptly advise the Owner and the Architect of any delays or potential delays that impact the Critical Path and/or Substantial Completion date(s) set forth in Section 4.3.1 of the Agreement. The Approved Project Schedule shall be updated monthly and provided to Owner with each application for payment to reflect actual conditions or if requested by the Owner or the Architect. If Contractor indicates any delays that impact the Critical Path and Substantial Completion dates set forth in Section 4.3.1 of the Agreement, then the Contractor shall propose an affirmative plan to correct the delay, including overtime and additional labor, if necessary. In no event shall any report by the Contractor of any delay be deemed an adjustment to the Contract Time or Contract Sum unless agreed to by the Owner and authorized in writing by a Change Order executed by the Owner, the Architect and the Contractor.

§ 3.10.5 On a bi-weekly basis, the Contractor shall provide a two-week look-ahead schedule which shall be reviewed as part of the respective weekly jobsite meetings and shall continuously maintain an accurate Approved Project Schedule. The Contractor shall keep accurate and detailed written records of the progress of the Work.

(Paragraph deleted)

§ 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, purchase orders, subcontracts, materials, equipment, applicable handbooks, commercial and technical standards and specifications, and any other related documents and revisions that arise out of the Contract Documents or the Work. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect. In addition, the Contractor shall submit to Owner one electronic copy of all submissions made to and accepted by the Architect no less than bi-weekly. Upon completion of the Work Contractor shall deliver a complete set of such submittals as a record of the Work as constructed. The foregoing record copy of the Contract Documents shall also contain "as-built" notations. The information marked on such record copy of the Drawings shall include, but not be limited to: (i) the actual location of the underground utilities and appurtenances as referenced to permanent surface improvements; (ii) the location of internal utilities and appurtenances concealed in building structures; and (iii) significant changes to the original Drawings that occurred during the construction process and significant detail not shown in the original Drawings. No portion of the Work shall be permanently concealed until the required information relating thereto has been recorded on such record copy of the Drawings as provided herein. The foregoing record copy of the Drawings shall be clearly marked "Project Record Copy", maintained in good condition and available at all times for inspection by the Owner and the Architect.

(Paragraph deleted)

§ 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.

(Paragraphs deleted)

§ 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.

(Paragraph deleted)

§ 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.

(Paragraph deleted)

§ 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.

(Paragraph deleted)

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof. The Contractor shall stamp all Shop Drawings, Product Data, Samples and other submittals to verify the Contractor's review and approval thereof, which stamp shall constitute a representation by the Contractor to the Owner that the submitted item conforms with the Contract Documents and is coordinated with other related Work. In collaboration with the Architect, the Contractor shall establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals.

(Paragraph deleted)

§ 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 law, architecture, engineering, or design services unless such services are specifically required by the Contract

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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 (to the extent such activity is considered to be a professional service under Georgia law) and specifically set out in the Contract Documents. The Contractor shall not be required to provide professional services in violation of applicable law.

(Paragraph deleted)

§ 3.12.10.1 Professional design services, certifications by a design professional related to systems, materials, or equipment, or other professional services that are specifically required of the Contractor shall be set forth in the Contract Documents, including the specific design and performance criteria related to such activities required of the Contractor. To the extent professional services are required of the Contractor in the future that are not set forth in the Contractor Documents, the Owner, Architect and Contractor will work together to specify and detail in writing (via Change Order) which particular service is required including the applicable scope and the performance and design criteria that such services must satisfy before Contractor is required to engage in such services. If Contractor reasonably believes that additional information regarding performance or design criteria are needed, it shall request the same before proceeding with the particular design services and applicable scope identified in the Change Order. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents unless the Contractor knows that the performance and design criteria are faulty or inadequate and Contractor failed to report the matter to the Architect and the Owner. The Contractor shall cause such design 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 as the submission of drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by a licensed design professional on behalf of Contractor shall constitute a representation that such licensed design professional possessed all of the performance criteria necessary to perform its services. To the extent Contractor provides the submission of a drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by a licensed design professional based on performance criteria not expressly identified in the Contract Documents, the Contractor shall expressly identify the performance criteria assumed by its licensed design professional. 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.

(Paragraph deleted)

§ 3.12.10.3 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 Contractor shall carry, or cause those subcontractors or consultants so performing such design work, to carry Errors and Omissions Insurance in amounts not less than the amounts listed on Exhibit A attached hereto.

(Paragraph deleted)

§ 3.13 Use of Site

(Paragraphs deleted)

§ 3.13.1 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. Only materials and equipment that are to be used directly in the Work shall be brought and stored on the Project site. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall provide a reasonably secure site (site fence with locked gates) so as to limit Project site damage from vandalism, theft, and other occurrences.

(Paragraph deleted)

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§ 3.13.2 The Contractor shall send proper notices, make all necessary arrangements, and perform all other services required in order to protect and maintain all marked, identified or known public utilities such as fire lines and hydrants, electric, gas, water lines, sewer pipes, mechanical systems and all other items of this nature, and assume all responsibility and pay all costs for which the Owner may be liable if said services are interrupted by actions of the Contractor or subcontractors.

(Paragraphs deleted)

§ 3.13.3 The Contractor shall not erect or permit the erection of any sign on the Project site without the prior written consent of the Owner, which consent may be withheld or revoked in the Owner's sole discretion. The Contractor shall not, without the Owner's review and prior written approval, which approval may be withheld or revoked in the Owner's sole discretion, include any representation of the Project, photographs of the exterior or interior of the Project or references to the fact that the Contractor is constructing the Project in the Contractor's promotional or advertising material.

(Paragraphs deleted)

§ 3.14 [Intentionally Deleted]

(Paragraphs deleted)

§ 3.15 Cleaning Up

(Paragraphs deleted)

§ 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. The Contractor shall maintain the streets and sidewalks around the Project site in a clean condition. The Contractor shall remove all spillage and tracking arising from the performance of the Work from such areas and shall establish a regular maintenance program of sweeping and hosing to minimize accumulation of dirt and dust upon such areas.

(Paragraphs deleted)

§ 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.

(Paragraphs deleted)

§ 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 or written notice identifying infringement concerns is provided to Owner.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the Owner, Owner's partners and/or members, the wholly owned affiliates of Owner and Owner's partner's and/or members, , Owner's and the agents, employees, representatives, and officers, of any of them (the "Indemnified Parties") harmless from and against any and all claims, damages, losses, and expenses, including, without limitation, expenses incurred to avoid litigation, attorneys' fees, court costs, and other litigation or pre-litigation expenses, arising out of or resulting from performance of the Work, including any such claim, damage, loss, or expense attributable to personal injury, 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, in whole or in part, a breach of the Contract Documents by Contractor, or the intentional or negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or

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anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by one of the Indemnified Parties. The Contractor shall also indemnify, defend and hold the Indemnified Parties harmless from and against any assertion of claims for mechanics' or construction liens or similar liens by any party that provided labor or materials for the Project except to the extent any such claims are the result of Owner's or any of the Indemnified Parties' wrongful withholding of payment due under the Contract Documents. 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. Contractor agrees that it will require by contract, that any subcontractors or vendors hired by Contractor to perform the Work, to indemnify, defend and hold harmless the Indemnified Parties consistent with the requirements set forth in this section.

§ 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 The Contractor's indemnity obligations under this Section 3.18 shall also specifically include, without limitation, all fines, penalties, damages, liabilities, costs, expenses (including, without limitation, reasonable attorneys' fees) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor, or any person or entity for whom either is responsible, or (ii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible.

§ 3.18.4 Contractor's obligations under this Article shall survive the expiration or earlier termination of the Contract.

ARTICLE 4 ARCHITECT

§ 4.1 General

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

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

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and the contract between the Owner and the Architect 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 specifically provided in the Contract Documents and the contract between the Owner and 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, (1) to become generally familiar with and keep the Owner informed about the progress and quality of the portion of the Work completed; (2) to guard the Owner against defects and deficiencies in the Work; and (3) 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

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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. Notwithstanding anything to the contrary, the Owner has not relinquished its right to communicate directly with the Architect's consultants, Contractor's Subcontractors, sub-subcontractors, suppliers or other parties involved in the Project.

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

§ 4.2.6 The Architect and the Owner have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect or the Owner considers it necessary or advisable, the Architect or the Owner 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 or the Owner 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 or the Owner 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 Contractor will prepare Change Orders, but such are not effective unless and until signed by the Owner. The Architect may order minor changes in the Work as provided in Section 7.4 without the signature of the Owner provided that such changes do not impact the Contract Sum or Contract Time. 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 Final Completion Date; 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 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 make recommendations on 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.

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§ 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 RFI REVIEW

The Contractor shall submit a written request for information ("RFI") in electronic format to Architect with a copy to Owner for any interpretations necessary for the proper execution or progress of the Work. Contractor's RFIs shall include (a) an identification of the specific plans or specifications at issue in the RFI; (b) photographs of the condition in the field (if addressing a field condition); (c) the Contractor's proposed solution to the situation, if any; and (d) the cost/schedule impact – if any – associated with the Contractor's proposed solution to the extent then known by Contractor. Such interpretations or responses to RFIs shall be issued in writing. Contractor shall anticipate and plan for a maximum of five (5) business days for a response to any RFI affecting non-Critical Path activities. In the event of an RFI that Contractor believes may affect the Critical Path, Contractor shall expressly designate the RFI as such and will specifically notify the Architect and Owner of the priority to be given to such RFI, and the Architect shall respond as expeditiously as possible in accordance with the Architect's standard of care. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information. So long as an extension will not delay the Critical Path of the Work, such interpretation and response periods shall be extended by mutual agreement of the Owner, Architect and Contractor, which agreement shall not be unreasonably withheld.

§ 4.2.14 UPDATED PERMITTED DRAWINGS

From the issuance of the permit through final completion of the Project, all conditions, directives, or other changes or deviations in the Work incurred through the normal construction administrative process that are performed or that are required to be performed differently than identified on the latest set of permitted Drawings or as required by the Contract Documents, including all deviations authorized or otherwise agreed to by the Architect and/or the Owner, will be periodically compiled and incorporated into the permit set of drawings via clouded plan revision and associated narratives by Architect, which, at Architect's instruction shall be submitted by the Owner to the Authority having Jurisdiction for review and approval.

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, or supply materials and/or equipment for the Work. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after the award of the Contract but prior to approval of the GMP, 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 fourteen (14) days of receipt of the information, the Architect or Owner may notify the Contractor whether the Owner or the Architect has reasonable objection to any such proposed person or entity, which time period may be extended by mutual agreement of the parties. Failure to provide notice or request an extension within the prescribed period shall constitute notice of no reasonable objection. Contractor's Subcontractors shall be subject to the Owner's approval as provided in Article 10 of the Agreement.

§ 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 fully qualified and capable of performing the Work and submitted a complete, comprehensive responsible bid proposal, the Contract Sum and Contract Time shall be increased or decreased by the documented cost 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. The Owner may require the Contractor to change any Subcontractor or Sub-subcontractor previously approved and, if at such time the Contractor is not in default hereunder, the Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and the Contract Time shall be adjusted if said change results in any delays.

§ 5.2.5 The Contractor shall contract with each and every Subcontractor and supplier solely in its own name and no approval by the Owner or anything in the Contract Documents shall be construed as creating any contractual relationship between the Owner and any Subcontractor or Supplier.

§ 5.3 Subcontractual Relations

§ 5.3.1 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. However, no Subcontractor shall be deemed to be a third-party beneficiary of the Agreement between the Owner and the Contractor, and nothing herein shall give any Subcontractor any rights directly 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. Contractor's subcontract agreements shall expressly state that the Owner's payment to the Contractor is a condition precedent to the Contractor's payment to the Subcontractor and that the Subcontractor shall not be entitled to payment from the Contractor unless and until the Contractor receives payment from the Owner.

§ 5.3.1.1 As used in this Section 5.3, in Section 5.4 and other provisions of the Contract, the terms "subcontract agreement", "subcontract" and similar terms shall mean and include subcontracts per se and also purchase orders, material and equipment supply agreements, consultant agreements and similar contracts for labor, services, materials or equipment for the Project to which a Subcontractor is a party.

§ 5.3.2 Each subcontract shall state that the Owner is and shall be a third-party beneficiary of such subcontract, and that the Owner shall have the right to assert claims directly against the Subcontractor for breach of contract, breach of express warranties, breach of implied warranties including warranties of merchantability and of fitness for a particular purpose if applicable, negligence and other claims arising out of or related to the Work or the Project. The Owner and Contractor acknowledge and agree that the purpose of this Section 5.3.3 is to enable the Owner, in addition to the Contractor, to assert claims for damages and indemnification directly against Subcontractors that are or may be responsible for breach of the Contract, defects in the Work, and other damages incurred by the Owner arising out of or related to the Work or the Project. Nothing in this Contract shall be interpreted, however, to mean that a Subcontractor has any right to bring a claim against Owner under this Contract or that a Subcontractor has any other rights under this Contract.

§ 5.3.3 Each subcontract shall state that the Subcontractor agrees to the contingent assignment of the subcontract to the Owner, consistent with Section 5.4.

§ 5.3.4 The Contractor shall not enter into any subcontract, contract, agreement, purchase order or other arrangement ("Arrangement") for the furnishing of any portion of the materials, services, equipment or Work with any party or entity if such party or entity is an Affiliated Entity (as defined below), unless such Arrangement has been approved in writing by the Owner, after full disclosure in writing by the Contractor to the Owner of such affiliation or relationship and all details relating to the proposed Arrangement. The term "Affiliated Entity" means any entity related to or affiliated with the Contractor or with respect to which the Contractor has direct or indirect ownership or control, including, without limitation, any entity owned in whole or part by the Contractor; any holder of more than 10% of the issued and outstanding shares of, or the holder of any interest in, the Contractor; any entity in which any officer, director, employee, partner or shareholder (or member of the family of any of the foregoing persons) of the Contractor or any entity owned by the Contractor has a direct or indirect interest, which interest includes, but is not limited to, that of a partner, employee, agent or shareholder. If self performing work is included as part of a Change To Work then contractor will only be allowed to bill the cost of the self-performed work plus the 15% subcontractor markup. No 5% general contractor markup will be allowed on the self-performed work.

§ 5.3.5 Notwithstanding anything to the contrary contained herein, all subcontracts shall be in the form and substance substantially similar to Contractor's Standard Form Subcontract attached to the Agreement as Exhibit [K] and shall specifically provide that the Owner is an intended third party beneficiary of such subcontract. Upon request, Contractor shall send Owner a copy of the executed Subcontract.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work and any purchase order for materials or equipment shall be 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 or purchase order, the Owner assumes the Contractor's rights and obligations under the subcontract. Notwithstanding the foregoing, Owner shall not assume, and Contractor shall remain responsible for, payment obligations that exist at the time of assignment of a subcontract if Owner has already remitted payment to Contractor for work or services performed by the Subcontractor that are due under the subcontract as of the date of the assignment.

§ 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 provided such claimed costs are substantiated by appropriate documentation.

§ 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 who accepts assignment thereof, the Owner shall be released from the obligations under the subcontract. In addition, the Owner, prior to acceptance of assignment of the subcontract, may assign the subcontract to a successor contractor or other entity and upon acceptance of the assignment of the subcontract by such successor contractor or other entity, such contractor or other entity shall have the rights and obligations of the Owner described under this Section 5.4 upon an acceptance of an assignment of the subcontract. In such event, the subcontract shall be deemed to have been directly assigned from the Contractor to the successor contractor or other entity, and the Owner shall have no liability thereunder.

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 or vendors (including but not limited to utility providers) 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 any other contractors, and with Separate Contractors.

§ 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 Notwithstanding anything to the contrary contained in Subparagraph 6.1.3, above, Owner and Contractor agree and acknowledge that regardless of what party is responsible for the installation of utilities (including, but not limited to, gas, electric, sewer, water, cable and communications) at the Project, the Contractor is responsible for scheduling and coordinating such installation with the Contractor's Work.

§ 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 and Owner 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 and Owner 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. In no event shall Contractor be responsible for the improper, defective or incomplete work of a Separate Contractor; provided however, that Contractor shall be responsible for any expenses incurred by the Owner that could have been avoided had Contractor notified Owner as required by this Section.

§ 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. Subject to Section 6.2.2, 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.

(Paragraph deleted)

§ 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 allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

(Paragraph deleted)

§ 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.

(Paragraph deleted)

§ 7.2 Change Orders

(Paragraph deleted)

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

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

§ 7.3 Construction Change Directives

(Paragraph deleted)

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

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

(Paragraph deleted)

§ 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, workers' compensation insurance, and fringe benefits required by agreement or custom, 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 (if applicable) and insurance, permit fees, and sales, use, or similar taxes, directly related to the change;
- .5 Costs of supervision and field office personnel directly attributable to the change; and
- .6 General conditions costs based on the rates and values set forth in Contractor's General Conditions Cost Breakdown attached as Exhibit K to the Agreement.

(Paragraph deleted)

§ 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.

(Paragraph deleted)

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

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

(Paragraph deleted)

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

(Paragraphs deleted)

§ 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.

(Paragraphs deleted)

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

(Paragraph deleted)

§ 7.4 Minor Changes in the Work

The Architect, after due coordination with the Owner, 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.

(Paragraphs deleted)

ARTICLE 8 TIME

(Paragraph deleted)

§ 8.1 Definitions

(Paragraphs deleted)

§ 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.

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

(Paragraphs deleted)

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

(Paragraphs deleted)

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

(Paragraphs deleted)

§ 8.2 Progress and Completion

(Paragraphs deleted)

§ 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. Contractor acknowledges that the Owner may rely on the Contract Time for marketing, leasing and occupancy of the Project and that delays will cause significant damage to the Owner.

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

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

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed 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; or (4) 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, if and to the extent such events delay the critical path of the Project schedule. The critical path is the longest sequence of tasks that must be completed on time to finish a project within a specified time frame. It's the longest possible path through the network of construction activities, and its length is the total duration of all the activities along the path. Critical tasks must be completed on time for the project is finished on schedule. Any delay in a critical task will result in a delay in the overall project. Any extended general conditions costs associated with Time Extensions on the project will be calculated based on the actual not to exceed general condition costs incurred at Final Completion based on the following: labor costs, field office trailer and utility costs, equipment, supplies, postage and shipping, progress photos, mobile phones, project vehicles and fuel charges, travel, safety supplies, daily cleanup and NPDES monitoring. Extended general conditions cannot exceed \$1,433 per each day of time extension approved. The number of days of time extension will be agreed upon between Contractor and the Owner as they are claimed during construction, but the final time extension payment based on total number of days of approved time extension will not be issued until after Final Completion and included the final payment application.

§ 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.

(Paragraphs deleted)

§ 8.3.5 Contractor must provide Owner with verbal notice of an event that may give rise to a delay within 48 hours of the occurrence of the event. Contractor must provide a written notice of delay and/or request for an extension of Contract Time and additional delay-related compensation in accordance with the requirements of the Contract Documents, including without limitation, those set forth in Article 15, below.

§ 8.3.6 In no event shall the Contractor be entitled to an extension in the Contract Time or additional

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delay-related compensation for any delay to the Contractor's Work that does not affect Work on the Critical Path of the Approved Project Schedule and the achievement of Substantial Completion of the Work by the Substantial Completion dates. The Contractor shall have a duty to make reasonable attempts to mitigate the effects of any condition or event which gives rise to, or is likely to give rise to, any delay in the completion of the Work.

(Paragraph deleted)

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

ARTICLE 9 PAYMENTS AND COMPLETION

(Paragraph deleted)

§ 9.1 Contract Sum

(Paragraph deleted)

§ 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. If the Agreement is subject to a Guaranteed Maximum Price (as defined in the Agreement), then, except as specifically set forth in the Agreement, the Contract Sum shall not exceed the Guaranteed Maximum Price.

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

§ 9.2 Schedule of Values

The Contractor shall submit a "Schedule of Values" to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The Schedule of Values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect or Owner.. This schedule shall not be front-end-loaded. This schedule, once approved by the Architect and Owner, shall become the "Approved Schedule of Values" and shall be used as a basis for reviewing the Contractor's Applications for Payment. The Approved Schedule of Values may only be revised by Change Order or otherwise in writing signed by the Owner.

§ 9.3 Applications for Payment

§ 9.3.1 At least fifteen (15) business days before the date established for each progress payment, the Contractor shall submit to the Architect and the Owner an itemized Application for Payment (AIA Document G702 and G703) 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 as provided in Section 12.1.4 of the Agreement, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications for payment 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 or is the subject of a backcharge against the Subcontractor as permitted under the Subcontract or Georgia law.

§ 9.3.1.3 With each Application for Payment submitted by the Contractor, the Contractor shall: (i) be deemed to have certified that (a) the Application for Payment represents a just estimate of Work performed and materials supplied during the period covered by the Application for Payment; (b) there are no known construction liens outstanding as of the date of the Application for Payment; (c) all due and payable bills with respect to the Work have been paid to date or included in the amount requested in the current Application for Payment; (d) except for such bills not paid but included as provided in (c), above, there is no known basis for the filing of any construction liens on the Work and waivers from all Subcontractors and all material suppliers have been obtained in such form as to constitute an effective waiver of lien under applicable state law; and (e) no public authority, private authority or utility company has

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contacted the Contractor alleging or claiming that the Work or the Contractor's performance of the Work is not in compliance with all laws, ordinances, rules, regulations and lawful orders; (ii) provide (a) Contractor's waiver of lien for all amounts requested in such Application for Payment; (b) waivers of lien from each Subcontractor, materials supplier and all other parties that provided labor or material for which payment was requested under previous Applications for Payment (in furtherance, and not in limitation of, the foregoing, this requirement (b) does not require Contractor to provide lien waivers from such parties for amounts requested until the Application for Payment immediately following the Application for Payment on which such amounts are included), (c) an updated subcontractor buyout report, in a form satisfactory to the Owner, that sets forth, (.1) the subcontracts that have been executed for hard cost line items contained in the Schedule of Values, (.2) the total amounts payable under the subcontracts identified in (.1) above, and (.3) an estimate of when the remaining subcontracts to be entered into for hard cost line items contained in the Schedule of Values are expected to be executed; and (d) any other information reasonably requested by Owner, Architect or Owner's title insurance company; and (iii) execute any document reasonably requested by Owner's title insurance company as a prerequisite for such title insurance company to insure over mechanic's liens, construction liens and all other similar liens attributable to the Work covered by the applicable 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 (such as proof of title or bills of sale) or otherwise protect the Owner's interest as set forth in Sections 7.5.5 and 12.1.10 of the Agreement, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

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

§ 9.4 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 Owner shall have ten (10) business days to review and approve any Certificates for Payment received from the Architect and Owner. Notwithstanding the foregoing and in addition to the other rights of Owner set forth herein, the Owner may decline to make part or all of a payment requested under an Application for Payment and may withhold the same, to the extent as may be necessary, in the Owner's reasonable opinion, to protect the Owner from loss because of the events enumerated in Subparagraph 9.5.1. When the Owner determines that the grounds are removed, payments shall be made for amounts withheld on account thereof.

§ 9.4.3 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

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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.

(Paragraph deleted)

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may, after consultation with the Owner, 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 or incomplete 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.

(Paragraph deleted)

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

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

(Paragraph deleted)

§ 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. However, by doing so, the Owner is not undertaking any payment obligation on the part of the Contractor, nor does any Subcontractor have any claims against the Owner or any right to future joint check payments.

§ 9.6 Progress Payments

(Paragraphs deleted)

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. The Owner shall not be obligated to make payments to the extent the Contractor has not submitted such documents supporting such payments as required by the Contract Documents. The withholding of such partial payment in accordance with the Contract Documents shall not be deemed to be a failure to make payment as required by the Contract Documents.

§ 9.6.2 The Contractor shall tender payment to each Subcontractor, no later than ten days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Except for Contractor's Fee, payments made by Owner shall be used by Contractor solely for purposes of this Project and for paying Subcontractors, suppliers, and for labor and materials, and shall not be used to pay debts owed by the Contractor outside of this Project.

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(Paragraph deleted)

§ 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 and Contractor shall deliver written evidence from the Contractor that the Contractor has properly tendered payment to Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work unless Contractor is otherwise entitled to withhold certain funds as justified in its subcontract agreement with the Subcontractor, in which case Contractor shall provide Owner a written justification for withholding payment. 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.

(Paragraph deleted)

§ 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.

(Paragraph deleted)

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

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor, and provided Owner has previously paid Contractor for the amounts claimed, Contractor shall, in a timely manner but no more than thirty (3) days from the filing of a lien, (i) obtain and record a release or satisfaction of said claim of lien; or (ii) transfer the lien to bond or other security.

(Paragraph deleted)

§ 9.7 Failure of Payment

§ 9.7.1 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. Notwithstanding the foregoing, the Contractor shall not stop the Work during the pendency of a bona fide dispute between the Owner and the Contractor provided any sums in dispute are placed in escrow pursuant to written instructions that require said disputed sum to be released in accordance with the resolution of the dispute.

(Paragraph deleted)

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion,

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elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 Substantial Completion

(Paragraph deleted)

§ 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. Substantial Completion shall also include the requirement that the Work, or designated portion thereof, receives a Temporary Certificate of Occupancy from the authority having jurisdiction over the Work, along with any other approvals, licenses and other documents from any governmental authority that are necessary for the beneficial occupancy of the Project. If a Temporary Certificate of Occupancy is issued, Contractor shall satisfy all conditions precedent for the issuance of a Final Certificate of Occupancy that are within Contractor's control prior to the date required for Final Completion as set forth in the A102 Agreement. The remaining Work must be performed without unreasonably disrupting or interfering with the Owner's and its customers' use and occupancy of the Project or business operations; *provided however*, Owner shall ensure that Contractor has reasonable access to the Work such that Contractor can perform its Punch List and completion obligations in accordance with the terms of this Agreement.

(Paragraphs deleted)

§ 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, with input from the Architect and Owner, prepare and submit to the Architect and Owner a comprehensive list of items to be completed or corrected prior to final payment for such portion of the Work that is substantially complete. The Contractor shall proceed promptly to correct and complete items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

(Paragraph deleted)

§ 9.8.3 Upon receipt of the Contractor's list, the Architect and Owner will make a joint inspection to determine whether the Work or designated portion thereof is substantially complete. If the inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy and 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 or Owner. In such case, the Contractor shall then submit a request for another inspection by the Architect and Owner to determine Substantial Completion.

(Paragraphs deleted)

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect, Contractor and Owner's Representative will prepare a comprehensive list of all remaining Work to be completed in order to achieve Final Completion (the "Punch List") and 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 Punch List accompanying the Certificate, as provided in Section 9.8.6 below. 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. Notwithstanding anything to the contrary herein, the Punch List shall be created and agreed to by the Owner and Contractor prior to occupancy.

(Paragraphs deleted)

§ 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.

(Paragraphs deleted)

§ 9.8.6 No later than thirty (30) days after Substantial Completion, the Contractor shall complete all Punch List Work, corrective work and work not in accordance with the requirements of the Contract Documents as set forth in Sections 4.3 and 4.4 of the Agreement and Exhibit [] attached thereto and, if any Work remains incomplete or uncorrected by such date, the Owner may, after providing Contractor with ten days' written notice and an opportunity to cure, (and in

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addition to any other remedies under this Agreement) complete and/or correct the Work by its own forces or by other trade contractors and may withhold its costs of completion and correction from any payments otherwise owed to the Contractor. If the Owner's costs of completion and correction exceed the balance due, then the Contractor shall pay the excess to the Owner within fourteen (14) days of receipt of written demand by the Owner.

(Paragraph deleted)

§ 9.9 Partial Occupancy or Use

(Paragraphs deleted)

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor.

(Paragraph deleted)

§ 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.

(Paragraphs deleted)

§ 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.

(Paragraph deleted)

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect and Owner will promptly make such inspection. When the Architect and Owner find 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. All warranties, guarantees, and contract closeout documents required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Architect as part of the final Application for Payment. The final Certificate for Payment shall not be issued by the Architect until all warranties, guarantees, and contract closeout documents have been received and accepted by the Owner. 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. If the Architect cannot certify that the Work has been completed in accordance with the terms and conditions of the Contract Documents and is required to re-inspect the Work, then the Contractor shall pay to the Owner the fees charged to the Owner for such re-inspection. The Owner shall not be obligated to make any payment to the extent that the Contractor has not submitted the documents required by the Owner as provided hereunder. The Owner shall make payments otherwise due to the extent documentation required by the Owner has been provided with respect to specific Subcontractors, Sub-subcontractors or material suppliers.

§ 9.10.1.1 For Final Completion of the Work to be achieved, (1) Substantial Completion of the Work or designated portion thereof much have been achieved, (2) the Owner must have received a final Certificate of Occupancy and all other governmental approvals necessary and required for the Owner to occupy or utilize the Work for its intended purposes, (3) the Contractor must have submitted all warranties, operation and maintenance manuals, as-built Drawings and Specifications, keys and other submittals required for the Work, (4) the Contractor otherwise must have fully performed and completed all of its other obligations required for Final Completion under the Contract Documents with respect to the Work.

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§ 9.10.2 Neither final payment nor any remaining retained percentage and withholding for Punch List work shall become due until the Contractor submits to the Architect and Owner (1) an affidavit in accordance with applicable law, (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) compliance with Owner's reasonable close-out procedures, (6) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (7) if required by the Owner, other reasonable data establishing payment or satisfaction of obligations, such as receipts and the waivers and releases of lien identified in Section 12.2.1.4 of the Agreement, (8) one (1) pdf set of the final marked Drawings marked by the Contractor pursuant to Subparagraph 3.11 above, showing the as built project and all components thereof, including, but not limited to, all utility lines and all other terms required to be disclosed thereon pursuant to Subparagraph 3.11 above, and (9) one (1) pdf copy set of operating and maintenance manuals for all systems and equipment installed. Furthermore, neither final payment nor any remaining retained percentage shall become due until the Contractor familiarizes and trains the Owner's designated personnel with respect to the maintenance and use of the Project's systems and equipment. If a Subcontractor refuses to furnish a Waiver and Release of Lien 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 or in Owner's reasonable discretion, provide other evidence satisfactory to Owner that Contractor is financially capable to fulfill its indemnification obligations under the Contract. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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

§ 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, including any latent defects;
- .3 terms of special warranties or guarantees required by the Contract Documents;
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment; or
- .5 indemnification claims arising after Final Completion.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and

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

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

(Paragraph deleted)

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

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall give the Owner and Architect reasonable advance notice of the foregoing and exercise utmost care and carry on such activities under supervision of properly qualified personnel and in accordance with all laws, statutes, ordinances, codes, rules and regulations, and lawful orders of all governmental authorities having jurisdiction over such activities, and shall give the Owner and the Architect reasonable advance notice in writing.

(Paragraphs deleted)

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

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect. 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 and property damage. For the purposes of this section, personal injury means any injury resulting in time loss for anyone on the site.

(Paragraph deleted)

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

§ 10.2.8 Injury or Damage to Person or Property

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

(Paragraphs deleted)

§ 10.2.9 Protection of Project Site and Adjoining Property

The Contractor shall protect adjoining private or municipal property as required by prudent construction practices, local building codes, ordinances or other laws, or the Contract Documents. The Contractor shall maintain Work, materials and apparatus free from injury or damage from typical rain, wind, storms, frost or heat (i.e. not intended to apply to severe or unusual weather). In addition to its other obligations pursuant to this Article 10, the Contractor shall, at its sole cost and expense, promptly repair any damage or disturbance to walls, utilities, sidewalks, curbs and the

property of third parties (including municipalities) resulting from the negligent performance of the Work, whether by it or by its Subcontractors at any tier. The Contractor shall maintain streets in good repair and traversable condition.

10.3 Hazardous Materials and Substances

(Paragraph deleted)

§ 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 the remediation of which is not part of the Contractor's Work) 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 verbally within 24 hours and in writing within 48 hours.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall 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 a reasonable 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 equitably extended and the Contract Sum shall be equitably increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

(Paragraphs deleted)

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, and Subcontractors and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death 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. If such damage, loss or expense is due in part, but not in whole, to the negligence of the party seeking indemnity, then the Owner's indemnity obligations hereunder shall be reduced by the percentage equal to the percentage of such party's contributory negligence.

(Paragraph deleted)

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

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

(Paragraph deleted)

§ 10.3.6 If, without negligence or fault on the part of the Contractor, Subcontractors, or anyone for whose acts or omissions any of them are responsible, 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 reasonable cost and expense thereby incurred.

(Paragraph deleted)

§ 10.4 Emergencies

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

(Paragraph deleted)

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

(Paragraphs deleted)

§ 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.

(Paragraphs deleted)

§ 11.1.2 The Contractor shall provide subcontractor surety bonds or subcontractor default insurance of the types, for such penal sums or limits, and subject to such terms and conditions as provided in Section 15.5.2 of the Agreement. The Contractor shall cause its subcontractors to purchase and maintain the bonds (as applicable) and Contractor shall purchase and maintain subcontractor default insurance from a company or companies lawfully authorized to issue surety bonds or subcontractor default insurance in the jurisdiction where the Project is located.

(Paragraph deleted)

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

(Paragraphs deleted)

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within five (5) 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 (with no adjustment to the Contract Sum or Contract Time) until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor or Owner. If the Owner purchases replacement coverage, the cost of the insurance shall be charged to the Contractor by an appropriate Change Order. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

(Paragraph deleted)

§ 11.2 Owner's Insurance

(Paragraphs deleted)

§ 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.

(Paragraph deleted)

§ 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 Owner, 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. To the extent 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.

(Paragraphs deleted)

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within five (5) 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.

(Paragraphs deleted)

§ 11.3 Waivers of Subrogation

(Paragraph deleted)

§ 11.3.1 Contractor waives all rights of recovery and shall cause its insurers to waive their rights of subrogation against the Owner and its employees; representatives; officers; directors; stockholders; members; managers; lenders and, Owner's parent, subsidiary and affiliated companies, for loss or damage covered by any insurance maintained by the Contractor whether maintained pursuant to this Agreement or otherwise.

§ 11.3.2 Owner shall waive all rights of recovery and shall cause its insurers to waive their rights of subrogation against the Contractor, its Subcontractors and sub-subcontractors at all tiers, and their employees; representatives; officers; directors; stockholders; members; managers; and, parent, subsidiary and affiliated companies, for loss or damage covered by the Builders Risk policy covering the Project or any other applicable property insurance policy, any wrap/Project-specific pollution liability policy and any wrap/OCIP liability insurance program purchased by any party for the benefit of and specifically insuring both Owner and Contractor. Owner's and its insurers' waivers shall not apply to Owner's payment of any insurance deductible. Owner and Contractor acknowledge that Owner's ability to cause its builders risk insurers to waive their rights of subrogation against design professionals or involving claims alleging professional errors & omissions may be limited or precluded by the terms of Owners builders risk insurance policy.

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

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

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

§ 11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the 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

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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.

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 or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect or Owner, be uncovered for the Architect's or Owner's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect, the Owner or any governmental authority has not specifically requested to examine prior to its being covered, the Architect, the Owner or the governmental authority (as applicable) 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, the Owner or any governmental authority 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, governmental authority's services 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 written notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. The Contractor further agrees to replace, repair, or restore any parts of the Work, the Owner's work or materials, or other items or property located in the Project that are injured or damaged as a consequence of defective or nonconforming Work or corrective action taken pursuant thereto. 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 under this Subparagraph 12.2.2. 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. If the Contractor does not proceed with correction of such nonconforming work within a reasonable time as fixed by the written notice, then the Owner may remove it and store the salvageable materials or equipment at the Contractor's expense and Owner shall deduct such expense from any amounts due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such expense, the Contractor shall immediately upon demand pay the difference to the Owner.

§ 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. This obligation under Section 12.2.2 shall survive acceptance of the Work under the Contract.

§ 12.2.2.3 The one-year period for correction of Work shall be extended by corrective Work performed by the Contractor pursuant to this Section 12.2 for an additional one-year period for such corrective Work commencing on the date Contractor completes such corrective Work.

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

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

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

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

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

§ 13.2 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. Notwithstanding the foregoing, if Owner transfers the Project, Owner shall have the right to assign the Contract Documents without the necessity of obtaining the Contractor's consent, and if the transferee (i) provides the Contractor reasonable evidence that financial arrangements have been made to fulfill the transferee's obligations under Contract Documents and (ii) agrees to assume all of the Owner's obligations under the Contract Documents, then the Owner shall be released from all its obligations under the Contract Documents. Any assignment of the Contract Documents by Owner as provided herein shall not diminish, impair or otherwise affect the Contractor's obligations under the Contract Documents, including the Contractor's warranty obligations, which shall be fully enforceable by the Owner's assignee.

§ 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 or in equity.

§ 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.

§ 13.3.3 The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner the validity, enforceability or effect of the remaining parts and provisions of the Contract Documents.

§ 13.4 Tests and Inspections

(Paragraphs deleted)

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§ 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 and the Owner timely notice of when and where tests and inspections are to be made so that the Architect and the Owner may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

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

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

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

(Paragraph deleted)

§ 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.

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

(Paragraph deleted)

§ 13.4.7 No inspection performed or failed to be performed by the Owner hereunder shall be a waiver of any of the Contractor's obligations hereunder or be construed as an approval or acceptance of non-conforming, defective or incomplete Work or any part thereof.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate set forth in Section 5.3 of the Agreement.

§ 13.6 Severability

If any term or provision of the Contract is to any extent held invalid or unenforceable, and if the provisions of the Contract that are essential to each party's interests otherwise remain valid and enforceable, then (i) the remaining terms and provisions of the Contract will not be affected thereby, (ii) each term and provision of the Contract will be valid and be enforced to the fullest extent permitted by law, and (iii) the court will give the offending provision the fullest meaning and effect permitted by law.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

(Paragraph deleted)

§ 14.1 Termination by the Contractor

(Paragraph deleted)

§ 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, or for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires the Work to be stopped;

- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents.

§ 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.

(Paragraph deleted)

§ 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' written notice to the Owner and Architect and opportunity to cure (or if cure cannot be completed within such time, commence action necessary to cure), terminate the Contract and recover from the Owner payment for Work executed in accordance with the Contract Documents, as well as a reasonable portion of the Contractor's Fee and reasonable costs incurred by reason of such termination.

(Paragraph deleted)

§ 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' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.1.5 Notwithstanding anything to the contrary contained herein or in the other Contract Documents, the Owner shall not be responsible for damages to Contractor or any Subcontractor or supplier for loss of anticipated profits on Work not performed on account of any termination pursuant to Paragraph 14.1.

(Paragraphs deleted)

§ 14.2 Termination by the Owner for Cause

(Paragraph deleted)

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents;
- .5 fails to commence the Work in accordance with the terms of the Contract;
- .6 fails to prosecute the Work, or any work reflected in a Change Order or Construction Change Directive issued in accordance with the terms of the Contract Documents in writing, in accordance with the terms of the Contract Documents;
- .7 breaches any warranty made by the Contractor under or pursuant to the Contract Documents;
- .8 fails to furnish the Owner with assurances satisfactory to the Owner evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents; or
- .9 fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than ten (10) days, except as permitted under the Contract Documents.

(Paragraphs deleted)

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

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

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- .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.

(Paragraphs deleted)

§ 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.

(Paragraphs deleted)

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including compensation for the Architect's, the Architect's subconsultants, and/or any other consultant's services (directly hired by the Owner) 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. This obligation for payment shall survive termination of the Contract.

§ 14.2.5 It is recognized that: (1) if an order for relief is entered on behalf of Contractor pursuant to Chapter 11 of the United States Bankruptcy Code, (2) if any other similar order is entered under any other debtor relief laws, (3) if Contractor makes a general assignment for the benefit of its creditors, (4) if a receiver is appointed for the benefit of Contractor's creditors, or (5) if a receiver is appointed on account of Contractor's insolvency, such event could impair or prevent Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon the occurrence of any such event, Owner shall be entitled to request of Contractor or its successor-in-interest adequate assurance of future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate the Contract Documents and to exercise the accompanying rights set forth above in Paragraph 14.2 hereof. In all events pending receipt of adequate assurance of performance and actual performance in accordance therewith, Owner shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be backcharged against the Contract Sum.

(Paragraphs deleted)

§ 14.3 Suspension by the Owner for Convenience

(Paragraph deleted)

§ 14.3.1 The Owner may, with or 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.

(Paragraphs deleted)

§ 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 a reasonable adjustment of the Contractor's Fee due to the increased cost of performance of the remaining portion of the Work. No adjustment to the Contract Sum 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;
- .2 that an equitable adjustment is made or denied under another provision of the Contract; or
- .3 the suspension, delay or interruption was made necessary by the Contractor or anyone for whose acts Contractor was responsible.

(Paragraph deleted)

§ 14.4 Termination by the Owner for Convenience

(Paragraphs deleted)

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Within 21 calendar days of receipt of notice of such termination, the Contractor shall submit an Application for Payment in accordance with and subject to the provisions of Section 14.4.3 below and Article 9 of the General Conditions.

(Paragraphs deleted)

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

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed in accordance with the Contract Documents, and the actual and documented costs incurred by reason of such termination, which shall include reasonable demobilization costs, non-refundable deposits, costs associated with materials ordered or fabricated which cannot be returned, costs attributable to termination of Subcontracts.

§ 14.4.4 If Owner terminates the Contract for cause pursuant to Paragraph 14.2 and it is subsequently determined that the Owner was not authorized to terminate the Contract as provided in Paragraph 14.2, the Owner's termination shall be treated as a termination for convenience under this Paragraph 14.4, and the rights and obligations of the parties shall be the same as if the Owner had issued a notice of termination to the Contractor as provided in this Paragraph 14.4.

§ 14.5 In no event shall Contractor have a claim against Owner for lost profits, or for any indirect, special or consequential damages, on account of the termination of this Agreement by Owner or Contractor.

ARTICLE 15 CLAIMS AND DISPUTES

(Paragraph deleted)

§ 15.1 Claims

§ 15.1.1 Definition

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

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law; provided, however, in no event shall the time period be deemed to commence prior to 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.

(Paragraph deleted)

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later, provided, however, that the claimant shall use its best efforts to furnish the Architect and the other party, as expeditiously as possible, with notice of any Claim once such claim is recognized, and shall cooperate with the Architect and the party against whom the Claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of the Claim. All other Claims must, subject to Subparagraphs 3.7.4, 15.1.5, and 15.1.6, be initiated prior to the expiration of the applicable statute of limitations as provided in Subparagraph 15.1.2

(Paragraphs deleted)

§ 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.

§ 15.1.3.3 All of Contractor's Claims must be in writing and must state the following to the extent such information is then available to the Contractor: (i) the factual basis upon which the Claim is made with such reasonable detail of the event, circumstance, condition, omission or act giving rise to the Claim that is available to Contractor, including, to the best of Contractor's knowledge, the date that such event, circumstance, condition, omission or act giving rise to the Claim occurred; (ii) the specific contractual relief requested by Contractor and identification of the terms of the Contract upon which Contractor's request is based; and (iii) if the Claim is for an increase in the Contract Sum, then the actual adjustment in the Contract Sum (in terms of a specific dollar amount) requested by Contractor. Each of Contractor's Claims is subject to audit by Owner and must be delivered with all documentation that supports the Claim, including copies of invoices, Subcontracts, and reports, if any.

(Paragraphs 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.

(Paragraph deleted)

§ 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 to the Owner and Architect before proceeding to execute the portion of the Work that is the subject of the Claim. The foregoing notice shall contain a written statement from the Contractor setting forth in detail the nature and cause of the Claim and an itemized statement of the increase requested. No such notice shall form the basis of an increase to the Contract Sum unless and until such increase has been authorized by a written Change Order executed and issued according to the terms and conditions set forth herein. The Contractor hereby acknowledges that the Contractor shall not have any right to and the Owner will not consider any requests for an increase in the Contract Sum that is not submitted in compliance with the foregoing requirements. Notice under this Section 15.1.5 shall contain sufficient detail and substantiating data as set forth in Section 15.1.3.3 to the satisfaction of the Owner to permit evaluation of the Claim by the Owner. No such Claim shall be valid unless so made. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

(Paragraph deleted)

§ 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 or a change in a milestone date included in the Construction Schedule, notice as provided in Section 15.1.3 shall be given to the Owner and the Architect within thirty (30) days after the occurrence of the event giving rise to such Claim for an increase in the Contract Time or change in a milestone date. The notice shall also contain a written statement from the Contractor setting forth in detail the nature and cause of the Claim giving rise to the requested additional time or change in a milestone date. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work, if known at the time of the submission. In the case of a continuing delay, only one Claim is necessary. The Contractor hereby acknowledges that the Contractor shall not have any right to and the Owner will not consider any requests for additional time or change in a milestone date or an increase in the Contract Sum that is not submitted in compliance with the foregoing requirements

(Paragraph deleted)

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. The weather days to be incorporated into the Contractor's project schedule each month are listed below. If the weather days for any given month exceed the amount shown below, the Contractor will notify the Owner and file a claim for extension of Contract Time and adjustment to the Contract Sum. The total amount of compensation for extended general conditions due to the Contractor for each additional weather day shall not exceed \$1,433 per day per Paragraph 8.3.1. Extended time and associated fee (extended general conditions) can be recoverable for weather, but only if the weather days impact the critical path scopes. (i.e., if dried in and the critical path is based on only scope inside the building then no time and fee (extended general conditions) due to weather).

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§ 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, but is not limited to:

- .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. Notwithstanding anything to the contrary herein, the Parties expressly acknowledge and agree that this waiver of consequential damages does not and shall not: (i) prevent or preclude Owner from assessing and recovering Liquidated Damages from Contractor and/or its surety(ies) or subcontractor default insurer as provided in Section 4.5 of the Agreement; (ii) apply to any damages, including consequential damages, covered by, and actually paid by, insurance. The provisions of this Section shall survive the making of Final Payment, Final Completion, or any termination/cancellation of the Agreement.

§ 15.1.8 Contractor's failure to prepare, and deliver to Owner, a Claim that complies with the requirements of this Contract shall constitute a waiver to any such Claim and deprive Contractor of any potential right to an extension of a Contract Time, an adjustment of the Contract Sum, or any other relief under the Contract, upon which such Claim is based. The Contractor hereby acknowledge that the Contractor shall not have any right to and the Owner will not consider any requests for additional time or an increase in the Contract Sum that is not submitted in compliance with the foregoing requirements.

§ 15.2 Initial Decision

(Paragraph deleted)

§ 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, and after the parties have satisfied the pre-submission requirement set forth in Section 13.1 of the A102 Agreement, 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.

(Paragraph deleted)

§ 15.2.2 The Initial Decision Maker will review Claims and within ten (10) 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.

(Paragraphs deleted)

§ 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.

(Paragraph deleted)

§ 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

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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.

(Paragraphs deleted)

§ 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.

(Paragraph deleted)

§ 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.

(Paragraphs deleted)

§ 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.

(Paragraphs deleted)

§ 15.1.9 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.

(Paragraphs deleted)

§ 15.1.10 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 [Intentionally Deleted]

(Paragraphs deleted)

§ 15.4 Arbitration

(Paragraphs deleted)

§ 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, negotiation between the parties in good faith shall be subject to arbitration which 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 In no event shall a demand for arbitration 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. Unless otherwise agreed, the arbitration shall be before a single arbitrator who shall be an attorney licensed in the state where the Project is located having at least twenty (20) years' experience practicing in construction law. In the event that the parties mutually agree to use a panel of three arbitrators, each of the Arbitrators shall have at least twenty (20) years' experience practicing in construction law and shall be neutral and independent. This section shall not preclude the Owner or Contractor from instituting legal action to discharge an invalid construction lien.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be a reasoned award (containing findings of fact and conclusions of law) and 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 and mutually consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

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

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

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

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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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City of Norcross Public Safety Building
6025 Buford Highway
Norcross, Georgia 30071

...

(Name, legal status and address)
City of Norcross
65 Lawrenceville Street
Norcross, Georgia 30071

...

Croft & Associates
3380 Blue Springs Road
Kennesaw, Georgia 30144

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

The Contract Documents are enumerated in the Agreement between Owner and Contractor (hereinafter the "Agreement") and consist of the Agreement, the AIA Document A201-2017, 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.

§ 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 or reasonably inferred from the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. 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.

§ 1.2 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.

§ 1.2.5 The Contractor shall examine all Contract Documents and all Specifications and Drawings for the Project, including those that may primarily pertain to work that the Contractor normally does not perform with its own forces. The Contractor shall use all of the Project Drawings and Specifications for a complete understanding of the Project and its Work, to determine the type of construction and systems, for coordination, to determine what other work may be involved throughout, to anticipate and notify others when their coordinated efforts will be required, and all other relevant matters related to the Project and its Work.

§ 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

§ 1.4.1 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. "Include" means "include but is not limited to," "includes" means "includes but is not limited to" and "including" means "including but not limited to," whether or not expressly stated as such.

§ 1.4.2 Contractor shall be responsible to Owner in all respects for the proper performance of its Subcontractors. References in the Contract to the "fault" or "responsibility" of Contractor or problems "caused" by Contractor shall be deemed to include, but not be limited to, Contractor's responsibility to Owner for all negligence, errors, omissions, breaches of contract, breaches of warranty (express or implied), or other improper conduct of the Subcontractors and any other person or entity for whom Contractor or its Subcontractor is responsible.

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

§ 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 (except for any license given to the Owner for use on this Project). 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' 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. Notwithstanding anything to the contrary contained herein, the Owner shall have the right to unlimited use of the Drawings, Specifications and all other documents and computerized materials prepared by the Architect and its consultants with respect to the Project and for modifications and additions to the Project, and the Architect shall provide the Owner with a copy of the foregoing as often as reasonably requested by the Owner and, except for the copies required in Section 9.10.2, the cost of such copies will be the Owner's responsibility.

§ 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 address set forth on the cover page of the Agreement and shall be deemed to have been duly served if delivered in person, one (1) business day after having been deposited, properly addressed and prepaid for guaranteed next business day delivery, with a nationally recognized overnight courier service (e.g., UPS or FedEx), or by electronic transmission. E-mail notification is the only authorized form of electronic transmission. All such e-mail notifications shall come from and be sent to a business account. E-mail sent from and/or to personal e-mail accounts does not meet the requirements of electronic transmission. An e-mail notification shall be deemed to have been duly served one (1) business day after having been transmitted to the e-mail account set forth on the cover page of the Agreement.

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing to the address set forth on the cover page of the Agreement and shall be deemed to have been duly served one (1) business day after having been deposited, properly addressed and prepaid for guaranteed next business day delivery, with a nationally recognized overnight courier service (e.g., UPS or FedEx)..

§ 1.6.3 Where, pursuant to the Contract Documents, any item is subject to the Owner's approval or consent, the Contractor shall obtain such approval or consent in writing prior to taking the action subject to such approval or consent. Consent or approval given by e-mail shall constitute in writing for purposes of this Subparagraph 1.6.3 so long as the terms of Subparagraph 1.6.1 are otherwise complied with.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

§ 1.8 [Intentionally Omitted]

ARTICLE 2 OWNER

§ 2.1 General

ARTICLE 1 — GENERAL PROVISIONS

§ 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 the authority to bind the Owner to any matter requiring the Owner's approval or authorization. The term "Owner" means the Owner or the Owner's authorized representative. The Owner's representative is acting solely as an agent of the Owner and is not a party to this Agreement.

§ 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. Lien rights will be in accordance with current Georgia lien law.

§ 1.1 Basic Definitions

§ 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. Such financial arrangements shall include reasonable evidence of insurance required under the Contract. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

§ 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. 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.

§ 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; or (2) 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 (2) 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 and documented costs of shutdown, delay (extended general conditions costs as provided in Section 8.3) and start-up.

§ 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.

§ 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.

§ 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' written 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. The Contractor shall require of the Subcontractors similar agreements to maintain the confidentiality of Project and Owner information. The confidentiality obligations contained in this Section 2.2.4 shall survive the complete performance of the Work or earlier termination of this Agreement.

§ 2.3 Information and Services Required of the Owner

§ 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.

§ 2.3.1 The responsibility for permits and fees is described in the Contract Documents..

§ 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.

§ 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 whose status under the Contract Documents shall be that of the Architect.

§ 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.

§ 2.3.4 The Owner shall furnish a survey for the site of the Project, and a legal description of the site. The Contractor shall be entitled to reasonably rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work, including confirming, prior to commencing the Work and to the best ability of the Contractor, the location of each utility indicated on the survey provided by Owner.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 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.

§ 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**§ 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.

§ 2.4.1 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 fails to carry out Work in accordance with the Contract Documents; or fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, materials or equipment in accordance with the Contract Documents; or improperly fails to bond around or discharge in a timely manner, but no more than thirty (30) days after the filing of a lien, any lien improperly filed upon the Project property by anyone claiming by, through or under Contractor (i.e., Subcontractor files lien for work Owner has paid Contractor for); or disregards the instruction of Architect or Owner when based on the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

§ 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.

§ 2.4.2 If, after consultation with the Architect, suspension of the Work is warranted by reason of unforeseen conditions which may adversely affect the Work if such Work were continued, the Owner may suspend the Work by written notice to the Contractor. In such event, the Contract Time and the Contract Sum may be adjusted as provided in

Section 8.3, below. If the Contractor believes, in its reasonable judgment, that a suspension is warranted by unforeseen circumstances that may adversely affect the Work if the Work were continued, then the Contractor shall immediately notify the Owner and the Architect of such belief in writing and describe in detail the particular reasons therefore.

§ 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.

§ 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 default or neglect. The Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15. The right of the Owner to correct deficiencies in the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. The right granted Owner in this Paragraph 2.5 shall be in addition to, and not in restriction of, all other rights that the Owner has under the Contract Documents.

§ 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.

§ 2.6 Extent of Owner's Rights

§ 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.

§ 1.3 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.

§ 2.6.1 The rights stated in the Contract Documents are cumulative and not a limitation of any rights of Owner granted in the Contract Documents, at law, or in equity.

§ 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.

§ 2.6.2 In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

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

§ 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, 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' reserved rights.

ARTICLE 3 CONTRACTOR

§ 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.

§ 3.1 General

§ 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.

§ 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.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

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

§ 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 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

§ 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.

§ 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.

§ 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.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 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 the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. 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 reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

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. The Contractor acknowledges and warrants that it visited the Project site prior to submitting its bid for this Project and executing this Agreement. Such site visit was for the purpose of generally familiarizing the Contractor with the above-ground conditions as they exist and the character of the operations to be carried on under the Contract Documents, including all existing visible site conditions, access to the Project site, above-ground physical characteristics of the Project site, and surrounding areas. Owner acknowledges that Contractor has not undertaken any independent subsurface or environmental investigations and is relying on the accuracy of the information provided by Owner.

§ 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.

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

§ 3.2.1.1 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. The Contractor represents that the Contractor, after examining and investigating the Project site and all other Contract Documents and after making all other reasonable investigations and requests that a prudent contractor would make for additional data, Contractor is familiar with (i) the Work required to complete the Project, (ii) the availability and the character, quality and approximate quantity of materials to be used, (iii) the character of construction equipment and facilities needed, (iv) the general and local weather conditions, (v) the condition of the soil and subsurface conditions of the Project site, as noted in the Contract Document and geotechnical report, and all improvements and structures located thereon, and (vi) anticipated labor supply and costs. The Contractor is not aware of any facts that make any information the Owner or Architect has furnished to the Contractor misleading or inaccurate in any material respect which would have a material adverse effect on the Contract Sum or Contract Time. The Contractor shall not be entitled to any adjustments in the Contract Sum or Contract Time as a consequence of matters discovered during performance of the Work that should reasonably have been discovered by the Contractor through the due diligence review required hereunder. Except for any errors, inconsistencies or omissions that the Contractor reports to the Architect and Owner pursuant to Paragraph 3.2 and concealed or unknown conditions as discussed in Subparagraph 3.7.4 and 3.7.5, the Contractor hereby represents that the Contract Documents are full and complete and are sufficient to enable the Contractor to construct the Work outlined therein and otherwise to fulfill all of the Contractor's obligations under the Contract Documents.

§ 3.2.1.1 In all cases of interconnection of its Work with existing or other work, the Contractor shall verify at the Project site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly corrected by the Contractor at no additional cost to Owner.

§ 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, Architect or Architect's Consultants 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 visible 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 and Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect and Owner may reasonably require. If the Contractor knowingly performs any construction activity involving such an error,

inconsistency or omission in the Contract Documents without such notice to the Owner, then the Contractor shall be responsible for any costs and expenses that would have been avoided had Contractor provided said notice. 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, except those drawings prepared by the Contractor or its Subcontractors, but the Contractor shall promptly report in writing to the Architect and Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. If the Contractor performs any construction activity involving such nonconformity known to the Contractor at the time of said construction activity, without such notice to the Owner and Architect, then the Contractor shall be responsible for any costs and expenses that would have been avoided had Contractor provided said notice. Notwithstanding the foregoing, Contractor and its Subcontractors shall comply with all applicable laws, building codes, and governmental requirements as provided elsewhere in this Contract (e.g. Sections 3.5.1, 3.7.2, 3.7.3, 3.7.6, 9.3.1, etc.).

§ 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. Notwithstanding the immediately preceding sentence, if the Contractor performs any construction activity and if it knows or should have known, based on the terms and conditions set forth in Subparagraphs 3.2.1, 3.2.2, and 3.2.3 that any portion of the Contract Documents relating to such construction activity contains an error, inconsistency, or omission, the Contractor shall be responsible for such performance and shall bear the cost for correction thereof.

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. 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.

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect within ten (10) days, 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.

§ 3.3.1.1 Nothing in these General Conditions shall be interpreted as imposing on the Owner, or its agents, employees, officers, directors or consultants, any duty, obligation or authority with respect to any items that are not intended to be

incorporated into the completed Project, including but not limited to the following: shoring, scaffolding, hoists, weatherproofing, or any temporary facility or activity, because these are the sole responsibility of the Contractor.

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§ 3.4 Labor and Materials

§ 3.3.4 The Contractor acknowledges that it is the Contractor's responsibility to hire all personnel for the proper and diligent performance of the Work and the Contractor shall use its best efforts to maintain labor peace for the duration of the Project.

~~§ 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.~~

§ 3.3.5 The Contractor shall develop procedures acceptable to the Owner for implementing, documenting, reviewing and processing field questions and responses, field variance authorizations and directives, minor changes and Change Orders. The Contractor shall review requests for changes submitted by the Subcontractors, negotiate Subcontractor's proposal, submit recommendations to the Owner and, if they are accepted by the Owner in writing, prepare and submit Change Orders for the approval and signature of the Owner. All requests for information by the Contractor or any Subcontractor shall be submitted in good faith and shall contain the Contractor's or the Subcontractor's, as applicable, proposed solution, if applicable. If the Contractor, solely for its own convenience and not for any other purpose, proposes a substitution from materials or equipment specified in the Contract Documents that are otherwise available for incorporation into the Work, then, if such substituted material or equipment is accepted by the Owner, the Contractor shall pay for any design or re-engineering costs incurred to accommodate the substitution. Contractor has already selected, paid for and implemented Project Site as the software to be used by the Contractor, Subcontractors, Architect, Architect's consultants and Owner (as desired) for the project documentation, including submittals, RFIs, financials, etc., and for comprehensive close-out documentation at the end of the Project. Contractor shall not change the software without prior written approval of Owner.

§ 3.3.6 If any of the Work is required to be inspected or approved by any public authority, or by the Architect or any consultant, then the Contractor shall cause such inspection or approval to be performed. No inspection performed or failed to be performed by the Owner hereunder shall be a waiver of any of the Contractor's obligations hereunder or be construed as an approval or acceptance of the Work or any part thereof.

~~§ 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 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.

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

§ 3.4.2 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 Owner and in accordance with a Change Order or Construction Change Directive. If the Contractor submits proposed substitutions of materials, equipment or processes in lieu of what has been specified or shown in the Contract Documents, the following subprovisions apply:

§ 3.4.2.1 The Contractor shall submit to the Architect and the Owner in writing (1) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution; (2) a written explanation of the reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (3) the adjustment, if any, in the Contract Sum, in the event the substitution is acceptable; and (4) the adjustment, if any, in the Completion Date and the Construction Schedule in the event the substitution is acceptable. Proposals for substitutions shall be submitted to the Architect and Owner a minimum of sixty (60) days prior to the date of the commencement of that portion of the Work plus any required lead time for ordering and receiving such material. The Architect shall review proposed substitutions within a reasonable time. Contractor shall bear the risk of any delay in performance caused by submitting substitutions. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as required in this Section 3.4.2.1.

§ 3.5 Warranty

§ 3.4.2.2 Substitutions and alternates may be rejected by the Owner or the Architect without explanation and will be considered only under one or more of the following conditions: (a) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing; (b) specified products are unavailable through no fault of the Contractor; (c) subsequent information discloses the inability of specified products to perform properly or to fit in the designated space; (d) the manufacturer/fabricator refuses to certify or guarantee the performance of the specified product as required; and (e) when in the judgment of the Owner or the Architect, a substitution would be substantially in the Owner's best interests, in terms of cost, time or other considerations.

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

§ 3.5.1 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.

§ 3.4.4 The Contractor shall use its best efforts to minimize the possibility of a strike, work stoppage or other labor disturbance.

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

§ 3.4.5 VALUE ENGINEERING. Contractor may have provided certain value engineering recommendations. Owner acknowledges that such recommendations are advisory only, not professional design services, and not to be considered substitutions. Owner acknowledges it is the Architect's responsibility to ensure that such recommendations are in compliance with all applicable codes and are consistent with design intent. Additional costs associated with value engineering, including additional costs to effectuate or implement such value engineering including design services, such costs are not the responsibility of Contractor and shall be borne by the Owner.

§ 3.4.6 INCIDENTAL SERVICES. To the extent the Owner requires any incidental services, construction consulting or value engineering, the Owner acknowledges that such services are advisory and are not professional design services. The Owner will, with due diligence, refer such questions, matters and inquiries to the design professionals, and the Contractor shall have no liability to the Owner or the Architect or its consultants for such services requested by the Owner and rendered hereunder. To be clear, the Contractor is not a design professional and makes no warranties concerning the Architect's drawings and/or performance of its services. Notwithstanding any terms herein to the contrary, this Section shall not be deemed or interpreted to modify the duties and responsibilities of the Contractor under Section 3.12.10 of these General Conditions.

§ 3.6 Taxes

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

§ 3.4.7 OWNER'S ACCEPTANCE OF INCIDENTAL SERVICES. To the extent the Contract Documents integrates or references Contractor's incidental services including proposed value engineer, Owner represents and warrants that it's design professionals has reviewed, accepted, and approved such recommendations and Owner has been fully advised by its design professionals of additional costs to implement or effectuate such recommendations.

§ 3.5 Warranty

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 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 or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

§ 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.

§ 3.5.3 The Contractor shall and does hereby assign to the Owner the benefits of any warranties of all Subcontractors (which includes Sub-subcontractors, suppliers and manufacturers) to the extent the warranties are not initially issued directly to Owner, but such assignment does not relieve the Contractor of its warranty obligations to the Owner under the Contract Documents. Prior to and as condition to Final Payment, the Contractor shall deliver to the Owner all warranties on equipment and materials furnished by all manufacturers and suppliers with duly executed instruments assigning the warranties to the Owner, as applicable.

§ 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.

§ 3.5.4 If the Contractor uses any of the Owner's other property prior to Final Completion of the Work, the Contractor shall restore such property to the condition it was in at the time of executing this Contract or as specified in the Contract Documents. The Contractor's warranty and agreement to correct defective Work shall specifically include the Contractor's obligations under this Subparagraph.

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

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (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.

§ 3.6 Taxes

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

3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.5 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.

§ 3.7.1 Unless otherwise provided in the Contract Documents, Owner shall secure and pay for the master building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for the commencement of the Work. Contractor shall secure and pay for building department trade permits required for proper execution and completion of the Work, if required by the building department to be paid separately by each trade subcontractor at the time bids are received. Original certificates of inspection and occupancy shall be delivered to the Owner upon completion of the Work in sufficient time for occupancy of the Project in accordance with the approved schedule for the Work.

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

§ 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.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders and all other requirements of public authorities, the Contractor shall assume responsibility for such Work and shall bear the costs attributable to the correction thereof. Unless otherwise authorized by appropriate authorities, the Contractor shall not perform any Work or conduct any construction activities outside of the hours permitted by local ordinance.

§ 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 fourteen (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. No adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition

(including those described in Subparagraph 3.7.5 below) that does not differ materially from those conditions disclosed or that reasonably should have been disclosed by the Contractor's (i) prior inspections, tests, reviews or preconstruction services for the Project, or (ii) inspections, tests, reviews or preconstruction services that the Contractor had the opportunity to make or should have performed in connection with the Project. The Contractor hereby acknowledges that the Contractor shall not have any right to and the Owner will not consider any requests for an increase in the Contract Sum or for additional time under Subparagraphs 3.7.4 and 3.7.5 that is not submitted in compliance with the foregoing requirements.

§ 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.

§ 3.7.6 Contractor and the Subcontractors shall comply with all applicable federal, state and local laws, statutes, ordinances, codes, rules, regulations and lawful orders of public agencies and public officials.

§ 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.

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

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

§ 3.9 Superintendent/Project Manager

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the 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.

§ 3.9.1 The Contractor shall employ a competent superintendent, among other staff, who shall be in attendance at the Project site during performance of the Work. The Project manager shall not be removed without prior written notice to Owner. Only communications in writing to the Project manager shall be considered valid as if given to the Contractor. The Project manager and lead superintendent proposed by Contractor shall, at minimum, have a tenure with Contractor of at least two years. The Contractor's Project superintendent and Project manager shall be satisfactory to the Owner in all respects, and Owner shall have the right to require Contractor to dismiss from the Project any Project superintendent or Project manager whose performance is not reasonably satisfactory to Owner, and to replace such Project superintendent or Project manager with a Project superintendent or Project manager satisfactory to Owner.

§ 3.9.1.1 Prior to the commencement of construction, the Contractor shall provide the Owner and the Architect with a list of the key personnel and employees assigned to this Project, including, but not limited to the name of the Project

superintendent, and the hourly rates for such key personnel and employees assigned to this Project, which list, upon receipt by Owner, shall be deemed Exhibit J to the Contract.

§ 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 and Project manager. Within 14 days of receipt of the information, the Architect or Owner may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent and Project manager or (2) requires additional time for review. Failure of the Architect and/or Owner 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 or Project manager to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent or Project manager without Owner's consent.

§ 3.10.1 Within thirty (30) days after the effective date of this Contract, Contractor shall provide an updated and detailed Construction Schedule appropriate for the Project, including (1) the Date of Commencement of the Work, interim schedule milestone dates, if any, 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 Construction Schedule shall be in a form satisfactory to the Owner and the Architect and shall, at a minimum, include detail of the tasks to be performed, the Commencement Date, the Substantial Completion dates and any other milestone dates requested by the Owner or the Architect. The tasks shall be broken down by trade for each phase of the Work, by building, if the Project includes multiple buildings, and by floor for each building in the Project that contains more than four stories. The schedule, once approved by the Owner and Architect ("Approved Project Schedule"), shall be attached to the Contract as Exhibit [B] and shall not be extended without the written approval of Owner in each instance. Contractor shall have discretion to manipulate the schedule, including sequencing and float, without Owner's consent or approval to the extent that any changes made by Contractor do not impact the Critical Path (as defined in Section 8.3.6 herein) and Substantial Completion dates set forth in Section 4.3.1 of the Agreement.

§ 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 and Owner's approval. The Architect's and Owner'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 Approved Project Schedule and submittal schedule submitted to the Owner and Architect and approved by the Owner by Change Order.

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

§ 3.10.4 The Contractor shall monitor the progress of the Work for conformance with the requirements of the Approved Project Schedule and shall promptly advise the Owner and the Architect of any delays or potential delays that impact the Critical Path and/or Substantial Completion date(s) set forth in Section 4.3.1 of the Agreement. The Approved Project Schedule shall be updated monthly and provided to Owner with each application for payment to reflect actual conditions or if requested by the Owner or the Architect. If Contractor indicates any delays that impact the Critical Path and Substantial Completion dates set forth in Section 4.3.1 of the Agreement, then the Contractor shall propose an affirmative plan to correct the delay, including overtime and additional labor, if necessary. In no event shall any report by the Contractor of any delay be deemed an adjustment to the Contract Time or Contract Sum unless

agreed to by the Owner and authorized in writing by a Change Order executed by the Owner, the Architect and the Contractor.

§ 3.10.5 On a bi-weekly basis, the Contractor shall provide a two-week look-ahead schedule which shall be reviewed as part of the respective weekly jobsite meetings and shall continuously maintain an accurate Approved Project Schedule. The Contractor shall keep accurate and detailed written records of the progress of the Work.

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

§ 3.11 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, purchase orders, subcontracts, materials, equipment, applicable handbooks, commercial and technical standards and specifications, and any other related documents and revisions that arise out of the Contract Documents or the Work. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect. In addition, the Contractor shall submit to Owner one electronic copy of all submissions made to and accepted by the Architect no less than bi-weekly. Upon completion of the Work Contractor shall deliver a complete set of such submittals as a record of the Work as constructed. The foregoing record copy of the Contract Documents shall also contain "as-built" notations. The information marked on such record copy of the Drawings shall include, but not be limited to: (i) the actual location of the underground utilities and appurtenances as referenced to permanent surface improvements; (ii) the location of internal utilities and appurtenances concealed in building structures; and (iii) significant changes to the original Drawings that occurred during the construction process and significant detail not shown in the original Drawings. No portion of the Work shall be permanently concealed until the required information relating thereto has been recorded on such record copy of the Drawings as provided herein. The foregoing record copy of the Drawings shall be clearly marked "Project Record Copy", maintained in good condition and available at all times for inspection by the Owner and the Architect.

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

§ 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.

§ 3.11 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.

§ 3.12.2 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 Shop Drawings, Product Data and Samples

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

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

§ 3.12.1 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.

§ 3.12.6 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.

§ 3.12.2 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.

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof. The Contractor shall stamp all Shop Drawings, Product Data, Samples and other submittals to verify the Contractor's review and approval thereof, which stamp shall constitute a representation by the Contractor to the Owner that the submitted item conforms with the Contract Documents and is coordinated with other related Work. In collaboration with the Architect, the Contractor shall establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals.

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

§ 3.12.9 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 law, architecture, engineering, or design services 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 (to the extent such activity is considered to be a professional service under Georgia law) and specifically set out in the Contract Documents. The Contractor shall not be required to provide professional services in violation of applicable law.

§ 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.

§ 3.12.10.1 Professional design services, certifications by a design professional related to systems, materials, or equipment, or other professional services that are specifically required of the Contractor shall be set forth in the Contract Documents, including the specific design and performance criteria related to such activities required of the Contractor. To the extent professional services are required of the Contractor in the future that are not set forth in the Contractor Documents, the Owner, Architect and Contractor will work together to specify and detail in writing (via Change Order) which particular service is required including the applicable scope and the performance and design criteria that such services must satisfy before Contractor is required to engage in such services. If Contractor reasonably believes that additional information regarding performance or design criteria are needed, it shall request the same before proceeding with the particular design services and applicable scope identified in the Change Order. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents unless the Contractor knows that the performance and design criteria are faulty or inadequate and Contractor failed to report the matter to the Architect and the Owner. The Contractor shall cause such design 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 as the submission of drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by a licensed design professional on behalf of Contractor shall constitute a representation that such licensed design professional possessed all of the performance criteria necessary to perform its services. To the extent Contractor provides the submission of a drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by a licensed design professional based on performance criteria not expressly identified in the Contract Documents, the Contractor shall expressly identify the performance criteria assumed by its licensed design professional. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

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

§ 3.12.10.3 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 Contractor shall carry, or cause those subcontractors or subconsultants so performing such design work, to carry Errors and Omissions Insurance in amounts not less than the amounts listed on Exhibit A attached hereto.

§ 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.

§ 3.13 Use of Site

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

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

§ 3.13.1 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. Only materials and equipment that are to be used directly in the Work shall be brought and stored on the Project site. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall provide a reasonably secure site (site fence with locked gates) so as to limit Project site damage from vandalism, theft, and other occurrences.

§ 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.

§ 3.13.2 The Contractor shall send proper notices, make all necessary arrangements, and perform all other services required in order to protect and maintain all marked, identified or known public utilities such as fire lines and hydrants, electric, gas, water lines, sewer pipes, mechanical systems and all other items of this nature, and assume all responsibility and pay all costs for which the Owner may be liable if said services are interrupted by actions of the Contractor or subcontractors.

§ 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.

§ 3.13.3 The Contractor shall not erect or permit the erection of any sign on the Project site without the prior written consent of the Owner, which consent may be withheld or revoked in the Owner's sole discretion. The Contractor shall not, without the Owner's review and prior written approval, which approval may be withheld or revoked in the Owner's sole discretion, include any representation of the Project, photographs of the exterior or interior of the Project or references to the fact that the Contractor is constructing the Project in the Contractor's promotional or advertising material.

§ 3.13 Use of Site

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

§ 3.14 [Intentionally Deleted]

§ 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.

§ 3.15 Cleaning Up

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

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project. The Contractor shall maintain the streets and sidewalks around the Project site in a clean condition. The Contractor shall remove all spillage and tracking arising from the performance of the Work from such areas and shall establish a regular maintenance program of sweeping and hosing to minimize accumulation of dirt and dust upon such areas.

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

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

§ 3.16 Access to Work

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

§ 3.15.2 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.

§ 3.17 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.

§ 3.16 Access to Work

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

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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 or written notice identifying infringement concerns is provided to Owner.

§ 3.18.1 To the fullest extent permitted by law, Contractor shall defend, indemnify and hold the Owner, Owner's partners and/or members, the wholly owned affiliates of Owner and Owner's partner's and/or members, , Owner's and the agents, employees, representatives, and officers, of any of them (the "Indemnified Parties") harmless from and against any and all claims, damages, losses, and expenses, including, without limitation, expenses incurred to avoid litigation, attorneys' fees, court costs, and other litigation or pre-litigation expenses, arising out of or resulting from performance of the Work, including any such claim, damage, loss, or expense attributable to personal injury, 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, in whole or in part, a breach of the Contract Documents by Contractor, or the intentional or 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 one of the Indemnified Parties. The Contractor shall also indemnify, defend and hold the Indemnified Parties harmless from and against any assertion of claims for mechanics' or construction liens or similar liens by any party that provided labor or materials for the Project except to the extent any such claims are the result of Owner's or any of the Indemnified Parties' wrongful withholding of payment due under the Contract Documents. 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. Contractor agrees that it will require by contract, that any subcontractors or vendors hired by Contractor to perform the Work, to indemnify, defend and hold harmless the Indemnified Parties consistent with the requirements set forth in this section.

§ 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 The Contractor's indemnity obligations under this Section 3.18 shall also specifically include, without limitation, all fines, penalties, damages, liabilities, costs, expenses (including, without limitation, reasonable attorneys' fees) arising out of, or in connection with, any (i) violation of or failure to comply with any law, statute, ordinance, rule, regulation, code or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor, or any person or entity for whom either is responsible, or (ii) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible.

§ 3.18.4 Contractor's obligations under this Article shall survive the expiration or earlier termination of the Contract.

ARTICLE 4 ARCHITECT

§ 4.1 General

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

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

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and the contract between the Owner and the Architect 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 specifically provided in the Contract Documents and the contract between the Owner and 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, (1) to become generally familiar with and keep the Owner informed about the progress and quality of the portion of the Work completed; (2) to guard the Owner against defects and deficiencies in the Work; and (3) 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. Notwithstanding anything to the contrary, the Owner has not relinquished its right to communicate directly with the Architect's consultants, Contractor's Subcontractors, sub-subcontractors, suppliers or other parties involved in the Project.

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

§ 4.2.6 The Architect and the Owner have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect or the Owner considers it necessary or advisable, the Architect or the Owner 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 or the Owner 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 or the Owner 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 Contractor will prepare Change Orders, but such are not effective unless and until signed by the Owner. The Architect may order minor changes in the Work as provided in Section 7.4 without the signature of the Owner provided that such changes do not impact the Contract Sum or Contract Time. 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 Final Completion Date; 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 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 make recommendations on 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 RFI REVIEW

The Contractor shall submit a written request for information ("RFI") in electronic format to Architect with a copy to Owner for any interpretations necessary for the proper execution or progress of the Work. Contractor's RFIs shall include (a) an identification of the specific plans or specifications at issue in the RFI; (b) photographs of the condition in the field (if addressing a field condition); (c) the Contractor's proposed solution to the situation, if any; and (d) the cost/schedule impact – if any – associated with the Contractor's proposed solution to the extent then known by Contractor. Such interpretations or responses to RFIs shall be issued in writing. Contractor shall anticipate and plan for a maximum of five (5) business days for a response to any RFI affecting non-Critical Path activities. In the event of an RFI that Contractor believes may affect the Critical Path, Contractor shall expressly designate the RFI as such and will specifically notify the Architect and Owner of the priority to be given to such RFI, and the Architect shall respond as expeditiously as possible in accordance with the Architect's standard of care. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information. So long as an extension will not delay the Critical Path of the Work, such interpretation and response periods shall be extended by mutual agreement of the Owner, Architect and Contractor, which agreement shall not be unreasonably withheld.

§ 4.2.14 UPDATED PERMITTED DRAWINGS

From the issuance of the permit through final completion of the Project, all conditions, directives, or other changes or deviations in the Work incurred through the normal construction administrative process that are performed or that are required to be performed differently than identified on the latest set of permitted Drawings or as required by the Contract Documents, including all deviations authorized or otherwise agreed to by the Architect and/or the Owner, will be periodically compiled and incorporated into the permit set of drawings via clouded plan revision and associated narratives by Architect, which, at Architect's instruction shall be submitted by the Owner to the Authority having Jurisdiction for review and approval.

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, or supply materials and/or equipment for the Work. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after the award of the Contract but prior to approval of the GMP, 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 fourteen (14) days of receipt of the information, the Architect or Owner may notify the Contractor whether the Owner or the Architect has reasonable objection to any such proposed person or entity, which time period may be extended by mutual agreement of the parties. Failure to provide notice or request an extension within the prescribed period shall constitute notice of no reasonable objection. Contractor's Subcontractors shall be subject to the Owner's approval as provided in Article 10 of the Agreement.

§ 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 fully qualified and capable of performing the Work and submitted a complete, comprehensive responsible bid proposal, the Contract Sum and Contract Time shall be increased or decreased by the documented cost 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. The Owner may require the Contractor to change any Subcontractor or Sub-subcontractor previously approved and, if at such time the Contractor is not in default hereunder, the Contract Sum shall be increased or decreased by the difference in cost occasioned by such change and the Contract Time shall be adjusted if said change results in any delays.

§ 5.2.5 The Contractor shall contract with each and every Subcontractor and supplier solely in its own name and no approval by the Owner or anything in the Contract Documents shall be construed as creating any contractual relationship between the Owner and any Subcontractor or Supplier.

§ 5.3 Subcontractual Relations

§ 5.3.1 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. However, no Subcontractor shall be deemed to be a third-party beneficiary of the Agreement between the Owner and the Contractor, and nothing herein shall give any Subcontractor any rights directly 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. Contractor's subcontract agreements shall expressly state that the Owner's payment to the Contractor is a condition precedent to the Contractor's payment to the Subcontractor and that the Subcontractor shall not be entitled to payment from the Contractor unless and until the Contractor receives payment from the Owner.

§ 5.3.1.1 As used in this Section 5.3, in Section 5.4 and other provisions of the Contract, the terms "subcontract agreement", "subcontract" and similar terms shall mean and include subcontracts per se and also purchase orders, material and equipment supply agreements, consultant agreements and similar contracts for labor, services, materials or equipment for the Project to which a Subcontractor is a party.

§ 5.3.2 Each subcontract shall state that the Owner is and shall be a third-party beneficiary of such subcontract, and that the Owner shall have the right to assert claims directly against the Subcontractor for breach of contract, breach of express warranties, breach of implied warranties including warranties of merchantability and of fitness for a particular purpose if applicable, negligence and other claims arising out of or related to the Work or the Project. The Owner and Contractor acknowledge and agree that the purpose of this Section 5.3.3 is to enable the Owner, in addition to the Contractor, to assert claims for damages and indemnification directly against Subcontractors that are or may be responsible for breach of the Contract, defects in the Work, and other damages incurred by the Owner arising out of or related to the Work or the Project. Nothing in this Contract shall be interpreted, however, to mean that a Subcontractor has any right to bring a claim against Owner under this Contract or that a Subcontractor has any other rights under this Contract.

§ 5.3.3 Each subcontract shall state that the Subcontractor agrees to the contingent assignment of the subcontract to the Owner, consistent with Section 5.4.

§ 5.3.4 The Contractor shall not enter into any subcontract, contract, agreement, purchase order or other arrangement ("Arrangement") for the furnishing of any portion of the materials, services, equipment or Work with any party or entity if such party or entity is an Affiliated Entity (as defined below), unless such Arrangement has been approved in writing by the Owner, after full disclosure in writing by the Contractor to the Owner of such affiliation or relationship and all details relating to the proposed Arrangement. The term "Affiliated Entity" means any entity related to or affiliated with the Contractor or with respect to which the Contractor has direct or indirect ownership or control, including, without limitation, any entity owned in whole or part by the Contractor; any holder of more than 10% of the issued and outstanding shares of, or the holder of any interest in, the Contractor; any entity in which any officer, director, employee, partner or shareholder (or member of the family of any of the foregoing persons) of the Contractor or any entity owned by the Contractor has a direct or indirect interest, which interest includes, but is not limited to, that of a partner, employee, agent or shareholder. If self performing work is included as part of a Change To Work then contractor will only be allowed to bill the cost of the self-performed work plus the 15% subcontractor markup. No 5% general contractor markup will be allowed on the self-performed work.

§ 5.3.5 Notwithstanding anything to the contrary contained herein, all subcontracts shall be in the form and substance substantially similar to Contractor's Standard Form Subcontract attached to the Agreement as Exhibit [K] and shall specifically provide that the Owner is an intended third party beneficiary of such subcontract. Upon request, Contractor shall send Owner a copy of the executed Subcontract.

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work and any purchase order for materials or equipment shall be 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 or purchase order, the Owner assumes the Contractor's rights and obligations under the subcontract. Notwithstanding the foregoing, Owner shall not assume, and Contractor shall remain responsible for, payment obligations that exist at the time of assignment of a subcontract if Owner has already remitted payment to Contractor for work or services performed by the Subcontractor that are due under the subcontract as of the date of the assignment.

§ 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 provided such claimed costs are substantiated by appropriate documentation.

§ 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 who accepts assignment thereof, the Owner shall be released from the obligations under the subcontract. In addition, the Owner, prior to acceptance of assignment of the subcontract, may assign the subcontract to a successor contractor or other entity and upon acceptance of the assignment of the subcontract by such successor contractor or other entity, such contractor or other entity shall have the rights and obligations of the Owner described under this Section 5.4 upon an acceptance of an assignment of the subcontract. In such event, the subcontract shall be deemed to have been directly assigned from the Contractor to the successor contractor or other entity, and the Owner shall have no liability thereunder.

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 or vendors (including but not limited to utility providers) 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 any other contractors, and with Separate Contractors.

§ 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 Notwithstanding anything to the contrary contained in Subparagraph 6.1.3, above, Owner and Contractor agree and acknowledge that regardless of what party is responsible for the installation of utilities (including, but not limited to, gas, electric, sewer, water, cable and communications) at the Project, the Contractor is responsible for scheduling and coordinating such installation with the Contractor's Work.

§ 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 and Owner 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 and Owner 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. In no event shall Contractor be responsible for the improper, defective or incomplete work of a Separate Contractor; provided however, that Contractor shall be

responsible for any expenses incurred by the Owner that could have been avoided had Contractor notified Owner as required by this Section.

§ 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. Subject to Section 6.2.2, 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.

§ 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.

§ 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 allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 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.

§ 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.

ARTICLE 4 — ARCHITECT

§ 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.

§ 4.1 General

§ 7.2 Change Orders

§ 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.

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

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

§ 7.3 Construction Change Directives

§ 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.

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

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

§ 4.2 Administration of the Contract

§ 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, workers' compensation insurance, and fringe benefits required by agreement or custom, 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 (if applicable) and insurance, permit fees, and sales, use, or similar taxes, directly related to the change;
- .5 Costs of supervision and field office personnel directly attributable to the change; and
- .6 General conditions costs based on the rates and values set forth in Contractor's General Conditions Cost Breakdown attached as Exhibit K to the Agreement.

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

§ 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.

§ 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.

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

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

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

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

§ 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.

§ 7.4 Minor Changes in the Work

The Architect, after due coordination with the Owner, 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.

§ 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.

ARTICLE 8 TIME

§ 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.

§ 8.1 Definitions

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

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

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

§ 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.

ARTICLE 5 — SUBCONTRACTORS

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

§ 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.

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

§ 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

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

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

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

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

§ 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.

§ 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.

§ 7.2 Change Orders

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

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

§ 7.3 Construction Change Directives

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

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

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

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

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

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

§ 7.4 Minor Changes in the Work

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

ARTICLE 8—TIME**§ 8.1 Definitions**

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

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

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

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

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

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

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

§ 8.3 Delays and Extensions of Time

§ 8.2.1 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. Contractor acknowledges that the Owner may rely on the Contract Time for marketing, leasing and occupancy of the Project and that delays will cause significant damage to the Owner.

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

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

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner 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 or (4) 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. determine, if and to the extent such events delay the critical path of the Project schedule. The critical path is the longest sequence of tasks that must be completed on time to finish a project within a specified time frame. It's the longest possible path through the network of construction activities, and its length is the total duration of all the activities along the path. Critical tasks must be completed on time for the project is finished on schedule. Any delay in a critical task will result in a delay in the overall project. Any extended general conditions costs associated with Time Extensions on the project will be calculated based on the actual not to exceed general condition costs incurred at Final Completion based on the following: labor costs, field office trailer and utility costs, equipment, supplies, postage and shipping, progress photos, mobile phones, project vehicles and fuel charges, travel, safety supplies, daily cleanup and NPDES monitoring. Extended general conditions cannot exceed \$1,433 per each day of time extension approved. The number of days of time extension will be agreed upon between Contractor and the Owner as they are claimed during construction, but the final time extension payment based on total number of days of approved time extension will not be issued until after Final Completion and included the final payment application.

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 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.

§ 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.

§ 8.3.5 Contractor must provide Owner with verbal notice of an event that may give rise to a delay within 48 hours of the occurrence of the event. Contractor must provide a written notice of delay and/or request for an extension of Contract Time and additional delay-related compensation in accordance with the requirements of the Contract Documents, including without limitation, those set forth in Article 15, below.

§ 8.3.6 In no event shall the Contractor be entitled to an extension in the Contract Time or additional delay-related compensation for any delay to the Contractor's Work that does not affect Work on the Critical Path of the Approved Project Schedule and the achievement of Substantial Completion of the Work by the Substantial Completion dates. The Contractor shall have a duty to make reasonable attempts to mitigate the effects of any condition or event which gives rise to, or is likely to give rise to, any delay in the completion of the Work.

§ 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.

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

ARTICLE 9 — PAYMENTS AND COMPLETION

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

and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

§ 9.1 Contract Sum

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

§ 9.1.1 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. If the Agreement is subject to a Guaranteed Maximum Price (as defined in the Agreement), then, except as specifically set forth in the Agreement, the Contract Sum shall not exceed the Guaranteed Maximum Price.

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

§ 9.2 Schedule of Values

The Contractor shall submit a "Schedule of Values" to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The Schedule of Values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect or Owner.. This schedule shall not be front-end-loaded. This schedule, once approved by the Architect and Owner, shall become the "Approved Schedule of Values" and shall be used as a basis for reviewing the Contractor's Applications for Payment. The Approved Schedule of Values may only be revised by Change Order or otherwise in writing signed by the Owner.

§ 9.3 Applications for Payment

§ 9.3.1 At least fifteen (15) business days before the date established for each progress payment, the Contractor shall submit to the Architect and the Owner an itemized Application for Payment (AIA Document G702 and G703) 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 as provided in Section 12.1.4 of the Agreement, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications for payment 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 or is the subject of a backcharge against the Subcontractor as permitted under the Subcontract or Georgia law.

§ 9.3.1.3 With each Application for Payment submitted by the Contractor, the Contractor shall: (i) be deemed to have certified that (a) the Application for Payment represents a just estimate of Work performed and materials supplied during the period covered by the Application for Payment; (b) there are no known construction liens outstanding as of the date of the Application for Payment; (c) all due and payable bills with respect to the Work have been paid to date or included in the amount requested in the current Application for Payment; (d) except for such bills not paid but included as provided in (c), above, there is no known basis for the filing of any construction liens on the Work and waivers from all Subcontractors and all material suppliers have been obtained in such form as to constitute an effective waiver of lien under applicable state law; and (e) no public authority, private authority or utility company has contacted the Contractor alleging or claiming that the Work or the Contractor's performance of the Work is not in compliance with all laws, ordinances, rules, regulations and lawful orders; (ii) provide (a) Contractor's waiver of lien for all amounts requested in such Application for Payment; (b) waivers of lien from each Subcontractor, materials

supplier and all other parties that provided labor or material for which payment was requested under previous Applications for Payment (in furtherance, and not in limitation of, the foregoing, this requirement (b) does not require Contractor to provide lien waivers from such parties for amounts requested until the Application for Payment immediately following the Application for Payment on which such amounts are included), (c) an updated subcontractor buyout report, in a form satisfactory to the Owner, that sets forth, (.1) the subcontracts that have been executed for hard cost line items contained in the Schedule of Values, (.2) the total amounts payable under the subcontracts identified in (.1) above, and (.3) an estimate of when the remaining subcontracts to be entered into for hard cost line items contained in the Schedule of Values are expected to be executed; and (d) any other information reasonably requested by Owner, Architect or Owner's title insurance company; and (iii) execute any document reasonably requested by Owner's title insurance company as a prerequisite for such title insurance company to insure over mechanic's liens, construction liens and all other similar liens attributable to the Work covered by the applicable 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 (such as proof of title or bills of sale) or otherwise protect the Owner's interest as set forth in Sections 7.5.5 and 12.1.10 of the Agreement, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

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

§ 9.4.1 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 Owner shall have ten (10) business days to review and approve any Certificates for Payment received from the Architect and Owner. Notwithstanding the foregoing and in addition to the other rights of Owner set forth herein, the Owner may decline to make part or all of a payment requested under an Application for Payment and may withhold the same, to the extent as may be necessary, in the Owner's reasonable opinion, to protect the Owner from loss because of the events enumerated in Subparagraph 9.5.1. When the Owner determines that the grounds are removed, payments shall be made for amounts withheld on account thereof.

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

§ 9.4.1 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.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Architect may, after consultation with the Owner, 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 or incomplete 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.

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

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

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

§ 9.5 Decisions to Withhold Certification

§ 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. However, by doing so, the Owner is not undertaking any payment obligation on the part of the Contractor, nor does any Subcontractor have any claims against the Owner or any right to future joint check payments.

§ 9.6 Progress Payments

§ 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.

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. The Owner shall not be obligated to make payments to the extent the Contractor has not submitted such documents supporting such payments as required by the Contract Documents. The withholding of such partial payment in accordance with the Contract Documents shall not be deemed to be a failure to make payment as required by the Contract Documents.

§ 9.6.2 The Contractor shall tender payment to each Subcontractor, no later than ten days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Except for Contractor's Fee, payments made by Owner shall be used by Contractor solely for purposes of this Project and for paying Subcontractors, suppliers, and for labor and materials, and shall not be used to pay debts owed by the Contractor outside of this Project.

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

§ 9.6.3 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 and Contractor shall deliver written evidence from the Contractor that the Contractor has properly tendered payment to Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work unless Contractor is otherwise entitled to withhold certain funds as justified in its subcontract agreement with the Subcontractor, in which case Contractor shall provide Owner a written justification for withholding payment. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

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

§ 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.

§ 9.5.4 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.

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

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor, and provided Owner has previously paid Contractor for the amounts claimed, Contractor shall, in a timely manner but no more than thirty (3) days from the filing of a lien, (i) obtain and record a release or satisfaction of said claim of lien; or (ii) transfer the lien to bond or other security.

§ 9.6 Progress Payments

§ 9.7 Failure of Payment

§ 9.7.1 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. Notwithstanding the foregoing, the Contractor shall not stop the Work during the pendency of a bona fide dispute between the Owner and the Contractor provided any sums in dispute are placed in escrow pursuant to written instructions that require said disputed sum to be released in accordance with the resolution of the dispute.

§ 9.6.4 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 Substantial Completion

§ 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.

§ 9.8.1 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. Substantial Completion shall also include the requirement that the Work, or designated portion thereof, receives a Temporary Certificate of Occupancy from the authority having jurisdiction over the Work, along with any other approvals, licenses and other documents from any governmental authority that are necessary for the beneficial occupancy of the Project. If a Temporary Certificate of Occupancy is issued, Contractor shall satisfy all conditions precedent for the issuance of a Final Certificate of Occupancy that are within Contractor's control prior to the date required for Final Completion as set forth in the A102 Agreement. The remaining Work must be performed without unreasonably disrupting or interfering with the Owner's and its customers' use and occupancy of the Project or business operations; *provided however*, Owner shall ensure that Contractor has reasonable access to the Work such that Contractor can perform its Punch List and completion obligations in accordance with the terms of this Agreement.

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

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

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

§ 9.6.5 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.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect and Owner will make a joint inspection to determine whether the Work or designated portion thereof is substantially complete. If the inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy and 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 or Owner. In such case, the Contractor shall then submit a request for another inspection by the Architect and Owner to determine Substantial Completion.

§ 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.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect, Contractor and Owner's Representative will prepare a comprehensive list of all remaining Work to be completed in order to achieve Final Completion (the "Punch List") and 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 Punch List accompanying the Certificate, as provided in Section 9.8.6 below. 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. Notwithstanding anything to the contrary herein, the Punch List shall be created and agreed to by the Owner and Contractor prior to occupancy.

§ 9.7 Failure of Payment

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

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

§ 9.8 Substantial Completion

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

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

§ 9.8.6 No later than thirty (30) days after Substantial Completion, the Contractor shall complete all Punch List Work, corrective work and work not in accordance with the requirements of the Contract Documents as set forth in Sections 4.3 and 4.4 of the Agreement and Exhibit [] attached thereto and, if any Work remains incomplete or uncorrected by such date, the Owner may, after providing Contractor with ten days' written notice and an opportunity to cure, (and in addition to any other remedies under this Agreement) complete and/or correct the Work by its own forces or by other trade contractors and may withhold its costs of completion and correction from any payments otherwise owed to the Contractor. If the Owner's costs of completion and correction exceed the balance due, then the Contractor shall pay the excess to the Owner within fourteen (14) days of receipt of written demand by the Owner.

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

§ 9.9 Partial Occupancy or Use

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

Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor.

§ 9.9 Partial Occupancy or Use

§ 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.

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

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

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

§ 9.9.3 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 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect and Owner will promptly make such inspection. When the Architect ~~finds and Owner find~~ 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. All warranties, guarantees, and contract closeout documents required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Architect as part of the final Application for Payment. The final Certificate for Payment shall not be issued by the Architect until all warranties, guarantees, and contract closeout documents have been received and accepted by the Owner. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2

Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. If the Architect cannot certify that the Work has been completed in accordance with the terms and conditions of the Contract Documents and is required to re-inspect the Work, then the Contractor shall pay to the Owner the fees charged to the Owner for such re-inspection. The Owner shall not be obligated to make any payment to the extent that the Contractor has not submitted the documents required by the Owner as provided hereunder. The Owner shall make payments otherwise due to the extent documentation required by the Owner has been provided with respect to specific Subcontractors, Sub-subcontractors or material suppliers.

§ 9.10.1.1 For Final Completion of the Work to be achieved, (1) Substantial Completion of the Work or designated portion thereof much have been achieved, (2) the Owner must have received a final Certificate of Occupancy and all other governmental approvals necessary and required for the Owner to occupy or utilize the Work for its intended purposes, (3) the Contractor must have submitted all warranties, operation and maintenance manuals, as-built Drawings and Specifications, keys and other submittals required for the Work, (4) the Contractor otherwise must have fully performed and completed all of its other obligations required for Final Completion under the Contract Documents with respect to the Work.

§ 9.10.2 Neither final payment nor any remaining retained percentage and withholding for Punch List work 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, and Owner (1) an affidavit in accordance with applicable law, (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) compliance with Owner's reasonable close-out procedures, (6) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6)-(7) if required by the Owner, other reasonable 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, and the waivers and releases of lien identified in Section 12.2.1.4 of the Agreement, (8) one (1) pdf set of the final marked Drawings marked by the Contractor pursuant to Subparagraph 3.11 above, showing the as built project and all components thereof, including, but not limited to, all utility lines and all other terms required to be disclosed thereon pursuant to Subparagraph 3.11 above, and (9) one (1) pdf copy set of operating and maintenance manuals for all systems and equipment installed. Furthermore, neither final payment nor any remaining retained percentage shall become due until the Contractor familiarizes and trains the Owner's designated personnel with respect to the maintenance and use of the Project's systems and equipment. If a Subcontractor refuses to furnish a release or waiver, Waiver and Release of Lien 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 or encumbrance or in Owner's reasonable discretion, provide other evidence satisfactory to Owner that Contractor is financially capable to fulfill its indemnification obligations under the Contract. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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

§ 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, including any latent defects;
- .3 terms of special warranties or guarantees required by the Contract Documents;

- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment; or
- .5 indemnification claims arising after Final Completion.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

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

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

§ 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.

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

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall give the Owner and Architect reasonable advance notice of the foregoing and exercise utmost care and carry on such activities under supervision of properly qualified personnel and in accordance with all laws, statutes, ordinances, codes, rules and regulations, and lawful orders of all governmental authorities having jurisdiction over such activities, and shall give the Owner and the Architect reasonable advance notice in writing.

§ 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.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by

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

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect. 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 and property damage. For the purposes of this section, personal injury means any injury resulting in time loss for anyone on the site.

§ 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.

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

§ 10.2.8 Injury or Damage to Person or Property

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

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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.

§ 10.2.9 Protection of Project Site and Adjoining Property

The Contractor shall protect adjoining private or municipal property as required by prudent construction practices, local building codes, ordinances or other laws, or the Contract Documents. The Contractor shall maintain Work, materials and apparatus free from injury or damage from typical rain, wind, storms, frost or heat (i.e. not intended to apply to severe or unusual weather). In addition to its other obligations pursuant to this Article 10, the Contractor shall, at its sole cost and expense, promptly repair any damage or disturbance to walls, utilities, sidewalks, curbs and the property of third parties (including municipalities) resulting from the negligent performance of the Work, whether by it or by its Subcontractors at any tier. The Contractor shall maintain streets in good repair and traversable condition.

10.3 Hazardous Materials and Substances

§ 10.2 Safety of Persons and Property

§ 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 the remediation of which is not part of the Contractor's Work) 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 verbally within 24 hours and in writing within 48 hours.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall 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 a reasonable 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 equitably extended and the Contract Sum shall be equitably increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

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

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

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, and Subcontractors and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death 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. If such damage, loss or expense is due in part, but not in whole, to the negligence of the party seeking indemnity, then the Owner's indemnity obligations hereunder shall be reduced by the percentage equal to the percentage of such party's contributory negligence.

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

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

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

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

§ 10.3.6 If, without negligence or fault on the part of the Contractor, Subcontractors, or anyone for whose acts or omissions any of them are responsible, 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 reasonable cost and expense thereby incurred.

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

§ 10.4 Emergencies

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

§ 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.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

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

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

§ 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.

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not 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.

§ 11.1.2 The Contractor shall provide subcontractor surety bonds or subcontractor default insurance of the types, for such penal sums or limits, and subject to such terms and conditions as provided in Section 15.5.2 of the Agreement. The Contractor shall cause its subcontractors to purchase and maintain the bonds (as applicable) and Contractor shall purchase and maintain subcontractor default insurance from a company or companies lawfully authorized to issue surety bonds or subcontractor default insurance in the jurisdiction where the Project is located.

§ 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.

§ 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.

§ 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.

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within five (5) 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 (with no adjustment to the Contract Sum or Contract Time) until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor or Owner. If the Owner purchases replacement coverage, the cost of the insurance shall be charged to the Contractor by an appropriate Change Order. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

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

§ 11.2 Owner's Insurance

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

§ 10.4 Emergencies

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

ARTICLE 11 — INSURANCE AND BONDS

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

§ 11.1 Contractor's Insurance and Bonds

§ 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 Owner, 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. To the extent 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.

§ 11.1.1 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.

§ 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.

§ 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.

§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance. Within five (5) 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.

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

§ 11.2 Owner's Insurance

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

§ 11.2.2 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.

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

§ 11.3.1 Contractor waives all rights of recovery and shall cause its insurers to waive their rights of subrogation against the Owner and its employees; representatives; officers; directors; stockholders; members; managers; lenders and Owner's parent, subsidiary and affiliated companies, for loss or damage covered by any insurance maintained by the Contractor whether maintained pursuant to this Agreement or otherwise.

§ 11.3.2 Owner shall waive all rights of recovery and shall cause its insurers to waive their rights of subrogation against the Contractor, its Subcontractors and sub-subcontractors at all tiers, and their employees; representatives; officers; directors; stockholders; members; managers; and, parent, subsidiary and affiliated companies, for loss or damage covered by the Builders Risk policy covering the Project or any other applicable property insurance policy, any wrap/Project-specific pollution liability policy and any wrap/OCIP liability insurance program purchased by any party for the benefit of and specifically insuring both Owner and Contractor. Owner's and its insurers' waivers shall not apply to Owner's payment of any insurance deductible.. Owner and Contractor acknowledge that Owner's ability to cause its builders risk insurers to waive their rights of subrogation against design professionals or involving claims alleging professional errors & omissions may be limited or precluded by the terms of Owners builders risk insurance policy.

§ 11.3.2-11.3.3 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all

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

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

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

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the 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.

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 or Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect or Owner, be uncovered for the Architect's or Owner's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect, the Owner or any governmental authority has not specifically requested to examine prior to its being covered, the Architect, the Owner or the governmental authority (as applicable) 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, the Owner or any governmental authority 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, governmental authority's services 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 written notice from the Owner to do so, unless the Owner has previously given the Contractor

a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. The Contractor further agrees to replace, repair, or restore any parts of the Work, the Owner's work or materials, or other items or property located in the Project that are injured or damaged as a consequence of defective or nonconforming Work or corrective action taken pursuant thereto. 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 under this Subparagraph 12.2.2. 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. If the Contractor does not proceed with correction of such nonconforming work within a reasonable time as fixed by the written notice, then the Owner may remove it and store the salvageable materials or equipment at the Contractor's expense and Owner shall deduct such expense from any amounts due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such expense, the Contractor shall immediately upon demand pay the difference to the Owner.

§ 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. This obligation under Section 12.2.2 shall survive acceptance of the Work under the Contract.

§ 12.2.2.3 The one-year period for correction of Work shall be extended by corrective Work performed by the Contractor pursuant to this Section 12.2 for an additional one-year period for such corrective Work commencing on the date Contractor completes such corrective Work.

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

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

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

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

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

§ 13.2 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. Notwithstanding the foregoing, if Owner transfers the Project, Owner shall have the right to assign the Contract Documents without the necessity of obtaining the Contractor's consent, and if the transferee (i) provides the Contractor reasonable evidence that financial arrangements have been made to fulfill the transferee's obligations under Contract Documents and (ii) agrees to assume all of the Owner's obligations under the Contract Documents, then the Owner shall be released from all its obligations under the Contract

Documents. Any assignment of the Contract Documents by Owner as provided herein shall not diminish, impair or otherwise affect the Contractor's obligations under the Contract Documents, including the Contractor's warranty obligations, which shall be fully enforceable by the Owner's assignee.

§ 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 or in equity.

§ 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.

§ 13.3.3 The invalidity of any part or provision of the Contract Documents shall not impair or affect in any manner the validity, enforceability or effect of the remaining parts and provisions of the Contract Documents.

§ 13.4 Tests and Inspections

§ 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.

§ 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 and the Owner timely notice of when and where tests and inspections are to be made so that the Architect and the Owner may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect, Owner and Owner's consultants 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.

§11.5 Adjustment and Settlement of Insured Loss

§ 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 and Owner's consultants' services and expenses, shall be at the Contractor's expense.

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

§ 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.

§ 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.

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

§ 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.

§ 13.4.7 No inspection performed or failed to be performed by the Owner hereunder shall be a waiver of any of the Contractor's obligations hereunder or be construed as an approval or acceptance of non-conforming, defective or incomplete Work or any part thereof.

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate set forth in Section 5.3 of the Agreement.

ARTICLE 12 — UNCOVERING AND CORRECTION OF WORK

§ 13.6 Severability

If any term or provision of the Contract is to any extent held invalid or unenforceable, and if the provisions of the Contract that are essential to each party's interests otherwise remain valid and enforceable, then (i) the remaining terms and provisions of the Contract will not be affected thereby, (ii) each term and provision of the Contract will be valid and be enforced to the fullest extent permitted by law, and (iii) the court will give the offending provision the fullest meaning and effect permitted by law.

ARTICLE 14 — TERMINATION OR SUSPENSION OF THE CONTRACT

§ 12.1 Uncovering of Work

§ 14.1 Termination by the Contractor

§ 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.

§ 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, or for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires the Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents.

§ 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.

§ 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.

§ 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' written notice to the Owner and Architect and opportunity to cure (or if cure cannot be completed within such time, commence action necessary to cure), terminate the Contract and recover from the Owner payment for Work executed in accordance with the Contract Documents, as well as a reasonable portion of the Contractor's Fee and reasonable costs incurred by reason of such termination.

§ 12.2 Correction of Work

§ 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' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.1.5 Notwithstanding anything to the contrary contained herein or in the other Contract Documents, the Owner shall not be responsible for damages to Contractor or any Subcontractor or supplier for loss of anticipated profits on Work not performed on account of any termination pursuant to Paragraph 14.1.

§ 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.

§ 14.2 Termination by the Owner for Cause

§ 12.2.2 After Substantial Completion

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents;
- .5 fails to commence the Work in accordance with the terms of the Contract;
- .6 fails to prosecute the Work, or any work reflected in a Change Order or Construction Change Directive issued in accordance with the terms of the Contract Documents in writing, in accordance with the terms of the Contract Documents;
- .7 breaches any warranty made by the Contractor under or pursuant to the Contract Documents;
- .8 fails to furnish the Owner with assurances satisfactory to the Owner evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents; or
- .9 fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than ten (10) days, except as permitted under the Contract Documents.

§ 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.

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

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

§ 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.

§ 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.

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

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

§ 12.3 Acceptance of Nonconforming Work

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds the costs of finishing the Work, including compensation for the Architect's, the Architect's subconsultants, and/or any other consultant's services (directly hired by the Owner) 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. This obligation for payment shall survive termination of the Contract.

ARTICLE 13 — MISCELLANEOUS PROVISIONS

§ 14.2.5 It is recognized that: (1) if an order for relief is entered on behalf of Contractor pursuant to Chapter 11 of the United States Bankruptcy Code, (2) if any other similar order is entered under any other debtor relief laws, (3) if Contractor makes a general assignment for the benefit of its creditors, (4) if a receiver is appointed for the benefit of Contractor's creditors, or (5) if a receiver is appointed on account of Contractor's insolvency, such event could impair or prevent Contractor's performance of the Contract Documents. Accordingly, it is agreed that upon the occurrence of any such event, Owner shall be entitled to request of Contractor or its successor-in-interest adequate assurance of

future performance in accordance with the terms and conditions of the Contract Documents. Failure to comply with such request within ten (10) days of delivery of the request shall entitle Owner to terminate the Contract Documents and to exercise the accompanying rights set forth above in Paragraph 14.2 hereof. In all events pending receipt of adequate assurance of performance and actual performance in accordance therewith. Owner shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis, the cost of which will be backcharged against the Contract Sum.

§ 13.1 Governing Law

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

§ 13.2 Successors and Assigns

§ 14.3 Suspension by the Owner for Convenience

§ 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.

§ 14.3.1 The Owner may, with or 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.

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

§ 13.3 Rights and Remedies

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

§ 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 a reasonable adjustment of the Contractor's Fee due to the increased cost of performance of the remaining portion of the Work. No adjustment to the Contract Sum 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;
- .2 that an equitable adjustment is made or denied under another provision of the Contract; or
- .3 the suspension, delay or interruption was made necessary by the Contractor or anyone for whose acts Contractor was responsible.

§ 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.

§ 14.4 Termination by the Owner for Convenience

§ 13.4 Tests and Inspections

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

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

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Within 21 calendar days of receipt of notice of such termination, the Contractor shall submit an Application for Payment in accordance with and subject to the provisions of Section 14.4.3 below and Article 9 of the General Conditions.

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

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

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

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

§ 13.5 Interest

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

ARTICLE 14 — TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

- 1 — Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- 2 — An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- 3 — Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- 4 — The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

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

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions

of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

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

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

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

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

§ 14.3 Suspension by the Owner for Convenience

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

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

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

§ 14.4 Termination by the Owner for Convenience

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

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§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed in accordance with the Contract Documents, and the actual and documented costs incurred by reason of such termination, which shall include reasonable demobilization costs, non-refundable deposits, costs associated with materials ordered or fabricated which cannot be returned, costs attributable to termination of Subcontracts.

§ 14.4.4 If Owner terminates the Contract for cause pursuant to Paragraph 14.2 and it is subsequently determined that

the Owner was not authorized to terminate the Contract as provided in Paragraph 14.2, the Owner's termination shall be treated as a termination for convenience under this Paragraph 14.4, and the rights and obligations of the parties shall be the same as if the Owner had issued a notice of termination to the Contractor as provided in this Paragraph 14.4.

§ 14.5 In no event shall Contractor have a claim against Owner for lost profits, or for any indirect, special or consequential damages, on account of the termination of this Agreement by Owner or Contractor.

ARTICLE 15 CLAIMS AND DISPUTES

§ 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.

§ 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.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law; provided, however, in no event shall the time period be deemed to commence prior to the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1 Claims

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later, provided, however, that the claimant shall use its best efforts to furnish the Architect and the other party, as expeditiously as possible, with notice of any Claim once such claim is recognized, and shall cooperate with the Architect and the party against whom the Claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of the Claim. All other Claims must, subject to Subparagraphs 3.7.4, 15.1.5, and 15.1.6, be initiated prior to the expiration of the applicable statute of limitations as provided in Subparagraph 15.1.2

§ 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.

§ 15.1.3.2 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.

§ 15.1.3.3 All of Contractor's Claims must be in writing and must state the following to the extent such information is then available to the Contractor: (i) the factual basis upon which the Claim is made with such reasonable detail of the event, circumstance, condition, omission or act giving rise to the Claim that is available to Contractor, including, to the best of Contractor's knowledge, the date that such event, circumstance, condition, omission or act giving rise to the Claim occurred; (ii) the specific contractual relief requested by Contractor and identification of the terms of the Contract upon which Contractor's request is based; and (iii) if the Claim is for an increase in the Contract Sum, then the actual adjustment in the Contract Sum (in terms of a specific dollar amount) requested by Contractor. Each of Contractor's Claims is subject to audit by Owner and must be delivered with all documentation that supports the Claim, including copies of invoices, Subcontracts, and reports, if any.

§ 15.1.2 Time Limits on Claims

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

§ 15.1.4 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.

§ 15.1.3 Notice of Claims

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given to the Owner and Architect before proceeding to execute the portion of the Work that is the subject of the Claim. The foregoing notice shall contain a written statement from the Contractor setting forth in detail the nature and cause of the Claim and an itemized statement of the increase requested. No such notice shall form the basis of an increase to the Contract Sum unless and until such increase has been authorized by a written Change Order executed and issued according to the terms and conditions set forth herein. The Contractor hereby acknowledges that the Contractor shall not have any right to and the Owner will not consider any requests for an increase in the Contract Sum that is not submitted in compliance with the foregoing requirements. Notice under this Section 15.1.5 shall contain sufficient detail and substantiating data as set forth in Section 15.1.3.3 to the satisfaction of the Owner to permit evaluation of the Claim by the Owner. No such Claim shall be valid unless so made. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time or a change in a milestone date included in the Construction Schedule, notice as provided in Section 15.1.3 shall be given to the Owner and the Architect within thirty (30) days after the occurrence of the event giving rise to such Claim for an increase in the Contract Time or change in a milestone date. The notice shall also contain a written statement from the Contractor setting forth in detail the nature and cause of the Claim giving rise to the requested additional time or change in a milestone date. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work, if known at the time of the submission. In the case of a continuing delay, only one Claim is necessary. The Contractor hereby acknowledges that the Contractor shall not have any right to and the Owner will not consider any requests for additional time or change in a milestone date or an increase in the Contract Sum that is not submitted in compliance with the foregoing requirements.

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

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. The weather days to be incorporated into the Contractor's project schedule each month are listed below. If the weather days for any given month exceed the amount shown below, the Contractor will notify the Owner and file a claim for extension of Contract Time and adjustment to the Contract Sum. The total amount of compensation for extended general conditions due to the Contractor for each additional weather day shall not exceed \$1,433 per day per Paragraph 8.3.1. Extended time and associated fee (extended general conditions) can be recoverable for weather, but only if the weather days impact the critical path scopes. (i.e., if dried in and the critical path is based on only scope inside the building then no time and fee (extended general conditions) due to weather).

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
3	3	3	3	3	3	3	3	3	2	3	3

§ 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, but is not limited to:

- .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. Notwithstanding anything to the contrary herein, the Parties expressly acknowledge and agree that this waiver of consequential damages does not and shall not: (i) prevent or preclude Owner from assessing and recovering Liquidated Damages from Contractor and/or its surety(ies) or subcontractor default insurer as provided in Section 4.5 of the Agreement; (ii) apply to any damages, including consequential damages, covered by, and actually paid by, insurance. The provisions of this Section shall survive the making of Final Payment, Final Completion, or any termination/cancellation of the Agreement.

§ 15.1.4 Continuing Contract Performance

§ 15.1.8 Contractor's failure to prepare, and deliver to Owner, a Claim that complies with the requirements of this Contract shall constitute a waiver to any such Claim and deprive Contractor of any potential right to an extension of a Contract Time, an adjustment of the Contract Sum, or any other relief under the Contract, upon which such Claim is based. The Contractor hereby acknowledge that the Contractor shall not have any right to and the Owner will not consider any requests for additional time or an increase in the Contract Sum that is not submitted in compliance with the foregoing requirements.

§ 15.2 Initial Decision

§ 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.

§ 15.2.1 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, and after the parties have satisfied the pre-submission requirement set forth in Section 13.1 of the A102 Agreement, 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.

§ 15.1.4.2 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.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten (10) 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.

§ 15.1.5 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

§ 15.2.3 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.

§ 15.1.6.1 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.

§ 15.2.4 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.

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

§ 15.1.7 Waiver of Claims for Consequential Damages

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

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

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

§ 15.2 Initial Decision

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the

reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.1 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.

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

§ 15.2.2 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.

§ 15.2.6.1 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.

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

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

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

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation

within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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

§ 15.1.10 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 [Intentionally Deleted]

§ 15.3 Mediation

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

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

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

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

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

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

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

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

§ 15.4.4 Consolidation or Joinder

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

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

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, negotiation between the parties in good faith shall be subject to arbitration which 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 In no event shall a demand for arbitration 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. Unless otherwise agreed, the arbitration shall be before a single arbitrator who shall be an attorney licensed in the state where the Project is located having at least twenty (20) years' experience practicing in construction law. In the event that the parties mutually agree to use a panel of three arbitrators, each of the Arbitrators shall have at least twenty (20) years' experience practicing in construction law and shall be neutral and independent. This section shall not preclude the Owner or Contractor from instituting legal action to discharge an invalid construction lien.

§ 15.4.2 The award rendered by the arbitrator or arbitrators shall be a reasoned award (containing findings of fact and conclusions of law) and 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 and mutually consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 Consolidation or Joinder

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

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

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

§ 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 08:23:08 ET on 05/31/2024 under Order No. 4104248375 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, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

APPENDIX B
SHORTLIST NOTIFICATION
RFQ PD 24-06
COST PROPOSAL

In a separate envelope, please include a cost proposal.

Preconstruction Phase Costs (Services + Fee) (Attach Spreadsheet)	\$ <u>29,575.00</u>
Construction Fee (Shown as a Percentage)	<u>2.75</u> %
Construction Phase General Conditions – Labor	\$ <u>477,945.00</u>
Construction Phase General Conditions – Other(Non-Labor)	\$ <u>373,215.00</u>
Total Const Phase General Conditions (Labor + Other) (Attach Spreadsheet)	\$ <u>851,160.00</u>

(General Conditions. The maximum amount of the overhead cost is inclusive of all direct and incidental expenses including but not limited to travel, sustenance, reproduction, salaries, wages, design and field office expenses, and those costs listed in the General Requirements. If authorized by the City to proceed with Construction Phase Services, the CMR/(CM/GC) will execute the work and be reimbursed for the actual costs as defined in the Contract Documents.)

CMAR's GENERAL CONDITIONS BREAKDOWN - PRECONSTRUCTION
Norcross Public Safety Building
REEVES YOUNG, LLC

PRECONSTRUCTION PHASE LABOR COSTS							
	Job Title	Hourly Rate**	Est. % on Project	Monthly Rate**	Duration (Months)	Total	Notes
1	Director of Preconstruction	\$135.00	5%	\$1,161.00	5	\$5,805.00	
2	Senior Preconstruction Manager	\$95.00	10%	\$1,634.00	5	\$8,170.00	
3	Preconstruction Engineer	\$65.00	25%	\$2,795.00	5	\$13,975.00	
4							
5							
6							
7							
8							
9							
10							
PRECONSTRUCTION PHASE GENERAL CONDITION COSTS							
	Description	Number of Units	Unit (Lump Sum, Day, Month, etc.)	Cost per Unit	Total	Notes	
13	Office Supplies	5	Month	\$125.00	\$625.00		
15	Postage & Shipping	5	Month	\$50.00	\$250.00		
16	Reproduction of Plans and Specs	5	Month	\$150.00	\$750.00		
33							
34							

CMAR's GENERAL CONDITIONS BREAKDOWN - CONSTRUCTION
Norcross Public Safety Building
REEVES YOUNG, LLC

CONSTRUCTION PHASE LABOR COSTS							
	Job Title	Hourly Rate**	Est. % on Project	Monthly Rate**	Duration (Months)	Total	Notes
1	Project Executive	\$135.00	5%	\$1,161.00	13	\$15,093.00	
2	Sr. Project Manager	\$110.00	15%	\$2,838.00	13	\$36,894.00	
3	Project Manager	\$98.00	100%	\$16,856.00	13	\$219,128.00	
4	Superintendent	\$92.50	100%	\$15,910.00	13	\$206,830.00	
5							
6							
7							
8							
9							
10							
CONSTRUCTION PHASE GENERAL CONDITION COSTS							
	Description	Number of Units	Unit (Lump Sum, Day, Month, etc.)	Cost per Unit	Total	Notes	
1	Field Office Trailer	13	Month	\$600.00	\$7,800.00		
2	Field Office Set-Up	1	Lump Sum	\$1,200.00	\$1,200.00		
3	Temp Toilet/Holding Tank for Trailer	1	Lump Sum	\$1,500.00	\$1,500.00		
4	Temp Power for Trailer	13	Month	\$300.00	\$3,900.00		
5	Temp Power Installation for Trailer	1	Lump Sum	\$800.00	\$800.00		
6	Temp Water for Trailer	13	Month	\$120.00	\$1,560.00		
7	Temp Water Installation for Trailer	1	Lump Sum	\$850.00	\$850.00		
8	Telephone/Internet for Trailer	13	Month	\$225.00	\$2,925.00		
9	Telephone/Internet Installation for Trailer	1	Lump Sum	\$500.00	\$500.00		
10	Cleaning for Trailer	13	Month	\$125.00	\$1,625.00		
11	Furniture for Trailer	1	Lump Sum	\$2,500.00	\$2,500.00		
12	Machines & Equipment for Trailer	13	Month	\$500.00	\$6,500.00		
13	Supplies for Trailer	13	Month	\$125.00	\$1,625.00		
14	Water for Consumption for Trailer	13	Month	\$50.00	\$650.00		
15	Postage & Shipping	13	Month	\$50.00	\$650.00		
16	Reproduction of Plans and Specs	13	Month	\$200.00	\$2,600.00		
17	Progress Photos	13	Month	\$75.00	\$975.00		
18	Owner Project Identification Signs	1	Lump Sum	\$2,500.00	\$2,500.00		
19	Mobile Phones	13	Month	\$240.00	\$3,120.00		
20	Project Vehicles	13	Month	\$1,350.00	\$17,550.00		
21	Fuel for Project Vehicles	13	Month	\$450.00	\$5,850.00		
22	Travel	13	Month	\$120.00	\$1,560.00		
23	Computers	1	Lump Sum	\$22,000.00	\$22,000.00	Software	
24	Builder's Risk Insurance	1	Lump Sum	\$20,900.00	\$20,900.00	Based on \$22M	
25	Liability Insurance	1	Lump Sum	\$176,000.00	\$176,000.00	Based on \$22M	
26	Safety & First Aid Supplies	13	Month	\$225.00	\$2,925.00		
27	Temporary Power for Building	5	Months	\$2,500.00	\$12,500.00		
28	Dumpsters	13	Month	\$2,200.00	\$28,600.00		
29	Daily and Final Clean Up	13	Month	\$1,750.00	\$22,750.00		
30	Temporary Fencing	1	Lump Sum	\$7,750.00	\$7,750.00		
31	NPDES Monitoring	13	Month	\$300.00	\$3,900.00		
32	Surveying and Layout	13	Month	\$550.00	\$7,150.00		
33							