



REQUEST FOR QUALIFICATIONS/PROPOSALS

for
Construction Management at Risk Services
for:

Two Rivers Magnet High School
(241-0104 MAG/N/PS)

Issue date: January 23, 2015

Mandatory Pre-Proposal meeting: January 29, 2015 at 2:00 pm

Deadline for Questions: February 12, 2015 at 12:00pm

Written Responses Due: February 20, 2015 at 2:00 pm

Capitol Region Education Council
CREC Construction Services
147 Charter Oak Avenue
Hartford, CT 06106

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I. INVITATION TO SUBMIT

Pursuant to the terms and conditions of this Request for Qualifications /Proposal (RFQ/P) the Capitol Region Education Council ("CREC" or "Owner") is pleased to announce the invitation to submit qualifications and fee proposals for construction management services for an approximately 183,000 square foot a magnet high school (grades 9 through and including 12), together with associated playing and athletic fields, to be developed by CREC (the "Magnet School" or "Project").

A mandatory Pre-Proposal Meeting is scheduled at CREC Central located at 147 Charter Oak Avenue, Hartford, CT 06106 on January 29, 2015 at 2pm.

Sealed Proposals (as such term is hereinafter defined) may be mailed or hand delivered to:

Douglas Rogers
Construction Services Director
Capitol Region Education Council
147 Charter Oak Avenue
Hartford, CT 06106

Sealed Proposals will be accepted at the above location until February 20, 2015 at 2:00 pm EST. No extensions will be granted.

CREC is pleased to make this opportunity available and looks forward to receiving your Proposal. CREC is an Equal Opportunity Employer.

Please direct any and all questions concerning this RFQ/P to Douglas Rogers, Director, in writing via email at the following address: drogers@crec.org. No questions concerning this RFQ/P will be accepted after February 12, 2015 at 12:00 pm EST.

II. PROJECT DESCRIPTION AND SCOPE OF SERVICES

ABOUT CREC: CREC is a Regional Education Service Center (RESC) established under Connecticut General Statute 10-66a-n. CREC is a public non-profit organization and is tax exempt under section 170 c (1) of the Internal Revenue Code.

PURPOSE OF RFQ/P: With regard to the Magnet School, this RFQ/P is requesting proposals from firms for services necessary and/or required to perform the work and provide the construction management services set forth in this RFQ/P pursuant to and in compliance with the Educational Specifications (as such term is hereinafter defined) and the requirements set forth in this RFQ/P (collectively, the "Services").

The Services shall be performed pursuant to CREC's 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 (AIA Document A133 – 2009), as amended (the “Agreement”), together with the General Conditions of the Contract of Construction (AIA Document A201 – 2007) thereto, as amended (the “General Conditions”), copies of which are each attached to RFQ/P as Exhibit K and are deemed a part hereof (the Agreement and General Conditions, collectively, the “Contract”). Each company and/or firm submitting a Proposal (each, a “Bidder”) agrees that such submission is deemed an agreement by a Bidder to (i) accept the terms and conditions of the Contract; and (ii) if awarded the Contract by CREC, execute the Contract without any exceptions. Work will only commence on a Contract after a notice to proceed is issued by CREC directing the commencement of such work.

After review of all factors, including, without limitation, qualifications, past performance and the bid amounts, CREC reserves the right to accept or reject any or all Proposals or any part thereof, to waive defects in same, to waive technicalities, to accept any Proposal and to award the Contract, as applicable, to the Bidder that CREC, in its sole and absolute discretion, determines as the most responsive, qualified, and responsible Bidder, which may not necessarily be the lowest Bidder. Procurement under this RFQ/P will be done in accordance with Connecticut General Statutes 10-287(b)(2).

The final location for the Magnet School has not yet been determined.

The phasing of the Project is anticipated as follows:

1. Design and Pre-Construction;
2. Construction; and
3. Furniture, Fixtures and Equipment.

The Project schedule is tentatively outlined as follows:

- | | |
|-------------------------------------|--------------------------------|
| • Design and local approvals | September 2014 – February 2016 |
| • Dept. of Const. Services approval | March 2016 – August 2016 |
| • Bidding and award | September 2016 – October 2016 |
| • Construction | November 2016 – August 2018 |
| • Furniture, fixtures and equipment | June 2018 – August 2018 |
| • Close-out | August 2018 – June 2019 |

CONTRACT RESPONSIBILITIES OF THE BIDDER: The selected Bidder obligations in providing the Services and performing the work under the Contract shall include, without limitation, the following:

1. The Bidder shall provide the Services pursuant to the Contract including, but not limited to the following: constructability reviews, estimating at various levels of design, solicitation, award, permitting, construction, commissioning assistance, occupancy, closeout, post occupancy, warranty phases and coordination of all owner vendors, contractors and consultants as necessary for the delivery of the Project.

2. The Bidder shall provide a Guaranteed Delivery Date (GDD) (as such term is defined in the Contract) and a GMP (as such term is defined in the Contract) in accordance with this RFQ/P and the terms and conditions of the Contract.
3. The Bidder shall provide performance and payment bonds from a surety acceptable to CREC in the amount of 100% of the GMP.
4. The individual trade contracts shall be between the Bidder and such trade contractor. The Bidder is "at risk" as it relates to the delivery of the applicable project.
5. The Bidder shall not perform any portions of the work with its own forces except as may be approved by CREC and in accordance with the guidelines as set forth by the State of Connecticut Department of Administrative Services ("DAS").
6. The Bidder shall adhere to all local, state and federal regulations and guidelines and operate under the DAS guidelines as they apply to the specific project.
7. The bidder shall endeavor to meet/exceed the goals of the CREC Equity Program (see Exhibit N) and provide the staffing requirements to assist with training/reporting.
8. Design and Pre-Construction Phase Services
 - Perform "constructability" reviews of the design documents (SD, DD, and CD) and construction. The Bidder will be a part of the building information modeling ("BIM") team along with the Project design professionals, participating in regularly scheduled meetings (anticipate these meetings to occur every (2) weeks, exact schedule yet to be determined), participating in decisions regarding the development of the design documents and construction documents relating to construction sequencing and cost containment (see Exhibit L attached hereto and made a part hereof for the BIM requirements, collectively, the "BIM Documents");
 - Perform drawing and specification review for completeness, coordination, and clarity. Provide a written report to CREC and the Project architect (the "Architect") on findings at each design phase. Review plans for consistency with the CREC design standards established by CREC and set forth in this RFQ/P and provide a report on any deviations.
 - Create proposed logistics plan.
 - Develop requirements for safety, quality assurance and schedule adherence (including phasing, relocation, temporary structures, etc. as applicable) in accordance with the quality control standards set forth in Exhibit I attached hereto and made a part hereof (the "Quality Control Standards and the scheduling requirements set forth in Exhibit M attached hereto and made a part hereof (the "Scheduling Requirements");

- Provide value management and/or engineering services as applicable. Participate in design team meetings every two weeks throughout the SD, DD, and CD development process, and provide a budget control report after each meeting;
- Engage in budget reconciliation and control sessions;
- Attend all design review and other special meetings as requested by CREC through the programming, schematic, design development and construction document phase;
- Provide continuous document review to ensure documents are clear and concise in an effort to minimize change orders due to unclear and/or missed scope;
- Perform an analysis of design documents and provide cost estimates at each phase, including, without limitation, applicable DAS or State of Connecticut Office of School Facilities (“OSF”) requirements for schematic design, design development, construction documents, etc. as needed for the Project or within 2 weeks of request by CREC, review estimate with CREC and Architect, ensure estimate is in line with current budget. If cost adjustments need to be made, the Bidder executing the Contract (the “CM” or “Construction Manager”) must collaboratively work with Architect, and their sub-consultants, to develop a list of Value Management/Engineering ideas for submission to CREC for review and approval;
- Prepare base Critical Path Method (CPM) schedule using Primavera P6 (implementation in the CREC database by CM, license to be procured and issued by CM to Architect and OPM) as per scheduling standards set forth on Exhibit M attached hereto and made a part hereof (the “Scheduling Standards”);
- In accordance with the BIM Requirements, provide (i) continuous review of the 3D BIM model development in an effort to minimize change orders due to unclear and/or missed scope, and analyze constructability, and phasing of work; and (ii) reports on any deviations from the 3D BIM model from the BIM Requirements;
- In accordance with the Scheduling Standards, develop a detailed 4D BIM in conjunction with the Primavera P6 scheduling software. Update the 4D BIM throughout construction.

9. Solicitation and Award Phase Services

- Arrange solicitation packages (bid packages) and adhere to the applicable DAS requirements;
- Provide a final pre-bid estimate in an appropriate format reflecting the bid package breakdown. Form must reflect projected GMP;
- Develop requirements to assure time, cost, and quality control during construction;
- Implement the State of Connecticut Commission on Human Rights and Opportunities (“CHRO”) requirements that may include pre-qualification process for M/WBEs and SBE contractors as well as reaching the goals of the CREC equity program, a copy of which program is set forth on Exhibit N attached hereto and made a part hereof (the “CREC Equity Program”).
- Review project labor requirements and availability, develop labor strategy and advise, identify potential bidders and generate maximum bidder interest;
- Schedule and conduct pre-bid conferences in conjunction with the Architect and CREC;

- Advertise, distribute, monitor, review, analyze and recommend awards in accordance with the applicable DAS requirements; and procure scheduling services as necessary pursuant to the Scheduling Standards.
- Monitor bidder activity to maximize bidder participation (ie. maintain call log for all potential bidders for each respective bid package).
- Procure scheduling requirements as per scheduling standard.
- In accordance with the BIM Requirements, take over management of the design BIM and transform it into the construction BIM. Utilize the BIM for construction coordination and clash detection, updating it as required when changes occur during construction.

10. Construction Phase Services

- Maintain consistent on-site staff, in accordance with your staff chart provided with the Fee Proposal (as such term is hereinafter defined), for applicable construction management;
- Establish and maintain all required reporting and other control procedures as directed by CREC (ie. monthly progress report – Primavera Contract Manager – implementation in the CREC database by CM, license to be procured and issued by CM to Architect and CREC);
- Develop and maintain a Project daily log (“Daily Log”). The Daily Log shall contain, but not be limited to, daily records of work performed, weather, progress, materials purchased, workforce, accident reports, safety checklists, etc;
- Develop and maintain final detailed Project construction schedule (CPM) after awards including delivery milestones, approvals, inspections, testing, construction, commissioning, and occupancy/operational activities, in accordance with the Scheduling Standards;
- Conduct, then record all job site meetings in the Bidder’s “Project Reporting” software discussed in Part III, paragraph H of this RFQ/P;
- Prepare and submit change order documentation to the Architect and CREC for approval using the Bidder’s “Project Reporting” software discussed in Part III of this RFQ/P;
- In accordance with the OSF change order requirements set forth on Exhibit H attached hereto and made a part hereof (the “Change Order Requirements”), prepare change orders for submission to OSF to ensure proper reimbursement;
- Track and expedite approvals of shop drawings, requests for information (RFI), and change order requests;
- Develop and deliver all monthly reports and presentations using the Bidder’s “Project Reporting” software discussed in Part III of this RFQ/P;
- Maintain quality control and ensure conformity to the “highest” intent of the construction documents;
- Manage all trade contractors to ensure effective and timely adherence to the schedule, input requirements shall be in accordance with the Scheduling Standards;
- Submit all executed trade contract agreements in accordance with the sequencing process agreed upon with CREC and the Architect;
- Provide cost control through progress payment review and verification according to approved schedule of values and contract amounts and terms;

- Coordinate all Owner activities and post-completion activities, including assembly of guarantees, manuals including operations and maintenance, and commissioning requirements, closeout documents and CREC's final acceptance;
- Coordinate and manage subcontractors; special inspectors and the requirements of the Owner's commissioning agent;
- Maintain all schedule requirements throughout the duration of the Project pursuant to the Scheduling Standards;
- As-built drawing coordination (including construction BIM); and
- Maintain adherence to the jobsite safety plan developed during the preconstruction phase. Make adjustments to the plan as necessary and as per directives from CREC.

11. Post-Occupancy and Warranty Phase

- Develop, coordinate and monitor the resolution of "punch list" items;
- Coordinate, monitor and resolve all warranty issues to the satisfaction of CREC one year from substantial completion (beyond such date where applicable);
- Develop and maintain an effective program of all operating manuals, maintenance manuals, and any preventative maintenance data insuring their delivery to the Owner at the completion of the Project;
- Completely address all close-out procedures as dictated by CREC (to be distributed during pre-construction phase).
- Provide on-site staff that can address commissioning issues during the week before the start of the school and for one month after; and completely address all close-out procedures as dictated by CREC (to be distributed during pre-construction phase).
- Provide a complete formal owner training of all facility systems installed as part of the Contract (including the preparation of video documentation); and
- Schedule and conduct a "pre-end of warranty" walk-through.

III. INSTRUCTIONS TO BIDDERS

Bidders are required to submit the following for the Project: (i) five (5) copies of their response to the qualification portion of this RFQ/P in a sealed envelope(s) or package(s), bearing on the outside the wording "Construction Management Qualifications Proposal, (the "Qualifications Proposal"); and (ii) in a separate sealed envelope one (1) copy of the fee proposal bearing on the outside the wording "Construction Management Fee Proposal", which together with the Qualifications Proposal collectively the "Proposal").

Qualifications Proposal must be organized with the following sections:

- A. Cover Letter (1 page)** – A Bidder shall indicate its commitment to the Project and how the Bidder will meet or exceed expectations. Specifically, a Bidder shall describe how it will maintain consistent leadership throughout the design and construction of the Project and how it will meet the requirements set forth in this RFQ/P with regards to budget, schedule and phasing as applicable.

B. Minimum Qualification Proposal Requirements – In order for a Qualifications Proposal to be responsive to this RFQ/P it must provide the following information (collectively, the “Minimum Requirements”):

1. Pursuant to the List of Qualifying Projects Form, a copy of which form is attached hereto as Exhibit C and made a part hereof, a list of ten (10) of the Bidder’s qualifying projects. (Note: The first three projects listed must meet the minimum experience requirements set forth in Exhibit B hereto for the Project);
2. Copy of the Bidder’s Connecticut Major Contractors License;
3. DAS pre-qualification certificate for the Bidder indicating pre-qualification in the amount equal to or greater than the Magnet School estimated cost of construction;
4. Signed acknowledgement of the Bidder’s acceptance of the Contract terms and conditions, a copy of the form of such acknowledgement is attached hereto as Exhibit J and made a part hereof (the “Acknowledgement of Contract Terms”);
5. A bonding capacity 15% greater than the estimated construction cost (as provided in Exhibit F). Provide the name of your bonding company, your bonding limitation, Best rating, name, and telephone number of your agent.

A Proposal that does not comply with all of the Minimum Requirements shall be deemed an unresponsive Proposal, which will result in the Proposal being rejected.

C. Organization Experience and Key Personnel (no more than 2 pages + Exhibit D) – A Bidder shall indicate how it will staff the Project and provide the resumes for each member of the Bidder’s team that will be assigned to the Project (one page per resume and resumes do not count toward three page limitation of this section). Indicate what each team member’s role and responsibility will be for the Project and describe each team member’s experience with public school construction projects in Connecticut. Indicate each team member’s time commitment to the Project through the staffing chart included in the Qualifications Proposal. It is a requirement of this RFQ/P that assigned staffing for the Project remains involved from pre-construction through construction and close out. Demonstrate the Bidder’s experience with managing school construction projects and experience with managing similar projects to the Project. Examples do not have to be State of Connecticut Office of School Facilities funded projects however such projects will be given greater consideration. Please include a completed Exhibit D in this section.

D. Building Information Modeling (no more than 2 pages) – The selected Bidder will participate as a key member in the design process, working with the Architect to create a completed set of Project construction documents for bidding. Further, in accordance with the BIM Requirements, the Bidder will be responsible for the BIM model during the construction phase and will present an as-built facilities BIM model to the Owner for future use.

Please provide a resume for your BIM coordinator, whose experience meets or exceeds the requirements listed in the RFQ/P. Demonstrate how the leadership provided by the Bidder will ensure a collaborative process with the Architect and Owner that meets the goal reducing change orders during the construction phase of the Project. The Bidder should discuss strategies for document (model) control throughout the construction phase and for the turnover of a facilities model to the Owner. Provide examples of experience with projects of similar size and scope of the Project that have been completed within the parameters of the required schedules for those projects. Examples do not have to be State of Connecticut Office of School Facilities funded projects however such projects will be given greater consideration.

- E. Schedule (no more than 2 pages)** – The selected Bidder shall be responsible for completing the Project pursuant to the Scheduling Standards. A Qualifications Proposal shall include a sample milestone schedule demonstrating the Bidder’s project approach to meeting the following minimum established milestones (Commissioning Agent Selection; Schematic Design; Site Design Development; Architectural Design Development; Construction Documents; CM Contract Procurement and Final GMP Phase; New Construction; Relocate Students; FF&E; Turnover to Owner; Closeout; Audit). Attach a sample milestones schedule for each Design Scheme as a part of your Qualifications Proposal (one (1) page per milestone schedule per Design Scheme, and milestone schedules do not count toward two (2) page limitation of this section).

Please provide a resume for your scheduler, whose experience meets or exceeds the requirements listed in the RFQ/P, including, without limitation the requirements of the Scheduling Standards. Demonstrate how the leadership provided by the Bidder will ensure that deadlines will be met. The selected Bidder shall ultimately provide the detail schedule pursuant to the Scheduling Standards, which shall be based on the schedule provided as part of this RFQ/P. Provide examples of experience with projects of similar size and scope of the Project that have been completed within the parameters of the required schedules for those projects. Examples do not have to be State of Connecticut Office of School Facilities funded projects however such projects will be given greater consideration.

- F. Quality Control Plan (no more than 2 pages)** – The Project minimum requirements for quality control are set forth on Exhibit I attached hereto and made a part hereof. Please describe your firm’s approach in meeting the requirements.
- G. Budget (1 page)** – The Bidder shall manage the budget to ensure the Project is completed within the construction budget indicated in this RFQ/P. Provide a detailed explanation as to your approach in managing the budget. Provide a sample budget that will be submitted on a monthly basis during construction of the Project.
- H. Project Reporting (1 page + examples of reports)** – The Bidder awarded the Contract will be responsible for producing comprehensive reports (RFI, Submittal, Change Order, Budget, Material Status Logs, etc.) using the Bidder’s software. Please provide examples from projects

previously completed of what is normally provided to effectively communicate the progress of a project and identify potential issues. How are these reports used to manage the subcontractors and overall progress of a project? What is the extent of subcontractor input for these reports? Regarding subcontractor input what is the Bidder's policy when a subcontractor is not providing information as required? Identify the type of software the Bidder utilizes or proposes to utilize. Provide detailed information on how you plan to use the software system to streamline communication and workflows between project team members.

- I. **Commissioning (1 page)** – The Bidder awarded a Contract shall be responsible for working with the CREC's commissioning agent. Elaborate on your approach for managing a successful commissioning program that provides CREC with a fully functioning and equipped Magnet School. Please provide a list of commissioning agents you have worked with in the past. Bidder's should be aware that this Project will be subject to enhanced commissioning.
- J. **Safety (1 page)** – The Bidder awarded a Contract shall be responsible for maintaining a safe work environment and adherence to all applicable regulations, including, without limitation OSHA regulations. In this section discuss the Bidder's approach toward safety. Explain specifically what will be done for the project to pro-actively maintain a safe environment for the workers and any visitors, etc. Provide a letter from your insurance carrier indicating your EMR rating for the last three years.
- K. **Close-out (no more than 2 pages)** – The Bidder awarded a Contract will be responsible for a prompt close-out of the Project. Describe your firm's management of the close-out process and how your procedures will ensure a timely close-out process with DAS requirements. A Qualification Proposal should include the Bidder's policy for management of warranties, O&M manuals, owner training, as-built documents, change orders and their proper processing per BSF requirements, commissioning, punchlist, certificate of occupancy, etc. A Bidder awarded a Contract shall provide, at all times requested by CREC, information required to satisfy BSF requirements as to close out of the project.
- L. **Change Orders (no more than 2 pages)** – The Bidder awarded a contract under this RFQ/P shall provide quality control of document review during the construction document phase to ensure the documents are 100% complete prior to bid. Describe your firm's approach to document review, change order management including the firm's process for verification of the validity of the change order as well as verifying and assuring the owner the best available pricing. The bidder will be responsible for compiling and submitting State Change Orders (ED-042CO) to the State Department of Administrative Services Office of School Facilities. Describe the firm's approach and experience with the DAS Change Order process.
- M. **Bid Packages (no more than 2 pages)** – Describe the approach to determining how the project will be broken down into bid packages. Does the Bidder firm have standard bid packages? Does the Bidder evaluate a particular project to determine the best way to package work? How does the Bidder evaluate and determine what will best serve the owner in the way the bid

packages are broken-down? Describe the Bidder's approach to the detail provided in describing portions of work that a trade contractor is responsible for.

N. CREC Equity Program (no more than 2 pages) – Describe your firm's approach on how to best implement the CREC Equity Program.

O. Past Claims or Disputes (1 page) – Indicate any claims, disputes, or arbitration proceedings that have occurred on any projects in the last five (5) years. Indicate who they were with and give a status of each even if they are pending.

P. Contract (1 page) – A Bidder shall include a signed acknowledgement (see Exhibit J) of its acceptance of the Contract and terms included therein as part of its Qualification Proposal. If such signed acknowledgement is not included with a Qualification Proposal, the Qualification Proposal shall be deemed unresponsive and your Qualification Proposal rejected.

Q. Fee Proposal –The Fee Proposal will be broken down into the following three (3) categories (please refer to Exhibit F):

- **Preconstruction Phase Services Fee:** The Bidder's preconstruction services fee for all the preconstruction services set forth in the Contract shall be stated as a stipulated lump sum amount, which amount shall include, without limitation, all staffing costs and reimbursable costs and expenses of the Bidder's (see Article 4 of the Agreement).
- **Construction Phase Services Fee:** The Bidder's construction services fee for all the construction service set forth in the Contract shall be stated as a fixed fee equal to a percentage of the cost of the work (see Article 5 of the Agreement).
- **General Conditions Costs and Expenses:** The general conditions costs and expenses of the Bidder for the items set forth in the task matrix to be completed by the Bidder and submitted as part of its Fee Proposal, a template of such task matrix is attached hereto as Exhibit G and made a part hereof (the "Task Matrix"), shall be a stipulated lump sum amount (see Articles 2 and 6 of the Agreement).

In addition to the Task Matrix, the Fee Proposal shall include the following: (i) a preconstruction staffing matrix, a template of such preconstruction staffing matrix is attached hereto as Exhibit E and made a part hereof (the "Preconstruction Staffing Matrix"); and (ii) a construction staffing matrix, a template of such construction staffing matrix is attached hereto as Exhibit E and made a part hereof (the "Construction Staffing Matrix").

IV. METHOD OF SELECTION

The selection process is based on a three (3) part process. The selected Bidder will have successfully met all of the criteria and be deemed by the CREC selection committee as the most responsible, responsive, and qualified bidder.

Administrative Review Process:

1. Review of Qualification Proposals for compliance with the Minimum Requirements will be performed.
2. Review and Qualification Proposals Meeting the Minimum Requirements: A Bidder's Qualification Proposal will be reviewed for compliance with the format identified in Section III of this RFQ/P. A score will be assigned by multiple reviewers. The Bidder's "qualification proposal score" will be an average of all of the reviewers' scores for such Bidder. The Bidder with the highest qualification proposal score will be ranked number 1, the Bidder with the second highest qualification proposal score will be ranked number 2 and so on until all of the Bidders have been ranked.
3. Fee Proposal: A Bidder's fee proposal will be ranked against all the Bidders who have submitted a Proposal. The Bidder with the lowest overall fee proposal will be ranked number 1 and so on until all Bidders have been assigned a ranking.

At the discretion of the CREC selection committee, no less than four (4) Bidders will be selected as responsible, responsive, and qualified Bidders.

At this time CREC does not anticipate interviewing Bidders. However, CREC reserves its rights to do so at its sole discretion should it be deemed in the best interest of CREC. CREC nor any of their respective officers, directors, employees or authorized agents shall be liable for any claims or damages resulting from the selection, non-selection or rejection of any Proposal.

V. GENERAL TERMS AND CONDITIONS

A Bidder shall adhere to the following terms and conditions and by submitting a Proposal a Bidder is hereby deemed to have accepted and agreed to comply with the terms and conditions of this RFQ/P, including, without limitation, the following terms and conditions:

1. **Acceptance or Rejection by CREC** – CREC reserves the right to accept and/or reject any or all Proposals submitted for consideration to serve the best interests of CREC. Bidders will be notified in writing as to Proposals that are not accepted.
2. **Ownership of Documents** – All documents submitted in response to this RFQ/P are to be the sole property of CREC.

3. **Ownership of Subsequent Products** – Any product, whether acceptable or unacceptable, developed under a Contract awarded as a result of this RFQ/P is to be the sole property of CREC unless stated otherwise in the RFQ/P or the applicable Contract.
4. **Timing and Sequence** – Timing and sequence of events resulting from this RFQ/P will ultimately be determined by CREC.
5. **Oral Agreements** – There shall be no oral agreements or arrangements by and between a Bidder and CREC related to this RFQ/P.
6. **Amending or Canceling Requests** – CREC reserves the right to amend or cancel this RFQ/P prior to the due date and time, if it is in the best interest of CREC.
7. **Rejection for Default or Misrepresentation** – CREC reserves the right to reject a Bidder's Proposal if the Bidder is in default under any prior contract with CREC or has made misrepresentations in the Proposal.
8. **Clerical Errors in Awards** – CREC reserves the right to correct inaccurate awards of a Contract under this RFQ/P resulting from clerical errors.
9. **Rejection of Proposals** – Proposals will be rejected if they limit or modify any of the terms and conditions and/or specifications of this RFQ/P.
10. **Changes to Proposals** – No additions or changes to a Proposal will be allowed after submittal under this RFQ/P.
11. **Contract Requirements** – The Proposal of a Bidder awarded a contract under this RFQ/P will become part of the contract and may be amended/revised by CREC at their discretion.
12. **Rights Reserved to CREC** – CREC reserves the right to reject any and all Proposals, in whole or in part, and to waive technical defects, irregularities and omissions if, in its judgment, the best interests of CREC will be served.
13. **Withdrawal of Submission** – Negligence on the part of the Bidder in preparing the RFQ/P confers no right of withdrawal after the time fixed for the acceptance of the submission.
14. **Assigning, Transferring of Agreement** – The successful Bidder is prohibited from assigning, transferring, conveying, subletting or otherwise disposing of an awarded contract under this RFQ/P without the prior consent and approval in writing by CREC.
15. **Cost of Preparing Proposal** – CREC shall not be responsible for any expenses incurred by the Bidder in preparing and submitting a Proposal. A Proposal shall provide a

straightforward, concise delineation of the Bidder's capabilities to satisfy the requirements of this RFQ/P. Emphasis should be on completeness and clarity of content.

VI. EQUAL OPPORTUNITY EMPLOYMENT

Contract Provisions Required Pertaining to Equal Opportunity in Employment

A Bidder awarded a Contract under this RFQ/P must file and receive an approved affirmative action plan by the State of Connecticut Commission on Human Rights and Opportunities prior to the commencement of construction. The Project is subject to the State of Connecticut set-aside goals of 25% for Small Business Enterprises and 6.25% for Minority Business Enterprises on the entire applicable Contract amount. The State of Connecticut set-aside goals are expected minimums with no limits (considerable improvement is desired). A Bidder awarded the Contract is encouraged to solicit bids from subcontractors and/or vendors who are currently certified minority owned business, disabled owned businesses, women owned business and small business under the supplier diversity program of the State of Connecticut Department of Administration Services. Furthermore, CREC requires, to the extent feasible, that a Bidder is awarded the Contract use and clearly document good faith efforts to provide opportunities for training and employment to unemployed and or under-employed residents of the communities where the Project is located and that contracts for work on the Magnet School be awarded to businesses that are located in or owned substantially in part by persons residing in the communities where the Magnet School is located. Failure to comprehensively demonstrate good faith efforts shall impede the progress of the Project along with possible monetary/financial penalties being assessed.

Every agreement and/or contract made by or on behalf of CREC for the design, construction, lease, alteration or repair of any public building or public work, or for the purchase, manufacture, sale or distribution of materials, equipment or supplies shall contain provisions providing for equal opportunity in employment and the Human Relations Director, who is CREC's Affirmative Action Officer, shall have the authority to enforce such equal opportunity in employment requirements.

Every agreement and/or contract for the construction, alteration or repair of any public building or public work shall contain the following provision approved by the Human Relations Director:

"The contractor, subcontractor or sub-subcontractor agrees and warrants that in the performance of this contract they will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, sex, sexual orientation, mental retardation or physical disability, including but not limited to blindness, unless it is shown by such contractor, subcontractor or sub-subcontractor that such disability prevents performance of work involved, in any manner prohibited by the laws of the United States, the State of Connecticut, or the Town in which the school is located . The contractor, subcontractor or sub-subcontractor also agrees to provide CREC's Affirmative Action Officer with such information that may be requested concerning the employment practices and procedures of the contractor, subcontractor or sub-subcontractor as related to the provisions of this section."

The aforesaid provision shall include, but not be limited to, the following: advertising, recruitment, layoff, termination, rates of pay or other forms of compensation, conditions or privileges of employment, selection for apprenticeship, selection or retention of subcontractors, or in the procurement of materials, equipment or services.

Nothing herein is intended to relieve any contractor, subcontractor or sub-subcontractor from compliance with all applicable federal, state and municipal legislation or provision concerning equal employment opportunity, affirmative action, non-discrimination and related subjects during the term of the Contract(s).

VII. INSURANCE REQUIREMENTS

Indemnity Clause

In connection with a Magnet School project, a successful Bidder shall be required to indemnify CREC under the applicable Contract in accordance with Section 3.18 of the General Conditions of the Contract.

CREC's Insurance Requirements

All contractors and vendors are required to provide proof of the required insurance coverage before entering the premises or commencing any work at any CREC facility. Contractors and vendors must obtain, at their own expense, all the insurance required here from an insurance company A.M. Best rated as "A-VII" or better, and acceptable evidence of such insurance must be properly furnished to, and approved by, CREC.

All subcontractors are subject to the same requirements. It is the responsibility of the primary contractor or vendor to obtain acceptable evidence of insurance from all subcontractors.

CREC also requires that they be named as an additional insured on your general liability policy(ies). Your general liability policy must be specifically endorsed with ISO Endorsement CG 20 10 (or equivalent) *or* ISO Endorsement CG 20 26 (or equivalent), *and* ISO Endorsement CG 20 37 (or equivalent). Where these forms require a description of locations or projects, enter "All CREC locations or projects." These form numbers must be specifically referenced on the certificate of insurance, and copies of these endorsements naming CREC as additional insured must be furnished with the required certificate of insurance. If your insurance company uses a different form to provide CREC with additional insured status on your policies, copies must be provided in advance with the insurance certificate for review and approval by CREC.

The amounts of insurance available to CREC as additional insured must be equal to the full policy limits carried by the contractor or vendor, including primary and excess (umbrella) liability policies or the amounts specified below, whichever is greater. Coverage provided under excess or umbrella policies must be at least as broad as that found in required underlying policies. All coverage must be primary and noncontributory as to CREC.

The proper name for the entity to be named as additional insured is: "Capitol Region Education Council, and/or related or affiliated entities."

Evidence of compliance with these requirements is with the ACCORD form 25, "Certificate of Liability Insurance", plus copies of any required additional insured endorsements. Certificates should be sent to: **Capitol Region Education Council**, Brian Greenleaf, 147 Charter Oak Ave., Hartford, CT 06106. Tel.: (860) 509-3727, Email: bgreenleaf@crec.org

Current insurance certificates must be furnished to CREC at all times. Replacement certificates must be furnished ten (10) days *prior to the expiration or replacement* of referenced policies.

CREC reserves the right to make commercially reasonable changes in these requirements during the term of any work or project.

	Independent Contractor (Major projects or engagements)
Commercial General Liability	\$1,000,000 per occurrence/ \$2,000,000 aggregate bodily injury/property damage \$1,000,000 Personal and Advertising Injury \$2,000,000 Products-Completed operations aggregate The CGL policy must include coverage for: liability from premises and operations. liability from products or completed operations. liability from actions of independent contractors. liability assumed by contract.
Conditions	All coverage provided to CREC under this section must be primary and non-contributory with any other insurance available to CREC. CREC must be specifically named as "additional insured" on your CGL policy with ISO form CG 20 10 or CG 20 26 or equivalent acceptable to CREC. CREC must <i>also</i> be named as "additional insured" for Products/Completed Operations on your CGL policy with form CG 20 37 or equivalent acceptable to CREC. Any Aggregate limit must apply per job/project. Products/completed operations must be carried for 2 years after completion of job/acceptance by owner.
Automobile Liability	\$1,000,000 each accident \$2,000,000 aggregate for bodily injury/property damage, including hired owned & non-owned vehicles. Limits carried must be sufficient to satisfy required underlying limits for the umbrella policy (see below).
Umbrella Liability	\$10,000,000 Limits must be excess over underlying limits described above. All coverage provided to CREC under this section must be at least as broad as that found in the underlying policies, and must be primary and non-contributory with any other insurance available to CREC.
Workers' Compensation	Liability meeting statutory limits mandated by the state and Federal laws with minimum limits of: \$1,000,000 each accident for bodily injury by accident \$1,000,000 each employee for bodily injury by disease \$1,000,000 policy limit for bodily injury by disease Limits carried must be sufficient to satisfy required underlying limits for the umbrella policy (see below).

Employers Liability	\$1,000,000 each accident Limits carried must be sufficient to satisfy required underlying limits for the umbrella policy (see below).
Professional Liability	\$1,000,000
Contractors Pollution Liability	\$1,000,000 per occurrence/ \$1,000,000 aggregate

VIII. CONTRACT

A copy of the Contract is attached hereto as Exhibit K and made a part of this RFQ/P.

EXHIBIT A - STATE REQUIREMENTS

Sec. 10-290e. Services agreements. Requirements. Prohibitions. (a) Any town or regional school district that enters into a services agreement with a consultant to render independent architectural services for a project receiving state assistance pursuant to this chapter may, where necessary or desired, provide the consultant with instructions, guidance and directions in connection with the consultant's performance of such services. The consultant shall provide all labor, materials, supplies, tools, equipment and other facilities and necessary appurtenances or property for or incidental to such services requested by the town or regional school district to complete the school building project. As part of the services agreement, the consultant shall agree to perform such services as an independent contractor and in a good and workmanlike manner, consistent with: (1) Instructions, guidance and directions provided by the town or regional school district to the consultant; (2) the terms and conditions of the services agreement; (3) the highest prevailing applicable professional or industry standards; (4) sound architectural practices; and (5) any applicable laws, rules, regulations, ordinances, codes, orders and permits of all federal, state and local governmental bodies, agencies, authorities and courts having jurisdiction. Such services agreement shall not limit the liability of the consultant for errors and omissions related to the performance of the services.

(b) The consultant shall not use, publish, distribute, sell or divulge any information obtained from any town or regional school district through a services agreement for the consultant's own purposes or for the benefit of any person, firm, corporation or other entity without the prior, written consent of the town or regional school district that contracted for the services. Any reports or other work product prepared by the consultant while performing services under the services agreement shall be owned solely and exclusively by the town or regional school district that contracted for such services and the Department of Administrative Services and cannot be used by the consultant for any purpose beyond the scope of the services agreement without the prior written consent of the town or regional school district. Any information designated by the town or regional school district in accordance with applicable law as confidential shall not be disclosed to any third parties without the prior written consent of the town or regional school district that contracted for such services.

(c) For the purposes of subsections (a) and (b) of this section, "services agreement" means a written agreement between a consultant and a town or regional school district for the provision of independent architectural services for the purpose of a school building project for which the town or district is receiving state assistance pursuant to this chapter.

(d) Any town or regional school district that fails to adhere to the provisions of this section for a project for which the town or district receives state assistance pursuant to this chapter shall be assessed a ten per cent reduction in the amount of its grant approved pursuant to this chapter upon completion of an audit pursuant to section 10-287.

EXHIBIT B - MINIMUM EXPERIENCE REQUIREMENTS

The Bidder shall have completed, as a construction manager at risk, at least three (3) school projects with a construction budget of not less than Forty Million Dollars (\$40,000,000.00), which was a Connecticut public school project that received a certificate of occupancy within the last ten (10) years and was funded by the State of Connecticut Department of Education or Department of Administrative Services (vocational technical schools managed by the State of Connecticut Department of Public Works are not schools that meet the foregoing minimum experience qualifications requirements).

EXHIBIT C - QUALIFYING PROJECTS

Contractors Name _____

Qualifying Projects Matrix

Note: The project used to satisfy the minimum experience requirements set forth in Exhibit B of this RFQ/P shall be identified in line item No. 1 through 3 of this exhibit. Additional projects to satisfy the additional criteria shall be listed in line items No. 4 through 10 of this Exhibit. This Exhibit must be filled out in its entirety.

No.	Project Title	State of CT Project # (if applicable)	Owner	Owner Point of Contact Name/Phone #	Project Budget	Month/Year Of Occupancy
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						

EXHIBIT D – KEY PERSONNEL EXPERIENCE MATRIX

For Key Personnel listed in Section III, please place an “X” for those projects listed in the Qualifying Projects Matrix on which they worked. Only mark those projects in which the role they were in matches their role for this project.

Key Personnel	Firm	Role	Years in Role	Years with Firm	1	2	3	4	5	6	7	8	9	10

EXHIBIT E – STAFFING MATRIX

Pre-Construction Staffing Matrix

Position	Name	Number of Hours	Hourly Rate	Total Price*	Comments
Projective Executive					Pre-Construction PT
Project Manager					Pre-Construction PT
BIM Coordinator					Pre-Construction PT
MEP Coordinator					Pre-Construction PT
Project Scheduler					IAW Exhibit M, CREC Scheduling Requirements
Quality Controls					Pre-Construction PT
Administrative Support					
Other (please list):					
Total Price for Pre-Construction Staff				\$	

*All staff listed in this matrix are included in the Pre-Construction Fee.

Construction Phase Staffing Matrix

All proposals must meet the minimum staffing requirements for the duration of construction.

Item Description	Name	General Conditions	Included in CM Fee	Number of Hours	Hourly Rate	Total Price*	Comments
Operations Manager			X				
Business Development Manager			X				
Projective Executive		X					Construction PT
Project Manager		X					Construction FT
Project Superintendent (x2)		X					Construction FT
Project Engineer /Asst. Superintendent (x2)		X					Construction FT
BIM Coordinator		X					Construction PT
MEP Coordinator		X					Construction PT
Safety Officer		X					Construction PT
Administrative Support		X					Construction FT
Project Scheduler/Scheduling Consultant		X					IAW Exhibit M, CREC Scheduling Standard
Quality Controls		X					Construction FT
Purchasing Agent Corp. Office			X				
Purch. Agent Admin. Support			X				
Admin support (Corp. Office)			X				
Estimator			X				Construction PT
Financial Manager			X				
Finan./Cost Support Corp. Office)			X				
Other Corp. Office Support Staff			X				
Staff Training		X					
Total Price for General Conditions Staff						\$	

*Only price those items which are included in the General Conditions. This total Price should be included in the fee breakout in Exhibit E.

EXHIBIT F - BID FORM

CM Firm _____

Fee and Compensation Structure for Pre-construction Phase Services

Description	Fixed Fee/Compensation (In Dollars)	By Percentage (of Construction Costs)
Pre-Construction Staffing Matrix Cost (from Exhibit D)	\$	%
Pre-Construction Fee	\$	%
Cost per month (i.e. if Pre-Con phase is 8 months total and Pre-con fee is \$80,000 total, the per month cost equals \$10,000)	\$ _____ per month	Not Applicable

Fee and Compensation Structure Construction Phase Services

Description	Fixed Fee/Compensation (In Dollars)	By Percentage (of Construction Costs)
Estimated Construction Costs (Direct Trade Work)	\$ 70,000,000	100 %
Construction Staffing Matrix Cost (from Exhibit D)	\$	%
Lump Sum General Conditions	\$	%
Construction Manager's Fee	\$	%
CM Contingency will be 3% when establishing GMP)	\$ 2,100,000	3 %

EXHIBIT G - CONSTRUCTION MANAGER TASK MATRIX

Item Description	Construction Manager	Supplied by Owner	Supplied by Trades	Comments
Pre-Construction Services				
All BIM requirements	X			Per Section II and Exhibit L
Cost Estimating	X			
Value Engineering	X			
Constructability Reviews	X			
Schedule, with updates	X			
Safety Plan	X			
Purchasing/Buyout	X			
Other (explain)	X			
Construction Services				
Projective Executive	X			
Project Manager	X			
Project Superintendent	X			
Project Engineer /Asst. Superintendent	X			
MEP Coordinator	X			
Safety Officer	X			
Administration Support	X			
Purchasing Agent Corp.Office	X			
Purch. Agent Admin. Support	X			
Admin support (Corp. Office)	X			
Trav. & Out of Pocket expenses	X			
Office mobilization	X			
Field office rental	X			
Field office installation / removal	X			
Field office furniture	X			
Field office cleaning	X			

Item Description	Construction Manager	Supplied by Owner	Supplied by Trades	Comments
Owner workspace in field office	X			
Shed &/or storage trailer	X			
Furniture (other)	X			
Stationary & supplies	X			
Postage & Shipping	X			
Office equipment	X			
Jobsite copy machine	X			
Computers	X			
Internet Connection	X			
Computer Software	X			
Licensing Fees	X			
On Site IT Support	X			
Telephones	X			
Fax lines	X			
Comm. equipment / radios	X			
Photocopying	X			
Office utilities	X			
Drinking water / coffee	X			
Data processing / IT	X			
First Aid supplies	X			
Project vehicle	X			
Project vehicle fuel	X			
Project vehicle maintenance	X			
Survey equipment & supplies			X	
Project signage	X			
Records storage	X			
Reproduction costs for CM use	X			
Progress photos	X			

Item Description	Construction Manager	Supplied by Owner	Supplied by Trades	Comments
Safety Compliance material & labor			X	
Staff Training	X			
Building Perimeter Protection			X	
Site fencing & gates			X	
Construction fencing & gates			X	
Ladders, ramps, & stairs			X	
Building enclosures			X	
Finish work protection			X	
Dust partitions			X	
Hygiene plan requirements			X	
Water consumption			X	
Electrical - Install & maintain			X	
Electrical - consumption	X			Allowance – Electrical \$150,000
Heat - install & maintain			X	
Heat - fuel consumption	X			Allowance – Heat \$250,000
Fire protection			X	
Watchmen / Security services	X			Allowance -\$100,000
Roads - install & maintain			X	
Barricades			X	
Traffic control			X	
Mud & dust control			X	
Mud pads @ exits			X	
Wheel wash stations			X	
Parking			X	
Temporary elevator service			X	
Personnel & material hoisting			X	
Building Permit fee		X		
General & excess liability insurance	X			

Item Description	Construction Manager	Supplied by Owner	Supplied by Trades	Comments
Builder's Risk insurance		X		
Contract Document printing	X			
Shop Drawing printing			X	
Legal Surveys		X		
Field Engineering services			X	
Pest control	X			
Special Inspection services		X		
Advertising expenses	X			Allowance - \$10,000
Trash dumpster rental & removal			X	
Trash dumpster tipping fee			X	
Trash chutes & hoppers			X	
Final clean up & window wash			X	
Winter protection			X	
General weather protection			X	
Snow Removal			X	
Maintenance of Silt Barriers			X	
Web Site start up			X	
Web Site maintenance			X	
Payment & Performance Bond	X			For CM. Trades pay for their own.

Note: The intent of this form is only to be used as a general guideline. Full scope of services required may not be noted and/or limited to items listed.

EXHIBIT H - STATE OF CONNECTICUT DEPARTMENT OF ADMINISTRATIVE SERVICES CHANGE ORDER REQUIREMENTS

The Construction Manager shall be responsible for the preparation and submission of all contract change orders to the State of Connecticut Department Administrative Services. Change orders shall be submitted to the DAS on Form ED042CO attached herein as part of these bid documents. The Construction Manager shall adhere to the following procedures when submitting change orders to the DAS.

Change Orders shall be submitted for each individual trade contractor. Multiple change orders can be included on each ED042CO form, but they must all be from the same trade contractor.

The Construction Manager shall attach sufficient documentation with each ED042CO form to support the change order claim. Documentation shall include, but may not be limited to: itemized quotes from trade contractors and material suppliers, architectural bulletins, change directives, proposal requests, sketches and/or RFI's if applicable. The Construction Manager shall respond to requests for additional or missing documentation from the State Department of Administrative Services.

The Construction Manager shall attach an executed trade contractor change order form to each ED042CO form submitted to the DAS.

The Construction Manager shall have each ED042CO form signed by the Superintendent of Schools and Finance Officer, as well as the Architect and Trade Contractor.

The Construction Manager may not include costs for payment and performance bond increases from either the trade contractor or the Construction Manager on each individual ED042CO form. Costs for bond premium increases shall be submitted at the end of the project using a single ED042CO form per trade and shall represent the bond premium increase on the cumulative value of all change orders issued to that trade contractor. Change orders submitted to the DAS for bond premium increases MUST include a copy of the invoice for the additional premium from the contractor's bonding company.

The Construction Manager may not include costs for CM overhead and profit and/or fee on each individual ED042CO form. Costs for CM overhead and profit shall be submitted at the end of the project using a single ED042CO form and shall represent the total OH&P/fee on the cumulative value of all change orders issued to the trade contractors. Change orders submitted to the DAS for CM OH&P/fee on trade contractor changes must include a change order log which lists the value of each trade contractor change order.

The Construction Manager shall submit an ED042CO form to the State Department of Administrative Services for any and all changes to the contract amount, including adds, deducts, expenditures of allowances and any value engineering cost changes to the GMP and/or CM's contract.

The Construction Manager shall submit an ED042CO form at the end of the project to reflect any final credits (deducts) or overruns (adds) of monies spent as part of an Allowance. Change orders for allowances must be submitted on a trade by trade basis and include a reconciliation log and detailed documentation of all expenditures made using the Allowance funds.

The Construction Manager shall submit ED042CO change order forms to the State Department of Administrative Services on an ongoing basis throughout the project and shall not allow change orders to accumulate over an excessive period of time at minimum, every three months.

It is the Construction Manager's responsibility to submit ED042CO change order forms with proper accompanying documentation pursuant to Section 10-286 of the general statutes as required by subsection (d) found below:

(d) For any school building project receiving state grant assistance under this chapter, all change orders or other change directives issued for such project (1) on or after July 1, 2008, until June 30, 2011, shall be submitted, not later than six months after the date of such issuance, to the Commissioner of Education, and (2) on or after July 1, 2011, shall be submitted, not later than six months after the date of such issuance, to the Commissioner of Construction Services, in a manner prescribed by the Commissioner of Construction Services. Only change orders or other change directives submitted to the Commissioner of Education or Commissioner of Construction Services, as applicable, in accordance with this subsection shall be eligible for state grant assistance.

EXHIBIT I – QUALITY CONTROL BY A CONSTRUCTION MANAGER

1b-01 GENERAL. *The Construction Manager shall establish and maintain an effective quality control system.* The quality control system shall comprise plans, schedules, and organization necessary to provide materials, equipment, workmanship, manufacture, construction, and operations which comply with contract requirements and shall identify personnel and forms to be used. The system shall cover construction operations, both indoors and outdoors, and shall be in accordance with the proposed construction sequence.

1b-02 COORDINATION MEETING. As soon as practicable after receipt of Notice to Proceed and before start of construction, the Construction Manager shall meet with the Owner's Project Manager (OPM) and discuss the Construction Manager's quality control (CQC) system. During the meeting a mutual understanding of the system details shall be developed including the forms for recording the CQC operations, control activities, testing, administration of the system for both indoors and outdoors construction, and the interrelationship of Construction Manager's inspection and control with the Owner's inspection. Minutes of the meeting will be prepared by the OPM and forwarded to the Construction Manager who will make them a part of the contract file. There may also be other subsequent meetings that will be called to reconfirm understandings. Minutes of these meetings will also be forwarded to the Construction Manager who will make them a part of the contract file.

1b-03 QUALITY CONTROL PLAN.

- a. Prior to starting the construction, the Construction Manager shall furnish his CQC plan through the OPM to the Owner for acceptance. Construction will be permitted to begin only after acceptance of the CQC plan or approval of that portion of the plan applicable to the particular feature of the work to be started. The Quality Control (QC) plan proposed by the Construction Manager shall identify personnel, procedures, instructions, records and forms, and, as a minimum, shall include:
 - (1) A description of the quality management organization.
 - (2) The names, qualifications, duties, responsibilities, and authorities of each person assigned a QC function. Note: A requirement of this list is that the primary CQC representative must already have up-to-date U.S. Army Corps of Engineers QA/QC Certification.
 - (3) A copy of the letter to the QC manager, signed by an authorized official of the firm, which describes the responsibilities and delegates the authorities of the QC manager.
 - (4) Procedures to perform QC over other activities including subcontractors, manufacturers, and suppliers.
 - (5) Control testing procedures for each specific test.
 - (6) Reporting procedures for QC including proposed reporting formats.
- b. After approval of the QC plan the OPM shall notify the Construction Manager in writing of

any proposed change to his QC plan. Proposed changes are subject to acceptance by the Owner through the OPM.

- c. The acceptance of the QC plan is conditional and will be predicated on a satisfactory performance during the construction. If it is determined that the QC plan, personnel, instructions, controls, tests or records are not providing a construction conforming to contract requirements, the Owner will reserve the right to require the Construction Manager to make changes in his QC plan and operations, as deemed necessary to obtain the specified quality. Any changes required to the plan will be made at no cost to the Owner.

1b-04 QUALITY CONTROL ORGANIZATION.

- a. The Construction Manager shall identify an individual within his organization at the site of the work who shall be responsible for overall management of CQC and have the authority to act in all CQC matters for the Construction Manager.
- b. A staff shall be maintained under the direction of the system manager to perform all QC activities. The actual strength of the staff during any specific work period may vary to cover work phase needs, shifts and rates of placement. The personnel of his staff shall be fully qualified by experience and technical training to perform their assigned tasks, and shall be directly hired by and work for the Construction Manager.

1b-05 SUBMITTALS.

- a. The Construction Manager shall develop procedures for purchasing materials and equipment, subcontracting, and processing shop drawings, samples, certificates, and other submittals. This procedure shall include the establishment of responsibilities to assure, at each level, adequate review and approval, timely delivery including verification procedures, and proper storage. Submittals of the shop drawings and/or manufacturer's data shall be, as specified, in accordance with contract clauses entitled "Materials and Workmanship" and "Shop Drawings". See Exhibit F – Contract – AIA Document A201, Sections 3.10, 3.11, and 3.12 for shop drawing requirements.
- b. Actions shall be taken to ensure that only materials and equipment which comply with contract requirements are purchased and delivered to the job site or used in off-site fabrication, unless specific deviations are approved, as specified hereinafter. The OPM may request a copy of the document of transportation of the provided material.
- c. The Construction Manager shall review the contract requirements and verify that submittals are conforming to contract compliance, and being submitted using the Construction Manager's "Project Reporting" software required as part of this RFQ/P.
- d. The CQC organization shall be responsible for certifying that all submittals are in compliance with the contract requirements. At minimum this applies to Payment Applications, Change

Order Requests, Change Orders, and Approval Letters.

- e. The Contractor shall submit copies of all submittals through the OPM to the Owner.
- f. Delays by the owner in the approval process shall not be the basis for consideration of a time extension when such delay is the result of the Construction Manager's failure to make proper and timely submittal, or make corrections in accordance with the specifications or the Owner's (or OPM's) comments, or is a result of a resubmittal which is required because of an unsatisfactory original submittal. Approval action by the Owner will not relieve the Construction Manager of his responsibility for compliance with the contract but will indicate only that the general method of construction and detailing is satisfactory.
- g. All proposed deviations from contract requirements shall be submitted in writing for approval by the Owner.

1b-06 CONTROL. Quality Control (QC) is the means by which the Construction Manager assures himself that his construction complies with the requirements of the contract plans and specifications. The QC system shall include at least the following four (4) phases of control and management for all definitive features of work:

- (1) **Preparatory.** This control phase shall be performed before beginning work on each definable feature of work. It shall include a review of contract requirements to assure that materials, sample, and equipment conform to contract requirements and that control testing procedures are finalized. The control shall also include examination of the work area to verify that structures over which new work is to be placed conform to contract requirements; Construction Manager shall also verify that the required materials be on hand and properly stored. The OPM shall be notified at least 24 hours in advance of each preparatory activity.
- (2) **Initial.** This phase of control must be accomplished as soon as a representative portion of the particular feature of work has been accomplished and shall include examination of the quality of workmanship and a review of control testing for compliance with contract requirements, identification of defective or damaged materials, omission, and dimensional requirements. The OPM shall be notified at least 24 hours in advance of the initial inspection and such inspection shall be made a matter of record in the CQC documentation.
- (3) **Follow-Up.** The follow-up phase shall be performed continuously to verify that control procedures are providing an end product which complies with contract requirements. Adjustments to control procedures may be required based upon the results of this phase.
- (4) **Completion.** At the completion of all work or any increment, the CQC representative shall conduct a joint review with the OPM. During this review the work shall be examined, quality control shall be examined, and a list shall be developed of work not properly completed or not

conforming to plans and specifications. This list shall be included in the quality control documentation with an estimated date for correction of each deficiency. The Construction Manager shall make sure that deficiencies be corrected prior to the contract completion date. Payment will be withheld for defective or deficient features until they are satisfactorily corrected except as otherwise provided in the contract.

1b-07 NOT USED.

1b-08 DEFECTIVE WORK. The Construction Manager shall not build upon or conceal a defective work.

1b-09 DOCUMENTATION.

- a. The Construction Manager shall maintain current records, on an appropriate form, of quality control operations, activities and tests performed including the work of suppliers and subcontractors. These records shall include factual evidence that the required activities or tests have been performed, including but not limited to the following:
 - (1) Type and number of control activities and tests involved.
 - (2) Results of control activities or tests.
 - (3) Nature of defects, causes for rejection, etc.
 - (4) Proposed remedial action.
 - (5) Corrective actions taken.
- b. These records shall cover both conforming and defective or deficient features and shall include a statement saying that supplies and materials incorporated in the work comply with the contract. Legible copies of these records shall be furnished to the OPM weekly. The records shall cover work performed during the time period for which the records are furnished and shall be verified by persons designated by the OPM and Owner.
- c. Typically documentation shall be submitted using the Construction Manager's "Project Reporting" software discussed in Section III, paragraph H of this RFQ/P, unless otherwise noted.

EXHIBIT J – ACCEPTANCE OF CONTACT TERMS

_____ as a condition of satisfying the minimum requirements of that certain document entitled “REQUEST FOR QUALIFICATIONS/PROPOSALS for Construction Management at Risk Services for the Two Rivers Magnet High School (241-0104 MAG/N/PS); hereby accepts the terms and conditions of the contract included and attached to said document as Exhibit K, without exception.

Authorized Signature

Date

Title

Printed Name

EXHIBIT K – CM AGREEMENT & GENERAL CONDITIONS

Exhibit K

AGREEMENT made as of the ___ day of _____ in the year **Two Thousand and Fifteen**

BETWEEN the Owner:

Capitol Region Education Council (CREC)
111 Charter Oak Avenue
Hartford, CT 06106

and the Construction Manager:

for the following Project:

The Architect:

The Owner's Designated Representative:

Douglas Rogers, Director – Construction Services
Capitol Region Education Council (CREC)
147 Charter Oak Avenue
Hartford, CT 06106

The Construction Manager's Designated Representative:

Telephone: (____) ____ - ____



The Architect's Designated Representative:

_____	[Redacted Signature Area]

The Owner and Construction Manager agree as follows.

TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	CONSTRUCTION MANAGER'S RESPONSIBILITIES
3	OWNER'S RESPONSIBILITIES
4	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
5	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
6	COST OF THE WORK FOR CONSTRUCTION PHASE
7	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
8	INSURANCE AND BONDS
9	DISPUTE RESOLUTION
10	TERMINATION OR SUSPENSION
11	MISCELLANEOUS PROVISIONS
12	SCOPE OF THE AGREEMENT

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, General Conditions, Drawings, Specifications, Addenda issued prior to the 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 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions, if any, prepared by the Architect and furnished by the Owner as described in Section 2.2.8. 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. The most stringent requirement shall control in the event of conflict between the Drawings and Specifications.

§ 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement and covenants with the Owner to cooperate with the Architect and Owner and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to use the Construction Manager's best efforts to perform the Work in an expeditious and economical manner consistent with the Owner's interests and without compromising quality. The Construction Manager shall perform the Work consistent with the professional skill and care ordinarily provided by nationally recognized construction managers having experience with successful projects of comparable size, complexity and in the same locality and under the same circumstances as the Project. The Owner shall endeavor 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.

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201TM-2007, General Conditions of the Contract for Construction, as amended, a copy of which is attached hereto as Exhibit A and made a part of this Agreement (the "General Conditions") shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be the General Conditions. The term "Contractor" as used in the General Conditions

shall mean the Construction Manager. The term "Contract Sum" as used in the General Conditions shall mean the Guaranteed Maximum Price.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES AND SERVICES

§ 2.0 Construction Manager's (i) Preconstruction Phase responsibilities and services are set forth in Sections 2.1 and 2.2. and that certain Construction Manager Task Matrix submitted by the Construction Manager to the Owner in response to the RFQ/P (as such term is defined below), a copy of which submitted Construction Manager Task Matrix is attached hereto as Exhibit B and made a part of this Agreement (the "Task Matrix"), and (ii) Construction Phase responsibilities and services are set forth in Section 2.3 and the Task Matrix. Notwithstanding and in addition to the foregoing, the Construction Manager's Preconstruction Phase and Construction Phase responsibilities and services shall also include the responsibilities and services of the Construction Manager set forth in that certain document issued by the Owner entitled "CREC Capitol Region Education Council REQUEST FOR QUALIFICATIONS/PROPOSALS for Construction Management at Risk Services for _____", a copy of which document is attached hereto as Exhibit C and made a part of this Agreement (as amended, the "RFQ/P"), including, without limitation, the Construction Manager's core responsibility for the full coordination of the process for the building information modeling digital representation of the physical and functional characteristics of the Project ("Building Information Modeling" or "BIM") used to create the building information model for the Project (also defined as "BIM"). 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 representative authorized to act on behalf of the Construction Manager with respect to the Project is identified in the introduction of this Agreement. The Construction Manager's Designated Representative shall have authority to accept instructions, make decisions, attend all required meetings, act for and bind the Construction Manager at all times and shall not be changed without the Owner's prior consent.

§ 2.1 Preconstruction Phase

§ 2.1.1 The date of commencement of the Construction Manager's Preconstruction Phase services is established pursuant to the limited notice to proceed issued by Owner in that certain CREC Memorandum _____, a copy of which is attached hereto as Exhibit D and made a part hereof (the, "CREC Memorandum"). As part of Construction Manager's Preconstruction Phase services, the Construction Manager shall (i) provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other, (ii) by the implementation of BIM in accordance with the BIM Documents (as such term is defined in the RFQ/P), which BIM Documents are made a part of and incorporated into this Agreement and deemed to include, without limitation, (a) AIA Document E203 – 2013 Building Information Modeling and Digital Data Exhibit, as amended, a copy of which is attached to the RFQ/P as Exhibit L and made a part of and incorporated into this Agreement; (b) G201 – 2013 Project Digital Data Protocol Form, as amended, a copy of which is attached to the RFQ/P as Exhibit L and made a part of and incorporated into this Agreement; and (c) AIA Document G202 – 2013 Project Building Information Modeling Protocol Form, as amended, a copy of which is attached to the RFQ/P as Exhibit L and made a part of and incorporated into this Agreement, provide detailed feasibility studies, programing and planning, (iii) provide an execution plan for how the Project will be executed, monitored, managed and built with regard to BIM (the "BIM Execution Plan"), and (iv) perform value management and/or engineering services. Such value management and/or engineering services shall be considered a part of Preconstruction Phase services whether performed before or after commencement of the Construction Phase. The Owner acknowledges and agrees that the Construction Managers performance of BIM, value management and/or engineering services are provided in the capacity of a Construction Manager and are not professional design services.

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect, Owner and each Project participant that is responsible for the implementation of BIM and/or the BIM protocols as required for the Project, the BIM Execution Plan or as directed by Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise and provide recommendations to the Owner and the Architect on design and construction methodologies that affect proposed Project site use and improvements, selection of materials, and building systems and equipment. At the request of Owner or when required for the progress of the Project, the Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; possible means and methods of attaining efficiencies 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. At the request of Owner, the Construction Manager shall

prepare a logistics plan for the use of the Project site and its surroundings, parking, temporary facilities, utilities, staging and storage for the Project, which shall include phasing and be coordinated with the needs of the Owner and approved, if applicable, by governmental authorities.

§ 2.1.3 At the request of the Owner or when required for the progress of the Project, the Construction Manager shall, for the Architect's review and the Owner's approval, prepare and periodically update, as applicable, (i) a detailed, preliminary milestone Project schedule including, without limitation, dates for the following: (a) submission of the Guaranteed Maximum Price proposal; (b) components of the Work, including, without limitation, the length of the Preconstruction Phase period; (c) times of commencement and completion required of each Subcontractor; (d) ordering and delivery of products, including those that must be ordered well in advance of construction; and (e) the occupancy requirements of the Owner (the "Preliminary Construction Schedule"), and (ii) a construction schedule, which construction schedule shall comply with the Owner's Project schedule requirements, a copy of such Owner's schedule requirements is attached to the RFQ/P as Exhibit M and is made a part of and incorporated into this Agreement (the "Schedule Requirements"), including, without limitation, the Schedule Requirements for the project scheduler (as in compliance with the Schedule Requirements, the "Construction Schedule"), and (iii) a spatial coordination schedule that is part of the BIM Execution Plan. The Construction Manager shall obtain the Architect's approval for the portion of the Construction Schedule relating to the performance of the Architect's services. The Construction 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.

§ 2.1.4 Phased Construction

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

§ 2.1.5 Preliminary Cost Estimates

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

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, pursuant to the RFQ/P or at appropriate intervals as directed by or agreed to by the Owner, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Notwithstanding the foregoing, such detailed estimates shall be revised by the Construction Manager not less than monthly. Such estimates shall be provided for the Architect's and Owner's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make specific recommendations for corrective actionable items and/or alternates. If such services arise from the Construction Manager's failure to perform the Preconstruction Services pursuant to the standard of care set forth herein, then the Construction Manager shall provide its recommendations at no additional cost to the Owner and the Construction Manager shall be responsible for any additional costs incurred by the Owner to bring the Project within budget. The Construction Manager shall, as part of such estimates of the Cost of the Work, prepare a written estimate of when the Construction Documents shall be ready for submission to State of Connecticut Department of Education ("DOE") for review and approval.

§ 2.1.6 Subcontractors and Suppliers

The Construction Manager shall (i) develop bidders' interest in the Project; (ii) endeavor to uniformly implement the goals of the Owner's equity program for the Project when obtaining bids and awarding the Work, a copy which Owner's equity program is attached to the RFQ/P as Exhibit N and is made a part of and incorporated into this Agreement (the "CREC Equity Program"); (iii) verify that the requirements and assignment of responsibilities for safety precautions and programs, temporary project facilities, and equipment, materials and services for common use of Subcontractors, are included in the proposed subcontracts; and (iv) review the Drawings and Specifications to ascertain areas of overlapping Work and verify that all Work has been included.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's approval, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction such that the Construction Schedule will not be exceeded. 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 and consistent with the requirements of the Contract Documents. Upon the establishment of the Guaranteed Maximum Price, which shall include the cost of such items, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise professional care pursuant to Section 1.2 in preparing schedules and estimates. 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 or in such form as the Owner or Architect may require. The Construction Manager shall review the Drawings and Specifications in order to be well informed as to the intent and scope of the Contract Documents and shall promptly report to the Architect and Owner any work that is not included in the Drawings and Specifications as it relates to the limits and responsibilities of the Construction Manager under the Agreement. While the Architect is responsible for including all required items or components in the Drawings and Specifications and design, errors or omissions in the Drawing and Specifications are the responsibility of the Architect, the Construction Manager shall be responsible for the Cost of Work not included in the Drawings and Specifications if during such review of the Drawings and Specifications the Construction Manager discovered or through the exercise of reasonable diligence should have discovered the Drawings and Specifications did not include certain work and did not promptly report it to the Architect and Owner. The Construction Manager shall have a responsibility to encourage and facilitate the sharing and distribution of BIM technology for the Project pursuant to the BIM Documents and/or the BIM Execution Plan.

§ 2.1.9 Notices and Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents including, without limitation, all programs and requirements set forth in the RFQ/P, this Agreement and the General Conditions.

§ 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 When the Drawings and Specifications are in the Owner's opinion sufficiently complete for certain initial Work identified by the Owner (the "Initial Work") and the Project trades and/or Subcontractors for the Initial Work have been bid and are ready to be awarded or have been awarded for such Initial Work, the Construction Manager shall, upon the Owner's request, prepare an initial Guaranteed Maximum Price proposal for the Owner's review and approval. The initial Guaranteed Maximum Price proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work as to the Initial Work, including the Construction Contingency (hereinafter defined in Section 2.2.5) and the Construction Manager's Fee. When the Drawings and Specifications are in the Owner's opinion sufficiently complete and all Project trades and/or Subcontractors have been bid and are ready to be awarded or have been awarded, the Construction Manager shall, upon the request of the Owner, prepare a subsequent Guaranteed Maximum Price proposal for the Owner's review and approval. The subsequent Guaranteed Maximum Price proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including the Construction Contingency and the Construction Manager's Fee.

§ 2.2.2 The Guaranteed Maximum Price in the proposal(s) shall be the sum, as applicable, of the Construction Manager's estimate of the Cost of the Work, including the Construction Contingency and the Construction Manager's Fee. As part of and included in the Cost of the Work, the Guaranteed Maximum Price proposal(s) shall, as applicable, set forth a not to exceed stipulated lump sum amount equal in the aggregate to \$_____ (the "Lump Sum General Conditions Amount"), which Lump Sum General Conditions Amount is established pursuant to the Construction Manager's Bid Form Fee And Compensation

Structure for Pre-Construction and Construction Phase Services submitted by the Construction Manager to the Owner in response to the RFQ/P, a copy of which submitted Bid Form Fee And Compensation Structure for Pre-Construction and Construction Phase Services is attached hereto as Exhibit E and is incorporated into and made a part of this Agreement (the “Fee and Compensation Structure Bid”) and is compensation to the Construction Manager for the costs and expenses incurred by the Construction Manager in performance of the Work and/or for the items set forth in the Task Matrix for the periods from (i) as to the initial Guaranteed Maximum Price proposal, the Date of Commencement of the Initial Work until the date of Substantial Completion of the Initial Work; and (ii) as to the subsequent Guaranteed Maximum Price proposal, the Date of Commencement until the date of Substantial Completion . The items set forth in the Task Matrix are collectively referred to as the “Lump Sum General Conditions Items”. Subject to Subsection 5.1.1, in no event shall the Lump Sum General Conditions Items component of the Cost of the Work exceed the General Conditions Lump Sum Amount, which General Conditions Lump Sum Amount includes, without limitation, the wages, salaries and labor costs set forth in Sections 6.2.

§ 2.2.3 With regard to the subsequent Guaranteed Maximum Price proposal and to the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager, if necessary, shall provide in the Guaranteed Maximum Price for such further development consistent with what is shown on the Contract Documents and reasonably inferable therefrom. Such further development does not include such items as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order. Further, the Construction Manager shall, if necessary, provide allowances in the Guaranteed Maximum Price proposal for acceptance by the Owner, designated to cover specific portions of the Work reasonably inferable from the Contract Documents, but whose quality, quantity or configuration is subject to modifying circumstances. Unless otherwise approved by the Owner, an allowance includes the Subcontractor’s cost of labor, materials and equipment, less applicable trade discounts, plus costs for unloading and handling, installation costs, overhead, profit and all other amounts contemplated for the portion of the Work covered by the allowance.

§ 2.2.4 The Construction Manager shall include with the Guaranteed Maximum Price proposal(s) 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(s), including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .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, with separate line items for allowances, Construction Contingency and the Construction Manager’s Fee;
- .4 A schedule of values prepare in accordance with the Contract Documents, including, without limitation, the Scheduling Requirements, which schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager’s Fee and the Lump Sum General Conditions Amount, which Lump Sum General Conditions Amount shall be payable in equal monthly installments during the Construction Phase, shall each be shown as a single separate items (as in compliance with the Schedule Requirements and Contract Documents, the “Schedule of Values”);
- .4 A Project Construction Schedule setting for, in part, the anticipated date of Substantial Completion of the Work upon which the Guaranteed Maximum Price proposal(s) is based;
- .5 A date, being a date not less than forty-five (45) days after the date the Guaranteed Maximum Price proposal(s) has been delivered to Owner, by which the Owner must either approve and accept the Guaranteed Maximum Price or reject the Guaranteed Maximum Price;
- .6 A BIM Execution Plan, which shall include a spatial coordination schedule; and
- .7 quality assurance and control plan developed by the Construction Manager for the Project in accordance with the Contract Documents (the “Quality Assurance and Control Plan”).

§ 2.2.5 In preparing the Construction Manager’s Guaranteed Maximum Price proposal(s), the Construction Manager shall include a construction contingency in an amount equal to three percent (3.0%) of the Cost of the Work determined at the time the Guaranteed Maximum Price is established for the Construction Manager’s exclusive use, subject to Owner’s written approval, to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order or not the basis for a Change Order (the “Construction Contingency”). Notwithstanding

anything to the contrary in the Contract Documents, in no event shall (i) the Owner be responsible for costs of rework of Work that is defective or non-conforming; (ii) the Construction Contingency be used for costs of rework of Work that is defective or non-conforming; and (iii) the Construction Contingency be used for costs covered by a Change Order, costs excluded under this Agreement, or costs caused by the breach of contract, negligence, or intentional act or omission of the Construction Manager or those for whom it is responsible. All unused Construction Contingency funds shall be the property of the Owner.

§ 2.2.6 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal(s). In the event that the Owner and 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(s), its basis, or both.

§ 2.2.7 If the Owner notifies the Construction Manager that the Owner has approved and accepted the Guaranteed Maximum Price initial proposal in writing before the date specified in the Guaranteed Maximum Price initial proposal, the Guaranteed Maximum Price initial proposal shall be deemed effective, but subject to the execution of a Guaranteed Maximum Price Amendment on terms and conditions acceptable to Owner, without further acceptance from the Construction Manager. Following Owner's approval and acceptance of a Guaranteed Maximum Price for the Initial Work set forth in the Guaranteed Maximum Price initial proposal, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, 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 for the Initial Work with the information and assumptions upon which it is based.

§ 2.2.8 If the Owner notifies the Construction Manager that the Owner has approved accepted the Guaranteed Maximum Price subsequent proposal in writing before the date specified in the Guaranteed Maximum Price subsequent proposal, the Guaranteed Maximum Price subsequent proposal shall be deemed effective, but subject to the execution of an Amended and Restated Guaranteed Maximum Price Amendment on terms and conditions acceptable to Owner, without further acceptance from the Construction Manager. Following the Owner's approval and acceptance of a Guaranteed Maximum Price set forth in the Guaranteed Maximum Price subsequent proposal, the Owner and Construction Manager shall execute the Amended and Restated Guaranteed Maximum Price Amendment amending and restating the Guaranteed Price Amendment and amending this Agreement, a copy of which the Owner shall provide to the Architect. The Amended and Restated Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

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

§ 2.2.10 The Owner may authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment or the Amended and Restated Guaranteed Maximum Price Amendment, as applicable. The Owner shall cause the Architect to furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment or the Amended and Restated Guaranteed Maximum Price Amendment, as applicable, and the revised Drawings and Specifications.

§ 2.2.11 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 or the Amended and Restated Guaranteed Maximum Price Amendment, as applicable, is executed.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of the General Conditions, the date of commencement of the Work shall mean the date of commencement of the Construction Phase as such date is established pursuant to the written notice to proceed issued by Owner (the "Date of Commencement"). The Owner may issue a limited written notice to proceed for the Initial Work and thereafter a written notice to proceed for the Work (collectively, the "Notice to Proceed"). The Construction Manager shall not proceed with any Work absent a written notice to proceed from the Owner.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's issuance of a Notice to Proceed directing the Construction Manager to commence the Work for the Construction Phase.

§ 2.3.1.3 The Owner and Construction Manager hereby acknowledge and agree that time is of the essence with respect to Construction Manager's performance of the Work hereunder. On the Date of Commencement Contractor shall immediately commence performance of the Work and continue to perform the same during the term of this Agreement in accordance with the Construction Schedule established by the Guaranteed Maximum Price Amendment, as such Construction Schedule may be amended in accordance with the Contract Documents. Owner and Construction Manager acknowledge and agree that the Project is being developed as a new and/or renovated educational facility and that it is crucial that the Owner be able to move students and educational programs into such new and/or renovated educational facility in accordance with the date of Substantial Completion of the Work set forth in the Construction Schedule or the Owner will be forced to make alternative arrangements. Accordingly, Owner and Construction Manager recognize the difficulties involved in proving actual damages and losses suffered by Owner and the difficulties of proof of loss by Owner, and the inconvenience or nonfeasibility of otherwise obtaining adequate remedies of Owner if the Construction Manager does not achieve Substantial Completion of the Work in accordance with the Construction Schedule. As a result, instead of requiring any such proof, Owner and Contractor agree that as liquidated damages (but not as a penalty) the Contractor shall be obligated to pay the Owner _____ and 00/100 Dollars (\$_____.00) [such amount to be determined during the Preconstruction Phase and included as part of the Guaranteed Maximum Price proposal] for each calendar day beyond a date of Substantial Completion that the Contractor fails to complete all of the Work and have the same ready for Owner's acceptance until all such Work is completed by Contractor and readied by Contractor for acceptance by Owner.

§ 2.3.2 Administration

§ 2.3.2.1 All portions of the Work shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall not perform any portions of the Work with its own personnel except as may be approved by Owner and in accordance with the guidelines as set forth by the DOE. The Owner may designate, in addition to the requirements set forth in the RFQ/P, specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids in accordance with the CREC Equity Program and the procurement process set forth in the RFQ/P. Further, the Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work. The Construction Manager shall deliver all bids to the Architect and Owner, along with a breakdown of anticipated subcontracts by trade and anticipated commencement and completion dates. The Construction Manager shall receive and open all bids, prequalify and evaluate all bidders, prepare a bid analysis and make recommendations to the Owner for the award of subcontracts or rejection of bids, and if the Construction Manager is bidding to self-perform any portion of the Work, it shall keep all Subcontractor's bids sealed until it has submitted its bid to Owner. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall conduct pre-award conferences with successful bidders, contract with all Subcontractors who are approved by Owner and whose bid or negotiated price has been accepted, and advise Owner on the acceptability of Subcontractors and material suppliers proposed by Subcontractors. The Owner may reject any and all bids in Owner's sole discretion. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection. The Construction Manager shall provide the Owner with a list of names and addresses of all Subcontractors and material suppliers working on the Project at the time the Subcontracts are executed and at the time subsequent subcontracts are signed.

§ 2.3.2.2 If the Guaranteed Maximum Price Amendment has been signed by the Owner and Construction Manager and when a specific bidder (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 Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 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 prior written consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, 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 Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a “related party” according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 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 to the Owner and Architect.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a submittal schedule in accordance with Section 3.10 of the General Conditions.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project pursuant to the Scheduling Requirements. On a not less than monthly basis, or otherwise as directed by the Owner, the Construction Manager shall submit periodic written progress reports to the Owner and Architect, showing percentages of completion, the numbers and amounts of Change Orders and other information required by the Owner. The Construction Manager shall also 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.

§ 2.3.2.8 Pursuant to the Scheduling Requirements, 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 provide monthly monitoring reports to the Owner and Architect, in accordance with Section 2.3.2.7 above of the budgeted Cost of the Work, showing actual costs for activities in process, estimates for uncompleted tasks, and variances between actual and budgeted or estimated costs. The Construction Manager shall advise the Owner and Architect whenever projected costs exceed budgets or estimates. The Construction Manager shall recommend necessary or desirable changes in the Work to the Owner and the Architect, review requests for changes, submit recommendations to the Owner and the Architect, and negotiate all Change Orders with Subcontractors. In no event shall such report constitute an adjustment of Contract Sum or Contract Time.

§ 2.3.2.9 The Construction Manager shall, as a cost being reimbursed as a Cost of the Work within the Guaranteed Maximum Price, cooperate and assist the commissioning agent hired by the Owner to commission the Work in accordance with the Project specifications, which cooperation and assistance shall be deemed to include, without limitation, that the Construction Manager shall provide on-site staff to address commissioning related issues during the period following Substantial Completion of the Work and commencing seven (7) days prior to the start of school and ending thirty (30) days after such start.

§ 2.3.2.10 The Construction Manager shall comply with the Project work rules reasonably established by the Owner.

§ 2.3.2.11 The Construction Manager acknowledges that the Project is a municipal school construction project receiving funding from the DOE pursuant to a school construction grant under Chapter 173 of the Connecticut General Statutes. The Construction Manager shall cooperate, as part of its accounting services provided hereunder being reimbursed as a Cost of the Work within the Guaranteed Maximum Price, with DOE audits of the Project, which cooperation shall include, without limitation, preparation of and production of documentation. Notwithstanding anything to the contrary in the Contract Documents, the Construction Manager shall comply with DOE requirements regarding Change Orders.

§ 2.3.2.12 Pursuant to the Quality Assurance and Control Plan, the Construction Manager shall ensure that any Subcontractor providing defective or non-conforming Work correct the Work in accordance with the Contract Documents at such Subcontractor’s expense. To the extent the Construction Manager self performs and provides defective or non-conforming Work, the Construction Manager shall, at its cost and expense, correct such Work in accordance with the Contract Documents. The Owner shall not be responsible for costs that could have been avoided by reasonable means, including backcharging responsible parties, prudent scheduling of the Work, supplementation of labor or equipment, judicious use of overtime or proper administration of Subcontractors.

§ 2.4 Professional Services

Section 3.12.10 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

§ 3.1.1 With reasonable promptness, the Owner shall provide information regarding requirements for and limitations on the Project.

§ 3.1.2 **Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall, at the request of Construction Manager and provided such information or services are reasonably required for the scope of the Project, furnish the following information or services with reasonable promptness at the Owner's expense. Subject to Section 2.2 of the General Conditions and except to the extent that the Construction Manager knows of any inaccuracy or through the exercise of due diligence reasonably should know of any inaccuracy, the Construction Manager shall be entitled to rely on the accuracy of any such information and services furnished by the Owner and described in Sections 3.1.4.1 through 3.1.4.4 but shall exercise proper precautions relating to the safe performance of the Work.

§ 3.1.2.1 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.

§ 3.1.2.2 Surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site.

§ 3.1.2.3 Services of geotechnical engineers, which may include but are not limited to 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.

§ 3.1.2.4 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.

§ 3.2 Owner's Designated Representative

The Owner Designated Representative is identified in the introduction to this Agreement and is authorized to act on behalf of the Owner with respect to the Project. The Owner's Designated 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 the General Conditions, the Architect does not have such authority. A new Owner's Designated Representative may be subsequently designated by the Owner upon notice to the Construction Manager.

§ 3.2.1 **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. Construction Manager is not responsible for identifying such services, but will assist Owner in implementing such services where appropriate. All costs to implement such services shall be borne by the Owner. Notwithstanding the foregoing, the Construction Manager acknowledges that (i) it is familiar with DOE requirements, including, without limitation, DOE audit requirements; and (ii) the requirements set forth in the RFQ/P, including, without limitation equal opportunity employment requirements, and Construction Manager shall comply with and assist in complying with such requirements as a cost being reimbursed as a Cost of the Work within the Guaranteed Maximum Price.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B101 - 2007, Standard Form of Agreement Between Owner and Architect (the "Architect Agreement") and in the BIM Documents, which BIM Documents are incorporated into and are deemed part of the Architect Agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services described in (i) Sections 2.0, 2.1 and 2.2, including, without limitation, all Construction Manager's BIM services, (ii) the Task Matrix and (iii) the RFQ/P and performed in accordance with that certain preconstruction and construction staffing matrix submitted by the Construction Manager to the Owner in response to the RFQ/P, a copy of which matrix is attached hereto as Exhibit F and made a part hereof (the "Staffing Matrix"), the Owner shall compensate the Construction Manager in a stipulated lump sum amount equal to \$_____ as set forth on the Fee and Compensation Structure Bid (the "Preconstruction Fee") payable in equal monthly installments during the Preconstruction Phase period consisting of _____ (____) months in accordance with the Preliminary Construction Schedule (the "Preconstruction Phase Period"), which Preconstruction Phase Period shall commence pursuant to a written notice to proceed issued by the Owner or the Owner's Designated Representative in accordance with the CREC Memorandum. The Preconstruction Fee includes all of the Construction Manager's costs and expenses incurred in the performance of the Preconstruction Phase services, including, without limitation, staffing costs and/or reimbursable costs and expenses.

§ 4.1.2 In no event shall the Construction Manager be compensated for Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2 in an amount in excess of the Preconstruction Fee, which Preconstruction Fee shall include, without limitation, all of the Construction Manager's staffing costs and reimbursable costs and expenses, including, but not limited to, long-distance telephone charges, travel and mileage, printing and other out-of-pocket expenses.

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed during the Preconstruction Phase Period, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted, but only to the extent that the Construction Manager is required to perform additional Preconstruction Phase services and incurs additional costs beyond those contemplated in the Preconstruction Fee. Such adjustment shall be proportionate to the scope of additional services provided beyond the services contemplated by the Preconstruction Fee and shall be calculated based upon the staff costs and hourly rates set forth in the Staffing Matrix and the equal monthly amounts paid for the Preconstruction Fee.

§ 4.1.4 The Staffing Matrix includes all the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

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

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice to Owner. Amounts unpaid ~~forty-five~~ (45) days after the date the invoice is received by Owner shall bear interest from the date payment is due at Prime Rate plus one percent (1%). As used herein, the Prime Rate shall mean the rate of interest published from time to time in the Wall Street Journal under the heading "Money Rates". Notwithstanding the foregoing, Contractor will not assess interest on minor delays due to normal processing procedures.

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Sections 2.0 and 2.3, the Task Matrix and RFQ/P, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee shall be a fixed fee equal to ____% of the Cost of Work established at the time the Guaranteed Maximum Price is determined and the Guaranteed Maximum Price Amendment is executed (the "Construction Manager's Fee"). In the event the Cost of the Work exceeds the Guaranteed Maximum Price pursuant to Owner approved Change Orders, the Construction Manager shall, as to such excess Cost of the Work amount, be entitled to (i) compensation in an amount equal to ____% of such excess Cost of the Work amount; provided, however, in no event shall the Construction Manager be entitled to receive aggregate compensation under

the Contract greater than an amount equal to the sum of the Preconstruction Fee and an amount equal to ____% of the Cost of the Work; and (ii) an increase in the Lump Sum General Conditions Amount by an amount equal to _____%.

§ 5.1.2 Subcontractors self-performing changes in the Work pursuant to Owner approved Change Orders shall receive no greater than 10% of the cost of such Work to cover overhead and profit for self-performing such changes in the Work. Sub-subcontractors performing changes in the Work pursuant to Owner approved Change Orders and working under the first tier Subcontractors not self-performing such Work shall receive no greater than 10% of the cost of such Work to cover overhead and profit for performing such changes in the Work and such first tier Subcontractors not self-performing shall receive no greater than 5% of the cost of such Work to cover overhead and profit. In no event shall the aggregate amount of overhead and profit of Subcontractors and Sub-subcontractors (of any tier) for performance of changes in the Work pursuant to Owner approved Change Orders exceed an amount equal to 15% of the cost of such Work.

§ 5.1.3 Rental rates and quantities for Construction Manager owned equipment shall be subject to Owner's prior approval, but in any case shall not exceed the standard rate paid at the place of the Project.

§ 5.1.4 Unit prices, if any, shall be set forth in the Guaranteed Maximum Price Amendment (the "Unit Prices").

§ 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it may be amended from time to time pursuant to the Contract Documents. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 5.2.3 Promptly after the quantities of unit price items and the actual costs of allowances become fixed, the Construction Manager shall submit to the Owner a proposed Change Order modifying the Guaranteed Maximum Price to reflect the difference between actual quantities or costs and the amount of the estimate or allowance. All savings realized in buying out the Work and allowances, and in completing unit price items, shall be solely the property of the Owner.

§ 5.3 Changes in the Work

§ 5.3.1 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 and the Owner's procedure and approval process for such changes, which process is set forth in the RFQ/P as Exhibit H and made a part hereof and incorporated into this Agreement (the "CREC Change Order Process"). The Owner shall issue such changes in writing. The Architect, upon written authorization from the Owner, may make minor changes in the Work as provided in Section 7.4 of the General Conditions, but the Architect shall not have authority to direct or authorize any changes in the Work that result in a change in the Contract Sum of the Contract Time. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of material changes that impact the critical path of the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment shall be determined in accordance with the CREC Change Order Process and Article 7 of the General Conditions; provided, however, notwithstanding anything in the Contract Documents to the contrary, (i) all changes in the Work for work outside the scope of work set forth in the Guaranteed Maximum Price Amendment shall be submitted as a change order request to the CREC Construction Services Division, which is a division of the Owner; and (ii) all changes in the Work for work outside the scope of work set forth in the Guaranteed Maximum Price Amendment shall be subject to the approval process set forth in the CREC Change Order Process, which approval process requires, as applicable, the approval of one or more of the following: (a) the senior program manager of the Owner; (b) the director of the CREC Construction Services Division; (c) the chief operating office of the Owner; and/or (d) the building committee of the Owner.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the term "costs" as used in Section 7.3.7 of the General Conditions shall have the meaning assigned to it in the General Conditions as modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of the General Conditions shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7 and certain of such items are Lump Sum General Conditions Items. The cost of such Lump Sum General Conditions Items are included in the General Conditions Lump Sum Amount, which General Conditions Lump Sum Amount is included in and a part of the Cost of the Work. The General Conditions Lump Sum Amount shall, notwithstanding anything to the contrary in this Agreement, include the Lump Sum General Conditions Items and such Lump Sum General Conditions Items shall in no event be included in the Cost of the Work other than as part of the General Conditions Lump Sum Amount. Subject to Subsection 5.1.1, in no event shall the Construction Manager's Lump Sum General Conditions Items component of the Cost of the Work exceed the General Conditions Lump Sum Amount.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain written approval of the Owner prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

§ 6.2 Labor Costs

§ 6.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel performing Work, which wages and salaries shall include no profit and are included in the General Conditions Lump Sum Amount.

§ 6.2.2 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, 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 and in accordance with the Staffing Matrix, which wages and salaries shall include no profit and are included in the General Conditions Lump Sum Amount.

§ 6.2.3 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, which costs are included in the General Conditions Lump Sum Amount.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts approved by Owner, which approval shall not be unreasonably withheld, delayed or conditioned.

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

§ 6.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, the Construction Manager shall compensate the Owner based on the fair market value of the materials, which value shall be credited to the Owner as a deduction from the Cost of the Work.

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

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling 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.

§ 6.5.2 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 costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior written approval.

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

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 Costs of materials and equipment suitably stored off the Project site at a mutually acceptable location, subject to the Owner's prior written approval and the commercially reasonable requirements established by the Owner regarding, without limitation, retainage and bonding of the storage facility.

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Commercial General Liability Insurance ("CGL Insurance") shall be reimbursed at the rate of ____% of the Cost of the Work, automobile and worker's compensation costs are included in such reimbursement for CGL Insurance. Payment and performance bonds costs of Construction Manager shall be reimbursed at a rate equal to ____% of the Cost of the Work. Construction Manager shall be reimbursed for Professional Liability Insurance at a rate equal to ____% of the Cost of the Work. These costs are included in the General Conditions Lump Sum Amount and are provided here as information for billing purposes.

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

§ 6.6.3 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.

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of the General Conditions or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and 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. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 the General Conditions or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

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

§ 6.6.8 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. Such costs shall include disputes with subcontractors, suppliers, and third parties, provided such disputes are not caused by Construction Manager's negligence, intentional misconduct or other failure to fulfill its obligations set forth in this Agreement or any such responsibility to a third party.

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work and required by Construction Manager to meet its obligations under this Agreement if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 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 Section 10.4 of the General Conditions.

§ 6.7.3 Costs of repairing (i) nonconforming Work resulting from a design defect, or (ii) damaged Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others. Notwithstanding the foregoing, in no event shall the Cost of the Work include costs incurred by the Construction Manager for rework of Work that is defective or non-conforming.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of the General Conditions 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 6.8.

§ 6.8 Costs Not To Be Reimbursed

§ 6.8.1 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 6.2;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the willful misconduct, negligence or failure of 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 to comply with the Contract Documents;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;
- .8 Costs for services incurred during the Preconstruction Phase;
- .9 Any Work which does not comply with the Contract Documents unless and not until such Work is rendered in compliance with the Contract Documents or costs to repair or correct Work that is defective or non-conforming with the Contract Documents except as provided in Subparagraph 6.7.3.
- .10 Any fines, penalties or costs imposed on the Construction Manager or a Subcontractor of any tier by any local, state or federal authority (including OSHA);
- .11 Overtime wages and allowances of Construction Manager's employees unless approved in advance, in writing, by the Owner;
- .12 Wages or salaries of the Construction Manager's supervisory and administrative personnel and any cost or expenses incurred by the Construction Manager related to personnel, including, without limitation cost of employee benefits, except as expressly included in General Conditions Lump Sum Amount; and
- .13 Legal, mediation and arbitration costs, including attorneys' fees incurred by the Construction Manager arising from the negligence or intentional misconduct of Construction Manager, or material breach of this Agreement by Construction Manager or arising from any dispute between the Owner and the Construction Manager.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 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 them 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.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term “related party” shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term “related party” includes any member of the immediate family of any person identified above.

§ 6.10.2 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 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 in writing the proposed transaction, 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 Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. 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 Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner and DOE. 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, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor’s proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of five (5) years after final payment, or for such longer period as may be required by law or DOE and shall, within thirty (30) days of the Owner’s request for records, provide the Owner with copies of such requested records. The Construction Manager shall provide a complete and clearly labeled digital copy of all records (i.e. subcontracts, change orders with all back up, etc.). If an audit inspection or examination in accordance with this article, discloses overpricing or overcharges (of any nature) by the Construction Manager to the Owner, in addition to repayment or credit for the overcharges, the reasonable actual cost of the Owner’s audit shall be reimbursed to the Owner by the Construction Manager. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Construction Manager’s invoices and/or records shall be made within a reasonable amount of time (not to exceed 30 days) from presentation of Owner’s findings to the Construction Manager.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect and Owner by the Construction Manager and Certificates for Payment issued by the Architect and approved by the Owner, 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.

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

§ 7.1.3 Provided that an Application for Payment is received by the Architect and Owner not later than the twenty-fifth (25th) day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the date thirty (30) days after receipt of such Application for Payment. If an Application for Payment is received by the Architect and Owner after the application date fixed above, payment shall be made by the Owner not later than forty-five (45) days after the Architect receives the Application for Payment.

§ 7.1.4 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 the cash disbursements already made by the Construction Manager on account of the Construction Manager's general conditions items, to the extent such items are not Lump Sum General Conditions Items, equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee and the Lump Sum General Conditions Amount. With each Application for Payment submitted in connection with an Owner approved Change Order that increases the Contract Time and extends the date of Substantial Completion, the Construction Manager shall, submit receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate the cash disbursements already made by the Construction Manager on account of the Construction Manager's Lump Sum General Conditions Items for the period of Contract Time for which the date of Substantial Completion was extended.

§ 7.1.5 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 be prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. The Schedule of Values, unless objected to by the Owner shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

§ 7.1.6 Applications for Payment shall be prepared in accordance with and comply with the Schedule Requirements, including, without limitation, the applicable coding, in order to 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 that portion of the Work which has actually been completed.

§ 7.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take 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 Schedule of Values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of the General Conditions;
- .2 Add 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 Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Subtract retainage of five percent (5%);
- .4 Add the Construction Manager's Fee, less retainage of five percent (5%) of such Construction Manager's Fee. The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1;
- .5 Add the Lump Sum General Conditions Amount, less retainage of five percent (5%) of such Lump Sum General Conditions Amount. The Lump Sum General Conditions Amount shall be payable in equal monthly installments during the Construction Phase;
- .6 Subtract retainage of five percent (5%) from that portion of the Work that the Construction Manager self-performs;
- .7 Subtract the aggregate of previous payments made by the Owner;
- .8 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .9 Subtract amounts, if any, for which the Architect or Owner has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the General Conditions.

§ 7.1.8 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, but in no event

less than five percent (5%) and the Construction Manager shall execute subcontracts in accordance with those agreements. The Construction Manager shall invoice for the Construction Manager's Fee on a percent complete basis; provided, however, five percent (5%) of the total of the Construction Manager's Fee shall be held as retainage by the Owner until the Project is financially closed out.

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

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the Owner and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Owner or Architect have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Owner or Architect have 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.

§ 7.1.11 Notwithstanding anything to the contrary herein, the Owner shall be entitled to withhold 200% of the estimated cost of the completion of Punch List (as such term is defined in Section 9.8.2 of the General Conditions) items as retainage. Said retainage shall be paid within thirty (30) days of completion of the Punch List items in a good and workmanlike manner. Additionally, the Owner shall have the right but not the obligation to complete the Punch List items in the event the Construction Manager has failed to complete same within sixty (60) days after receiving seven (7) days' advanced written notice from the Owner of such Punch List items. In the event the Owner completes the Punch List items, the Owner shall have the right to apply the reasonable cost of such completion against the Guaranteed Maximum Price.

§ 7.1.12 In the event the Construction Manager fails to pay Subcontractor or suppliers when due and payable, the Owner shall have the right, but not the obligation, to pay any such Subcontractor directly and subtract such amount paid, plus a percentage equal to the Construction Manager's Fee for such work, from the Guaranteed Maximum Price. Notwithstanding any other provisions to the contrary the Owner shall always be entitled to withhold from payment to the Construction Manager such additional amounts as may be reasonably necessary to protect the Owner from the insolvency of the Construction Manager.

§ 7.1.13 In the event of a monetary dispute between or among the Construction Manager and any Subcontractor or supplier, the Construction Manager shall immediately notify the Owner in writing and furnish such information and substantiation as the Owner may require with respect to the nature and extent of such dispute or claim.

§ 7.2 Final Payment

§ 7.2.1 Final payment (the "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 Section 12.2.2 of the General Conditions, and to satisfy other requirements, if any, which extend beyond Final Payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's Final Payment to the Construction Manager shall be made no later than forty-five (45) days after the issuance of the Architect's final Certificate for Payment. At the time of Final Payment, in addition to the lien waivers and other material to be submitted to the Owner or the Architect as a condition to receiving Final Payment, the Construction Manager, if requested by the Owner, shall deliver a final Sworn Construction Statement, in a form acceptable to Owner and duly executed and acknowledged, showing payment to have been made to all contributors to the Work.

§ 7.2.2 Provided the Construction Manager has fully performed all its obligations under the Contract Documents, the Owner and/or its accountants shall review the Construction Manager's final cost accounting and provide Construction Manager with a final written report setting forth any disputed costs within thirty (30) days after

Owner's receipt of the accounting. Notwithstanding any dispute over all or a portion of the Final Payment requested by Construction Manager, Owner shall pay Construction Manager all undisputed amounts within the time set forth in Section 7.2.1. Any disputed amounts shall be identified in writing by Owner to Construction Manager and substantiated with appropriate references to the Contract Documents.

§ 7.2.3 If the Owner and/or its accountants report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount. 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 and/or its accountants 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 minus the disputed amount.

§ 7.2.4 If, subsequent to Final Payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager 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 the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance pursuant to and in accordance with the insurance requirements set forth in the RFQ/P and the General Conditions, and the Construction Manager shall provide bonds as set forth in Article 11 of the General Conditions.

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of the General Conditions.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of the General Conditions, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction in the state courts where the Project is located.

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 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 Section 14.1.1 of the General Conditions.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section (i) exceed the compensation set forth in Section 4.1; or (ii) include payment for Work not executed and any cost or damages incurred by reason of such termination.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall be entitled to receive payment pursuant to Section 14.4.3 of the General Conditions.

§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of the General Conditions.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of the General Conditions shall not exceed

the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of the General Conditions shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of the General Conditions. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of the General Conditions.

ARTICLE 11 MISCELLANEOUS PROVISIONS

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

§ 11.2 Ownership and Use of Documents

Section 1.5 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

Section 13.1 of the General Conditions shall apply to both the Preconstruction and Construction Phases.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to the extent required by DOE or to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of the General Conditions, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

§ 11.5.1 Subject to Section 10.3 of the General Conditions, Construction Manager shall, as part of the Work, be responsible for the removal, handling, and disposal of polluted, contaminated, or hazardous materials, including, but not limited to, the abatement and disposal of material containing lead or asbestos.

§ 11.5.2 The scope of the Project and the Work included in the Guaranteed Maximum Price will be established to avoid any confusion or overlap of responsibilities with third parties performing other work in and around the Project, if any. Owner shall provide Construction Manager with the information necessary to fully understand and evaluate the work being performed by third parties, if any.

§ 11.5.3 While Construction Manager assumes no responsibility for insuring that the Contract Documents specify work, materials, or equipment are in compliance with local building codes, ordinances, or other requirements, the Construction Manager shall be obligated to inform Owner of any noncompliance that they know of.

§ 11.5.4 Lien waivers shall be furnished to cover only prior payments received by Construction Manager and its subcontractors.

§ 11.5.5 Where work is designated "by others" or "by Owner" or is otherwise not the responsibility of Construction Manager, Construction Manager shall provide management support to Owner in order to assist the Owner in managing and coordinating such work.

§ 11.5.6 The relationship of Construction Manager to Owner shall be that of an independent contractor. Nothing in the Agreement shall be construed to create a fiduciary relationship between Owner and Construction Manager.

§ 11.5.7 Owner shall be responsible for the payment of all permanent utility company charges and connection costs.

All permanent utilities shall be established and maintained in the name of the Owner. Notwithstanding the foregoing, the Construction Manager shall be responsible for temporary heat, power, and light hookup and utility charges for its own temporary gas and telephone and all associated utilities charges.

§ 11.5.8 The Construction Manager and Owner have each had full opportunity to review, consult counsel and participate in the negotiation and preparation of this Agreement and, accordingly, the Contract Documents shall not be more strictly construed against anyone of the parties hereto.

§ 11.5.9 In the event any term or provision of the Agreement is finally determined to be illegal, void or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of the Agreement shall be construed to be in full force and effect.

§ 11.5.10 This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and together shall constitute a single instrument.

§ 11.5.11 OWNER AND CONSTRUCTION MANAGER HEREBY KNOWINGLY, IRREVOCABLY, VOLUNTARILY AND INTENTIONALLY WAIVE ANY RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM BASED UPON THE CONTRACT DOCUMENTS, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THE CONSTRUCTION OF THE WORK OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY.

ARTICLE 12 SCOPE OF THE AGREEMENT

§ 12.1 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.

§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, 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, as amended.

§ 12.3 The following exhibits attached to this are part of the Agreement and also comprise the Agreement:

- Exhibit A – AIA Document A201-2007, as amended;
- Exhibit B – Task Matrix;
- Exhibit C – RFQ/P;
- Exhibit D – CREC Memorandum;
- Exhibit E – Fee and Compensation Structure Bid; and
- Exhibit F – Staffing Matrix.

To the extent of conflicts between this Agreement and the CREC Memorandum, the terms and conditions of this Agreement control and prevail. To the extent of conflicts between this Agreement and Exhibit K of the RFQ/P, the terms and conditions of this Agreement control and prevail.

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

CAPITOL REGION EDUCATION COUNCIL

OWNER (*Signature*)

« »« »

(*Printed name and title*)

CONSTRUCTION MANAGER (*Signature*)

« »« »

(*Printed name and title*)

AIA[®] Document A201[™] – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

THE OWNER:

Capitol Region Education Council (CREC)
111 Charter Oak Avenue
Hartford, CT 06106

THE ARCHITECT:

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- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
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- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS

ADDITIONS AND DELETIONS:

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

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

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement to which this A201, as modified, is attached to and made a part thereof, 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) an Approval Letter, (4) a Construction Change Directive or (5) a written order for a minor change in the Work issued by the Architect.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

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

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services. The Contract Documents shall govern the execution of 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, project manuals, 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 and certify termination of the Agreement under Section 14.2.2.

§ 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 and make the Work complete and operable in all respects, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

§ 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. The Contractor and all Subcontractors shall refer to all of the Drawings, including those showing primarily the Work of the mechanical, electrical and other specialized trades, and to all of sections of the Specifications.

§ 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.

§ 1.2.3.1 In the event of conflicting provisions among the Contract Documents that were not called to the Owner's or Architect's attention in writing prior to award of the Contract, the Contract Documents shall be construed according to the following priorities:

Highest Priority	Modifications to the Agreement
Second Priority	Agreement
Third Priority	Addenda (later date to take precedence - if any)
Fourth Priority	General Conditions
Fifth Priority	Bidding Requirements
Sixth Priority	Drawings and Specifications

§ 1.2.4 Contractor and all Subcontractors shall refer to all of the drawings, including those showing primarily the work of the mechanical, electrical and other specialized trades, and to all of the documents of the specifications, and shall perform all work reasonably inferable therefrom as being necessary to produce the indicated results. If work is required in a manner to make it impossible to produce work of the quality required by or reasonably inferred from the Contract Documents, or should discrepancies appear among the Contract Documents, the Contractor shall request, in writing, an interpretation from the Architect before proceeding with the Work. If the Contractor fails to make such request, no excuse will thereafter be entertained for failure to carry out Work in the required manner or to provide required guarantees, warranties, or bonds, and the Contractor shall not be entitled to any change in the Contract Sum or the Contract Time on account of such failure.

§ 1.2.5 Should conflict occur in or between the Drawings and Specifications, the Contractor is deemed to have included the better quality and larger quantity of work in the Bid.

§ 1.2.6 All indications or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials, or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.

§ 1.2.7 Where codes, standards, requirements and publications of public and private bodies are referred to in the Specifications, references shall be understood to be to the latest revision prior to the date of receiving bids, except where otherwise indicated.

§ 1.2.8 Where no explicit quality or standards for materials or workmanship are established for Work, such Work is to be of good quality for the intended use and consistent with the quality of the surrounding Work and of the construction of the Project generally.

§ 1.2.9 All manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents.

§ 1.2.10 Mechanical and Electrical Drawings are diagrammatic only, and are not intended to show exact physical locations or configurations of Work. Such Work shall be installed to clear all obstructions, permit proper clearances for the work of other trades, and present an orderly appearance where exposed. Exact locations of fixtures and outlets shall be obtained from Architect before the Work is roughed in; Work installed without such information from Architect shall be relocated at Contractor's expense.

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§ 1.2.11 Test boring and soil test information included with the Contract Documents or otherwise made accessible to Contractor was obtained by Owner for use by Architect in the design of the Work. Owner does not hold out such information to the Contractor as an accurate or approximate indication of sub-surface conditions, and no claim for extra cost or extension of time resulting from a reliance by Contractor on such information shall be allowed except as provided in Section 3.7.4.

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

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

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors of their respective Instruments of Service, including the Drawings and Specifications, and the Owner shall be the owner of the Instruments of Service and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment 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 this Project is not to be construed as publication in derogation of the Owner or Owner's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice acceptable to Owner. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents. The Contractor agrees that use of Instruments of Service in electronic form: (a) is not a substitute for professional judgment; (b) does not relieve the Contractor from applying the appropriate standard of care and skill relevant to the use of the Instruments of Service; and (c) is only to be used as a tool to assist the Contractor in connection with the Project.

ARTICLE 2 OWNER

§ 2.1 GENERAL

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

(Paragraph deleted)

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Owner may furnish surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a legal description of the site. To the extent the foregoing are made available to Contractor they are not deemed Contract Documents and there is no warranty or guaranty, either express or implied, that the conditions indicated by such documents are representative of those existing throughout the areas where the Work is to be performed. If Owner or Architect has made investigations of subsurface characteristics or concealed conditions of areas where the Work is to be performed, such investigations, if any, were made solely for the purposes of Owner's study and Architect's design. Neither such investigations nor the records thereof are a part of the Contract between Owner and Contractor. To the extent such investigations or the records thereof are made available to Contractor by Owner or Architect, such information is furnished solely for the convenience of Contractor. Neither the Owner nor

Architect assumes any responsibility whatsoever with respect to the sufficiency or accuracy of the investigations thus made, the records thereof, or of the interpretations set forth therein or made by Owner or Architect in its use thereof, and there is no warranty or guaranty, either express or implied, that the conditions indicated by such investigations or records thereof are representative of those existing throughout the areas where the Work is to be performed, or any part thereof, or that unforeseen developments may not occur, or that materials other than or in proportions different from those indicated may not be encountered. In connection with the foregoing, Contractor shall be solely responsible for locating and shall locate prior to performing any Work all utility lines, telephone lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, without limitation, all buried pipelines and buried telephone cables, and shall perform the Work in such a manner so as to avoid damaging any such lines, cables, pipes, and pipelines. Not in limitation of the foregoing, before performing any excavation at the Project Contractor shall use the services of Call Before You Dig.

§ 2.2.2 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 the use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 Section omitted.

§ 2.2.4 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness after receipt from the Contractor of a written request for such information or services. To the extent the foregoing are made available to Contractor they are not deemed Contract Documents and there is no warranty or guaranty, either express or implied, that the conditions indicated by such documents are representative of those existing throughout the areas where the Work is to be performed. The Contractor, not the Owner, is responsible for the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.

§ 2.2.5 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.

§ 2.3 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 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.

§ 2.4 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, in its sole and absolute discretion and without prejudice to other remedies the Owner may have, (a) furnish, or employ a person or entity to furnish, labor, services, materials or equipment to correct, remove and/or repair such deficiencies, as the Owner deems most expedient; (b) take such action as the Owner deems necessary to regain and/or maintain the Construction Schedule; and/or (c) withhold payment as permitted under the Contract Documents. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor 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 payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 2.5 RIGHTS CUMULATIVE

The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner under the Contract Documents, at law, or in equity.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

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

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents and shall furnish all necessary labor, materials, tools, equipment, and transportation necessary for performance of the Work. The Contractor shall also furnish all necessary water, heat, light, and power.

§ 3.1.3 The Contractor shall not be relieved of 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 (including, without limitation, (i) the location, condition, layout and nature of the Project site and surrounding areas; (ii) anticipated labor and supply costs; and (iii) availability and cost of materials, tools and equipment) and correlated personal observations with requirements of the Contract Documents. During the period that the Contractor is in care, custody and control of the Project site, the Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. During execution of the Work, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, (i) carefully study and compare the various Contract Documents, including, without limitation, the Schematic Design, Design Development and Construction Documents, relative to that portion of the Work, (ii) verify the Owner's design intent is reflected and incorporated into the Contract Documents, (iii) take field measurements of any existing conditions related to that portion of the Work, and (iv) observe any conditions and verify all grades, elevations dimensions or locations at the Project site affecting it. Any defects resulting from the Contractor's failure to comply with its obligations under this paragraph shall be promptly rectified by the Contractor, at its cost and expense and without additional cost to the Owner. The Contractor shall at once report to Architect and Owner, as a request for information ("RFI") or in such form as the Owner directs, any error, inconsistency or omission the Contractor may discover. The Contractor shall not proceed with Work affected by such errors, omissions, inconsistencies or variances without the Architect's response to such RFI. Any necessary change shall be ordered as provided in Article 7, subject to the requirements of Article 1 and other provisions of the Contract Documents. If Contractor proceeds with the Work without such notice to the Owner and Architect having discovered such errors, inconsistencies or omissions, or if by reasonable study of the Contract Documents the Contractor should have discovered such errors, inconsistencies or omissions, the Contractor shall bear all costs arising therefrom. 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. In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and the applicable standards, codes and ordinances as they relate to performance of the Work, the Contractor shall (i) provide the better quality or greater quantity of Work, or (ii) comply with the more stringent requirements; either or both in accordance with the Owner's interpretation.

§ 3.2.3 The Contractor shall examine the site of the Work and adjacent premises and the various means of approach to the site, and shall make all necessary investigations in order to inform itself thoroughly as to the character and magnitude of all work involved in the complete execution of the work shown in the Contract Documents. The Contractor shall further inform itself as to the facilities for delivering, handling, and installing the construction plant and other equipment and the conditions and difficulties that will be encountered in the performance of the Work.

§ 3.2.4 The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies, or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract

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Documents unless the Contractor recognized or through the exercise of reasonable diligence should have recognized such errors, inconsistencies, omission, or difference and failed to report it to the Owner and Architect. Contractor shall give Architect and Owner timely and proper notice and documentation of any additional design drawings, specifications, or instructions required to define the Work in greater detail, correct coordination issues, or to permit the proper progress of the Work either prior to starting construction or during construction activities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor, and not the Owner, shall be solely responsible for, and have control over, charge of and responsibility for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, notwithstanding any of the rights and authority granted the Owner in the Contract Documents. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and 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 will not be safe with the proper exercise of safety precautions and programs required hereunder, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be responsible for loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

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

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

§ 3.3.4 The Contractor shall inspect all materials delivered to the site and shall reject any materials that will not conform with the Contract Documents when properly installed.

§ 3.3.5 The Contractor shall be responsible for and coordinate any and all inspections required by any governmental body that has jurisdiction over the Project. Failure to obtain any permits, licenses, or other approvals because of the failure of the Contractor to conform to this requirement shall not extend the Contract Time, and Contractor shall not be entitled to an increase in the Contract Sum therefor.

§ 3.3.6 The Contractor shall confine all operations (including storage of materials) conducted on the Project site to areas authorized or approved by Owner.

§ 3.3.7 The Owner may undertake or award other contracts for additional work at the Project. With regard to the Work of the Owner's third party contractors, subcontractors, and vendors or work that is otherwise not the responsibility of Contractor, Contractor shall fully cooperate with such third parties and shall provide management support to Owner in order to assist the Owner in managing and coordinating such work, which management support shall be limited to providing scheduling input to Owner and the third parties with respect to the delivery and installation of third party services, materials, and equipment that must be integrated with Contractor's Work.

§ 3.3.8 The Contractor shall at all times staff the Project adequately for high quality management and construction work. The Contractor shall have competent supervision continuously on the job during work hours and readily available at all times upon call.

§ 3.3.9 The Contractor shall at all times make provisions to protect the existing building (if any) or new construction from damage due to the Work or due to the weather.

§ 3.3.10 The Owner or the Owner's Designated Representative shall have access to the Work site and all Work. No inspection by the Owner's Designated Representative shall relieve the Contractor of any of its obligations under the Contract Documents or give rise to any duty on the part of the Owner.

§ 3.3.11 If part of the Work is adjacent to or dependent upon work by a separate contractor or the Owner's own forces, the Contractor shall meet and coordinate with such separate contractor or forces prior to proceeding with that portion of the Work.

§ 3.3.12 The Contractor shall ensure that personnel performing the Work comply with an Owner-approved logistics plan for the use of the Project site and its surroundings, parking, temporary facilities, utilities, staging and storage for the Project, including phasing, in coordination with the needs of the Owner and the requirements of governmental authorities.

§ 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. Immediately prior to the Architect's inspection for Substantial Completion, the Contractor shall remove all temporary connections, distribution lines, meters, and associated paraphernalia.

§ 3.4.2 The Contractor may make substitutions only with the written consent of the Owner, after evaluation by the Architect in consultation with the Owner and in accordance with a Change Order, Approval Letter or Construction Change Directive. Substitutions and alternates may be rejected in the Owner's sole discretion. Substitutions and alternates will be considered only if: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations; (ii) specified products are unavailable through no fault of the Contractor or any Subcontractor; (iii) subsequent information discloses the inability of specified products to perform properly or to fit in a designated space; (iv) the manufacturer or fabricator refuses to certify or guaranty the performance of the specified product as required; or (v) when, in the sole judgment of the Owner, a substitution would be substantially in the Owner's best interests in terms of cost, time or other considerations.

§ 3.4.2.1 No time extensions shall be allowed nor any responsibility assumed by the Owner if the Contractor submits a request for a substitution, whether such request is approved or denied.

§ 3.4.2.2 Approval by the Owner of any substitution shall not relieve the Contractor requesting the substitution of any responsibility for additional costs incurred by the Architect and other trades for changes made necessary to accommodate the substituted item. Any additional cost, or any loss or damage arising from the substitution of any material or any method for those originally specified shall be borne by Contractor, notwithstanding approval or acceptance of such substitution by Owner or Architect, unless such substitution was made at the written request or direction of Owner or Architect.

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

§ 3.4.4 When the Contract Documents require Work, or any part of same, to be above the standards required by applicable laws, ordinances, rules, and regulations, and other statutory provisions pertaining to the Work, such Work shall be performed and completed by Contractor in accordance with the Contract Documents. When the Contract Documents describe the Work in general terms, but not in complete detail, Contractor understands and acknowledges only the best general practice is to be employed. Any design detail furnished by Contractor shall be in conformance with applicable laws and shall be sufficient for the purposes intended. Contractor shall closely inspect all materials as delivered and all Work as performed and shall promptly reject and return all substandard materials and redo all substandard Work without awaiting Architect's inspection and rejection thereof. Such Contractor inspection of all Project materials shall be performed, in part, to confirm and/or verify that no hazardous materials are incorporated in to the Project or Work and the Contractor shall reject any and all Project materials containing hazardous materials unless the Contract Document specifically require such hazardous materials for the Work.

§ 3.5 WARRANTY

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract

will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements, including substitutions not properly authorized, shall 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. The Contractor shall arrange for the Owner to have the benefit of and right to enforce all warranties by Subcontractors, Sub-subcontractors, suppliers and manufacturers. Manufacturers' warranties and warranties by others shall not relieve the Contractor of any of its responsibilities.

§ 3.5.2 Contractor shall be responsible for determining that all materials furnished for the Work meet all the requirements of the Contract Documents. The Architect or Owner may require Contractor to produce reasonable evidence that a material meets such requirements, such as certified reports of past tests by qualified testing laboratories, reports of studies by qualified experts, or other evidence which, in the opinion of the Owner or Architect, would lead to a reasonable certainty that any material used, or proposed to be used in the Work meets the requirements of the Contract Documents. All such data shall be furnished at Contractor's expense. This provision shall not require Contractor to pay for periodic testing of different batches of the same material, unless such testing is specifically required by Contract Documents to be performed at Contractor's expense.

§ 3.5.3 In all cases in which a manufacturer's name, trade name or other proprietary designation is used in connection with materials or articles to be furnished under this Contract, whether or not the phrase "or equal" is used after such name, Contractor shall furnish the product of the named manufacturer(s) without substitution, unless a written request for a substitute has been submitted by Contractor and approved in writing by Owner and Architect as provided in Subparagraph 3.4.2.

§ 3.5.4 The Contract Documents are intended to produce a building of consistent character and quality of design. All components of the building including visible items of mechanical and electrical equipment have been selected to have a coordinated design in relation to the overall appearance of the building. Architect shall judge the design and appearance of proposed substitutes on the basis of their suitability in relation to the overall design of the Project, as well as for their intrinsic merits.

§ 3.5.5 The warranty provided in this Section 3.5 shall be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise prescribed by law.

§ 3.5.6 Contractor shall procure and deliver to Architect, no later than the date claimed by Contractor as the date of Substantial Completion, all special warranties required by the Contract Documents. Delivery by Contractor shall constitute the Contractor's guarantee to the Owner that the warranty will be performed in accordance with its terms and conditions.

§ 3.5.7 The Contractor's warranty on all materials and equipment shall be for a minimum of 12 months after Substantial Completion of the Work or a portion thereof, unless there is a longer period provided for specific materials and equipment in the Contract Documents.

§ 3.6 TAXES

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

§ 3.6.2 Contractor shall be familiar with the current regulations of the Department of Revenue Services. The tax on materials, supplies, or products purchased for this Project and exempted by such regulations shall not be included in the Contract Sum.

§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government, municipal, quasi public and/or regulatory 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. Upon the Owner's request, the Contractor shall cooperate with and assist the Owner in the event the Owner seeks to pursue a reduction of any permit or license fees. Before commencing Work, the Contractor shall submit copies of such permits or written proof that required permits have been obtained.

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

§ 3.7.3 If Contractor performs Work knowing it to be contrary to any laws, statutes, ordinances, building codes, rules, regulations or recorded covenants or restrictions applicable to the Project Site, Contractor shall assume full responsibility for such work and shall bear and be liable to Owner for the attributable costs and damages arising therefrom and indemnify Owner against the adverse consequences thereof. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Owner and Architect in writing so that the Owner may take such action as at his discretion the Owner may determine to be necessary. The requirements of the foregoing section do not waive the Contractor's responsibility of complying with the requirements of the Contract Documents when such requirements exceed those of laws, ordinances, rules, regulations, and order of any public authority applicable to the Work.

§ 3.7.4 If the Contractor encounters conditions at the Project 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 written notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner, in consultation with the Architect, will promptly investigate such conditions and, if it is determined 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, the Contractor shall be entitled to an equitable adjustment in the Contract Sum or Contract Time, or both. No request by the Contractor for an equitable adjustment to the Contract Sum or Contract Time under this sub-section or the following sub-section shall be allowed, unless the Contractor has given the required written notice. No change in the Contract Time or Contract Sum shall be permitted in connection with a concealed or unknown condition that does not differ materially from those conditions that were disclosed to or that reasonably should have been known to the Contractor in the proper exercise of its obligations hereunder. Further, no request by Contractor for such equitable adjustment shall be allowed if made after the Architect has issued the final Certificate of Payment.

§ 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 in writing. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum may be adjusted accordingly by Change Order or Approval Letter, as applicable. The amount of any such Change Order or Approval

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Letter shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

§ 3.9 PROJECT MANAGER AND SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent project manager, superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work until the date of Substantial Completion, and for such additional time thereafter as the Owner may determine to be necessary for the expeditious completion of the Work. The project manager and superintendent shall be satisfactory to the Architect and the Owner and shall not be changed except with the written consent of the Owner unless the project manager or superintendent ceases to be in the employ of the Contractor. Owner shall have the right, at any time, to direct a change in Contractor's representatives if their performance is unsatisfactory. In the event of such demand, Contractor shall, within seven (7) days after notification thereof, replace said individual(s) with an individual satisfactory to Owner, in Owner's reasonable discretion. Owner shall have no obligation to direct or monitor Contractor's employees. The project manager shall represent the Contractor, and all notices and other communications given to the project manager 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 furnish in writing to the Owner and the Architect the name and qualifications of a proposed project manager and superintendent.

§ 3.9.3 The Contractor shall not employ a proposed project manager or superintendent to whom the Owner has made objection.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's Construction Schedule (as such term is defined in the Agreement) for the Work, including man-loading/labor required to perform the Work. The Construction Schedule shall not exceed time limits established under the Contract Documents, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The Construction Schedule and all schedule updates shall clearly delineate all Subcontractor start and finish dates, realistic activity sequences and durations, critical dates by which Shop Drawings, Product Data, Samples and other submittals must be processed and the times by which products requiring long delivery lead times must be procured, commissioning and closeout process as well as the anticipated dates for the Owner's other contractors, if any, to coordinate their work with the Contractor's Work. The Contractor shall update the Construction Schedule on a monthly basis, or more frequently as required by the Owner, the condition of the Work or the Project, or as necessary to keep the Owner apprised of the progress of the Work. Construction schedule updates shall conspicuously note any changes to the prior submitted schedule update. The Construction Schedule shall not be modified or extended without the prior approval of the Owner in each instance.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract, but in no event later than fifteen (15) days after the award of subcontracts or later than the date of the first submittal to be reviewed by the Architect and Owner, and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Owner's and Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's Construction Schedule, (2) allow the Architect reasonable time to review submittals, and (3) be updated weekly and submitted to the Owner and Architect. If the Contractor fails to submit a 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. The Contractor shall collaborate with the Owner and the Architect to establish and implement procedures for expediting the processing and approval of Shop Drawings, Project Data, Samples and other similar submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

§ 3.11.1 The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders, Approval Letter, Construction Change Directives and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. At the completion of the Work, the Contractor shall certify by signing on them that each of the foregoing marked documents is complete and accurate. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.11.2 No review or receipt of such records by the Architect or Owner shall be considered a waiver of any deviation from the Contract Documents or approved shop drawings, or any way relieve the Contractor from its responsibility to perform the Work in accordance with the Contract Documents.

§ 3.11.3 The Contractor shall maintain at the Project site on a current basis records of all subcontracts, purchase orders, materials, equipment, maintenance and operating manuals and instructions, warranties, and any other related documents and revisions which arise out of any subcontract or the Work. The Contractor will make records stored at its home office available to the Owner at the Project site on the Owner's request. At the completion of the Project, the Contractor shall promptly deliver all such records to the Owner.

§ 3.11.4 The Contractor shall establish and maintain a log of RFI's that includes date submitted, date response required and date returned. This log shall be updated and submitted to the Owner weekly. The Contractor shall submit all RFI's in writing on a pre-approved form, which shall provide space for the requested information and the response.

§ 3.11.5 Contractor's Daily Report. The Contractor shall prepare a Contractor's Daily Report to the Owner that identifies the Contractor's staff, Contractor's direct labor, subcontractors on the Project site and the areas of Work for the day.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which 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 Owner and Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has determined and verified all dimensions, quantities, field dimensions, relations to existing Work, coordination with Work to be installed later, coordination with information on previously accepted Shop Drawings, Product Data or Samples and verification of compliance with all the requirements of the Contract Documents. The accuracy of all such information is the responsibility of the Contractor. In reviewing and

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approving Shop Drawings, Product Data and Samples, the Architect shall be entitled to rely upon the Contractor's representation that such information is correct and accurate. The Architect's comments made on the Shop Drawings, Samples, or other submitted data during reviews do not relieve the Contractor from compliance with requirements of the Drawings and Specifications and other Contract Documents. Comments made which are construed by the Contractor as altering the Contract Sum must be reported to the Architect immediately. No work action may be taken prior to a resolution or written consent of Architect. Any Work not shown on the Shop Drawings which is shown in the Contract Documents remains part of the Project requirements. The Architect is not responsible for completeness of the Shop Drawings nor as such shall the Shop Drawings supersede the requirements of the Contract Documents. The Contractor is responsible for: determining quantities; confirming and correlating dimensions; selecting fabrication processes and techniques of construction; coordination for all of the Work; overseeing safety; and executing the Work in a satisfactory manner.

§ 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 requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing 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, Approval Letter or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. 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 cause such services or certifications to be provided by a properly 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, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

§ 3.13.1 The Contractor's right to entry and use thereof arises solely from the permission granted by the Owner under the Contract Documents. The Contractor shall confine operations at the Project site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the Project site with materials or equipment.

§ 3.13.2 The Contractor shall at all times cooperate and coordinate with any other contractors and the Owner with respect to schedules and interferences with the Work so as to complete the Project on schedule.

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§ 3.13.3 Protection of construction materials and equipment stored at the Project site from weather, theft, damage and all other such adversity is solely the responsibility of the Contractor.

§ 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 and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. Structural members shall not be cut except with the prior written permission of the Architect. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.14.3 The Contractor shall in all cases exercise extreme care in cutting operations and perform such operations under adequate supervision by competent mechanics skilled in the applicable trade. Openings shall be neatly cut and shall be kept as small as possible to avoid unnecessary damage. Careless and/or avoidable cutting and damage is not permitted and the Contractor will be held responsible for such avoidable or willful cutting or damage.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract on a daily basis. Furthermore, the Contractor shall be responsible for maintaining cleanliness of surrounding access roads and property adjacent to the Project site. 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 Owner shall be entitled to reimbursement from the Contractor.

§ 3.15.3 Burning of waste materials and rubbish at the Project site is not permitted. Removal and proper disposal of all waste material and rubbish is included in the Contract Sum.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect 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 (including liability, costs, and attorney's fees related thereto or to enforcement of this Subparagraph) on account thereof, but shall not be responsible for such 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 the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss (including liability, costs, and attorney's fees related thereto or to enforcement of this Subparagraph) unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law, the Contractor hereby agrees to and shall at all times defend, indemnify and hold Owner and its subsidiaries, affiliates, officers, agents, excluding design professionals, and employees, wholly harmless from any and all losses, costs, expenses (including court costs and attorneys' fees, interest and profits), claims, demands, liability, suits by any person or persons, injuries, damages or death and other liabilities of whatsoever kind or nature arising out of or resulting from the performance (or attempted performance) of the Work, or otherwise caused by, incident to, connected with or arising directly or indirectly out of: (a) the performance of this Contract by the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for

whose acts any of them may be liable, (b) any breach or failure to comply with applicable laws, codes or regulations by Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, or (c) any act, omission, intentional misconduct or negligence of Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This indemnity shall survive the termination of this Contract.

§ 3.18.2 In any and all claims against any person or entity indemnified under this Section 3.18 by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under insurance coverage required by the Contract Documents, Workmen's Compensation Acts, disability benefits acts or other employee benefits acts.

§ 3.18.3 If Contractor fails to defend any person or entity indemnified hereunder, such person may defend any suit, action or other legal proceeding and the actual costs thereof (including, without limitation, attorneys' fees) shall be included as part of the loss, cost, damage and expense covered by Contractor's indemnity.

§ 3.18.4 To the fullest extent permitted by law and without limiting any other indemnification obligations of the Contractor, except to the extent caused by the uncured failure by the Owner to make payment when required by the Contract Documents, the Contractor shall indemnify and defend the Owner, its officers, directors, assigns, lenders, agents, and employees from any claims, liens, charges (including attorneys' fees) or encumbrances (including but not limited to mechanic's and materialmen's liens or bond claims) arising out of or in connection with the performance of the Work. The Owner shall be entitled to recover from the Contractor all costs and expenses incurred in enforcing this Agreement, including attorneys' fees.

§ 3.18.5 As pertains to Paragraph 3.18, the Owner reserves the right to retain its own counsel and to charge any reasonable counsel fees to the Contractor where there is not a commonality of interests between the Owner and the Contractor or as to claims that are not insured. The Contractor expressly consents to the Owner's selection of legal counsel and waives any waivable conflict.

§ 3.19 ASSIGNMENT

§ 3.19.1 Neither this Contract nor any payments becoming due hereunder shall be assigned by Contractor without the written consent of Owner.

3.20 ACCESS TO BOOKS AND RECORDS

§ 3.20.1 Upon forty-eight (48) hour prior notice to Contractor, the Owner shall at all times have the right to inspect and copy the books and records (however kept) of the Contractor for verification of work done, payments due, amounts claimed, obligations owed Subcontractors or suppliers, or any other aspect of the Contractor's obligations regarding the Work and this Agreement. In the event of an emergency, the Owner shall have the right to inspect and copy such books and records without prior notice. The Contractor shall keep books and records adequate to support its costs and charges, to comply with generally accepted accounting principles, and to evidence compliance with this Agreement. At the Owner's request, the Contractor shall promptly provide evidence satisfactory to the Owner of the Contractor's compliance with the Contract Documents.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

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

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

§ 4.1.3 If the employment of the Architect is terminated, the Owner may employ a successor architect whose status under the Contract Documents shall be that of the Architect.

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§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will when directed by Owner be an Owner's representative during construction until Final Payment (as such term is defined in Section 9.10.1). The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents. The Architect shall have no authority to order any extra-contractual work or services, contractually bind the Owner or alter the Owner's rights and obligations under the Contract Documents.

§ 4.2.1.1 The Owner shall in its discretion have the option to have the administration of the Contract performed by the Architect, an Owner's representative, a Construction Manager, or other party. As of the date of this Agreement, the Owner has elected to have the administration of the Contract performed by the Owner.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, and to determine if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. The Architect shall report promptly to the Owner any objectionable Work at the time discovered or reasonably should have been discovered. 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, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will issue written reports to Owner and Contractor about the progress and quality of the portion of the Work completed, which reports shall include all (1) known deviations from the Contract Documents and from the most recent Construction Schedule submitted by the Contractor, (2) defects and deficiencies observed in the Work and (3) any Work rejected by the Architect or additional inspections or testing required by the Architect. 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 FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other directly about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor unless the Owner indicates otherwise. Communications by and with separate contractors shall be through the Owner.

§ 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 recommending payment on such amounts. The Owner shall make the final decision on whether to make payment to the Contractor in accordance with the Contractor's Applications for Payment, and the Owner shall have the right to communicate with any individual or entity involved in the Project to verify amounts included in Applications for Payment.

§ 4.2.6 The Owner and Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Owner and/or Architect considers it necessary or advisable, the Architect, with the Owner's consent, will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such 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, material and equipment 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. The purpose of such review is to evaluate conformance with the Contract Documents and all applicable laws, statutes, ordinances, and regulations. The Architect's action will be taken in accordance with the Owner approved submittal schedule 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. The Architect shall endeavor to complete its review within the limits set forth in the Owner approved submittal schedule. 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, unless otherwise specifically stated by the Architect, 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 If requested by the Owner, the Architect will review Change Orders and Approval Letters prepared by the Contractor and the Architect will prepare Construction Change Directives as directed by the Owner, and the Architect may, at the Owner's direction, authorize minor changes in the Work as provided in Section 7.4. The Architect will make recommendations to the Owner regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect, in consultation with the Owner, will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion. The Architect will 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 Project site.

§ 4.2.11 The Architect will make recommendations on matters concerning performance of the Contractor under, and requirements of, the Contract Documents on written request of the Owner. 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.

§ 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 a RFI about the Contract Documents. The Architect's response to such request will be made in writing within any time limits agreed upon or otherwise with reasonable promptness and in no event later than ten (10) days from the date of the Contractor's request, to ensure that there is no negative impact on the Construction Schedule. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the RFI.

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 subcontractors of a separate contractor.

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

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner and the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each

principal portion of the Work. The Owner may reply within 14 days to the Contractor in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply 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 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 has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner 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 previously selected if the Owner makes reasonable objection to such substitution. The Owner may reasonably require the Contractor to change any Subcontractor previously approved, and the Contract Sum shall be increased or decreased by the difference in cost occasioned by such change. The Contractor shall supply Owner with a list of the names and addresses of all Subcontractors and material suppliers on request and from time to time.

§ 5.2.5 If any of the Subcontractors or personnel involved in the Project is not fulfilling its responsibilities properly, the Owner may require such personnel to be terminated or removed and replaced as expeditiously as possible with Subcontractors or personnel acceptable to the Owner.

§ 5.2.6 Nothing herein shall be construed as an intent to create a contractual or third party beneficiary relationship between the Owner and any of the Subcontractors, except as provided in § 5.4.

§ 5.2.7 The form of each subcontract shall be submitted to the Owner for its review, which shall not be unreasonably delayed. Each subcontract shall expressly provide for the contingent assignment referred to in Section 5.4.1.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, 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, which the Contractor, by the 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. The Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors of all tiers. 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 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. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

§ 5.3.2 The Contractor shall include in each subcontract an obligation for the Subcontractor to provide immediate notice of any material adverse change to the Subcontractor's financial condition since the date of the award, that there is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of Subcontractor's knowledge, threatened against Subcontractor, wherein an unfavorable decision, ruling or filing would materially adversely affect the performance by Subcontractor of its obligations under its subcontract with

Contractor. If the Contractor becomes aware of any material change in the financial condition of a Subcontractor or Sub-subcontractor during the progress of the Project, the Contractor shall give the Owner prompt, written notice of such change.

§ 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 in writing; 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 under the subcontract.

§ 5.4.2 The Contractor shall, upon the request of Owner, submit a copy of each subcontract signed by Contractor in connection with the Project. Each subcontract shall contain a contingent assignment of the subcontract to the Owner consistent with Section 5.4..

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

§ 5.4.4 Without limitation on the generality of the foregoing, each Subcontract agreement and each Sub-subcontract agreement shall include, and shall be deemed to include, the following provisions:

- .1 An agreement that the Owner is a third-party beneficiary of the Sub-contract (or Sub-subcontract), entitled to enforce any rights thereunder for its benefit, and that the Owner shall have the same rights and remedies against the Subcontractor (or Sub-subcontractor) as the Contractor (or Subcontractor) has, including but not limited to the right to be compensated for any loss, expense, or damage of any nature whatsoever incurred by the Owner resulting from any breach of representations and warranties, express or implied, if any, arising out of the agreement and any error, omission, or negligence of the Subcontractor (or Sub-subcontractor) in the performance of any of its obligations under the agreement;
- .2 A provision that the agreement shall be terminable upon seven (7) days' written notice by the Contractor (or Subcontractor) or, if the Subcontract (or Sub-subcontract) has been assigned to Owner, by Owner;
- .3 A provision that neither the Contractor nor the Subcontractor (or Sub-subcontractor) shall have the right to require arbitrations of any disputes; and
- .4 A provision requiring the Subcontractor (or Sub-subcontractor) to submit releases and certificates and waivers of liens for work completed by it and its Sub-subcontractors as a condition precedent to the disbursement of the progress payment next due and owing.

§ 5.4.5 The Contractor shall be responsible for any and all Subcontractors working under it and shall carry insurance for all Subcontractors or ensure that they are carrying it themselves so as to relieve the Contractor, Owner, Architect, and their respective officers, directors, agents, and employees of any and all liability arising out of the respective subcontractor's work.

§ 5.4.6 The Owner assumes no responsibility for the overlapping or omission of parts of the Work by various Subcontractors in their agreements with the Contractor, such responsibility being solely with the Contractor.

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 Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those

portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15. The Owner's separate contractors, if any, may have access to those portions of the Project site under construction prior to the anticipated date of Substantial Completion for the purpose of installing items which it is more cost effective for the Owner to have installed during the progress of the Work (i.e., before walls and ceilings are completed). The Owner and Contractor agree to cooperate in scheduling all entries and work by the Owner's 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 schedule, coordinate and cooperate fully with all other contractors. The Contractor shall take such steps as the Owner and Contractor after joint review and mutual agreement may require to assure scheduling, coordination, and cooperation among the contractors and the Contractor shall make any revisions to the 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.

(Paragraph deleted)

§ 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 report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report 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, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Contractor's delays, improperly timed activities or defective construction. 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 the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors 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 allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Pursuant to CREC Change Order Process (as such term is defined in the Agreement) procedures and approval process, Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Approval Letter, 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 between the Owner and Contractor; an Approval Letter shall be based upon agreement between the Owner and Contractor; a Construction Change Directive 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, at the direction of the Owner.

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

§ 7.2 CHANGE ORDERS AND APPROVAL LETTERS

(Paragraphs deleted)

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

- .1 The change in the Work for work that out is outside the scope of work set forth in the Guaranteed Maximum Price Amendment (as such term is defined in the Agreement);
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.1.2 The Architect's signature on a Change Order indicates its recommendation of the change but shall not be a condition to its validity.

§ 7.2.2.1 An Approval Letter is a written instrument prepared by the Contractor and signed by the Contractor and Owner, which states their agreement upon a change in the Work for Work that is part of the scope of work set forth in the Guaranteed Maximum Price Amendment. The cost of such Approval Letter change in the Work is a Cost of the Work included within the Guaranteed Maximum Price established by the Guaranteed Maximum Price Amendment.

§ 7.2.2.2 The Architect's signature on an Approval Letter indicates its recommendation of the change but shall not be a condition to its validity

§ 7.2.3 Architect or Owner shall provide no oral orders or directives to change the Work and Contractor is not obligated to follow any such oral directives or orders. All such directives or orders shall be made in writing by the Owner, upon consultation with the Architect. The Contractor specifically agrees that if it proceeds on an oral order to change the Work, it shall waive any claim for additional compensation for such work and the Contractor shall not be excused from compliance with the Contract Documents. The requirements set forth in this Article 7 are the essence of the Contract Documents. Accordingly, no course of conduct or dealings between the parties, no oral, express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work shall be the basis for any claim to an increase in the Contract Sum or Contract Time. Changes in the Work may be made without notice to Contractor's sureties, and absence of such notice shall not relieve such sureties of any of their obligations to Owner.

§ 7.2.4 Agreement on any Change Order or Approval Letter shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum, Contract Time and the Construction Schedule.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directives shall be prepared by the Owner or Architect, at the direction of the Owner, 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 or Approval Letter.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be *(Paragraphs deleted)* as provided in Section 7.3.7.

§ 7.3.4 If quantities originally contemplated in establishing Unit Prices are materially changed in a proposed Change Order, Approval Letter or Construction Change Directive so that application of such Unit Prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable Unit Prices shall be equitably adjusted.

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

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the adjustment shall be recorded on the basis of reasonable expenditures based upon the costs set forth below 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, such overhead amount being included in the General Conditions Lump Sum Amount, and profit, such profit amount being included in the Construction Manager's Fee, as such General Conditions Lump Sum Amount and Construction Manager's Fee are adjusted for increases in the Cost of the Work as set forth in Section 5.1.1 the Agreement and, if applicable, in Section 5.1.2 of the Agreement for Subcontractor's overhead and profit. In such case, the Contractor shall keep and present, in such form as the Owner may require, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following costs; provided, however the following costs are not included for the purposes of this Section 7.3.7 to the extent the following costs are under the Contract Documents included in the General Conditions Lump Sum Amount:

- .1 Costs of labor at the rates set forth in labor rates set forth in the Construction Staffing Matrix (the "Labor Rates"), which Construction Staffing Matrix is an exhibit attached to and part of the Agreement;
- .2 Unit Prices for materials, supplies and equipment and if there are no applicable Unit Prices for such then 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 (provided that the rates were previously agreed to by the Owner and the Owner shall not be charged for idle time for Contractor-owned equipment including that owned by the Contractor's affiliated companies, the Contractor's officers, owners, or employees, Subcontractors, Sub-subcontractors, or their agents or employees, or any other persons or entities performing any portion of the Work);
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work at the rates set forth in Article 6 of the Agreement; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change based upon the labor rates set forth in Article 6 of the Agreement.

Under no circumstances shall the compensation to the Contractor and Subcontractors in connection with Change Orders or Approval Letters be more than the Contractor's and Subcontractor's costs set forth in this Subparagraph 7.3.7 plus no more than the overhead and profit amounts set forth Sections 5.1.1 and 5.1.2 of the Agreement.

§ 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, at the rates set forth in Sections 5.1.1 and 5.1.2 of the Agreement shall be figured on the basis of net increase, if any, with respect to that change.

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§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may not request payment for Work completed under the Construction Change Directive in Applications for Payment absent the Owner's express, written consent. The Architect, in consultation with the Owner, will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect and Owner determine 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 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 change will be recorded as a Change Order.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect, subject to the Owner's approval, may order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Contractor. The Architect shall provide prompt, written notice to the Owner of any minor change in the Work ordered by the Architect.

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 determined in accordance with Section 9.8.

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

§ 8.2 PROGRESS AND COMPLETION

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the Project site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner, and or prior to receiving written notice to proceed from the Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously in accordance with the Construction Schedule with adequate forces and shall achieve Substantial Completion within the Contract Time. The Contractor shall at all times ensure that each Subcontractor is providing and maintaining sufficient skilled workmen, materials and equipment to achieve Substantial Completion within the Contract Time. Absent Change Orders signed by the Owner or a delay for which the Contractor is entitled to an extension of time by Section 8.3.1, the Contractor shall not make any claims for additional payment of straight time, overtime or premium time in undertaking to achieve Substantial Completion of the Work in accordance with the Construction Schedule.

§ 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 an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work by Owner or Architect; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation; or by other causes Owner determines may reasonably justify delay, then the Contract Time shall be extended by Change Order for a reasonable time as determined by Owner.

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

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§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents; provided, however, Contractor shall be entitled to additional compensation for delays in the progress of the Work only to the extent that the actual Substantial Completion date for the entire Project (including all phases) exceeds thirty (30) days beyond the contractual Substantial Completion date, as may be adjusted by Change Order. Furthermore, the Contractor's sole remedy for delays excusable under Section 8.3.1 is an extension of time as provided herein and additional compensation, exclusive of any damages claimed by the Contractor on account of compensable claims by Subcontractors or suppliers, limited to, as determined by the Owner, either of the following: (i) an equitable adjustment to the General Conditions Lump Sum Amount, or (ii) Contractor's actual costs of supervision and field personnel at the Project site attributable to such delay based upon the Labor Rates.

§ 8.3.4 Contractor shall include in each subcontract the following language: "Subcontractor acknowledges that delays resulting from changes in the work, extreme weather, changes to the sequencing of the work, material shortages, transportation, strikes and other causes are inherent in the construction process. Subcontractor acknowledges that it has accounted for delays in its prices and agrees to bring no claims for money damages as a result of any delay or hindrance. In the event that Subcontractor claims that it has been delayed or hindered, it shall submit a request for a time extension to Contractor in the manner and pursuant to the time periods set forth in the Contract Documents. If it is determined that Subcontractor has been delayed or hindered through no fault of its own, the time for performance hereunder will be extended and the extension of time will be Subcontractor's sole remedy for the delay. Under no circumstances will the Contractor or Owner be liable to the Subcontractor for damages resulting from any delays or hindrances."

§ 8.3.6 The Contractor shall not be entitled to any delay costs for delay to any early completion date elected by the Contractor or those for whom it is responsible.

§ 8.3.7 If, in the opinion of the Owner, the Contractor falls behind the approved Construction Schedule, the Contractor shall take all steps necessary to improve its progress, including those that may be required by the Owner, without additional costs to the Owner. In these circumstances, the Owner may require the Contractor, at no additional cost to Owner, to increase the number of shifts, overtime operations, days of work, and/or the amount of construction planned, and to submit for approval any supplementary schedules or "recovery" schedules in such detail and form as the Owner deems necessary to demonstrate how the approved rate of progress shall be regained.

§ 8.3.8 Requests for extension of time shall set forth in detail the circumstances of such claim, the dates upon which claimed delay began and ended, and the number of days' extension of time requested. The Contractor shall provide supporting documentation as the Owner may require, including a revised critical path method Construction Schedule indicating the effect of the circumstances that form the basis for the claim. The Contractor shall not be entitled to an extension of time for each and every one of a number of causes which have a concurrent and interrelated effect on the progress of the Work.

§ 8.4 The Contractor shall not be entitled to an adjustment of the Contract Sum or Contract Time on account of delays: (i) that it could have avoided or mitigated using the Contractor's commercially reasonable professional efforts; (ii) that do not impact the critical path; (iii) for which there is available float in the chain of activities affected by the delay; (iv) that were caused by, or could have been reasonably anticipated and avoided by, the Contractor or those for whom the Contractor is responsible; or (v) are of a duration of one day or less.

§ 8.5 The Owner may direct the Contractor to take such action, including adding, increasing or supplementing the workforce, the number of shifts, the days of work and/or overtime operations, as necessary to minimize threatened delays to Substantial Completion, and the Contractor shall adjust the Construction Schedule on account of such directives. The Contract Sum may be adjusted on account of such acceleration only to the extent that the acceleration is due to a delay that is excusable under § 8.3.1.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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.

§ 9.2 SCHEDULE OF VALUES

A schedule of values allocating the entire Contract Sum to the various portions of the Work is attached to and part of the Agreement. This schedule shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 Timelines for progress payments shall be as set forth in the Agreement. In accordance with such timelines, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values for completed portions of the Work. Such application shall be notarized and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, including, without limitation, copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. Interest shall not accrue or be payable on retainage. The Contractor's applications for payment shall specifically indicate that all applicable taxes are included, and the Contractor shall require the same of its Subcontractors.

§ 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, 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 material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.1.3 If requested by Owner, the Contractor shall provide lien waivers and releases for itself for the current payment application and for Subcontractors, Sub-subcontractors, and suppliers for the previous payment application before the Contractor has earned or has the right to receive any payment. All lien waivers and releases shall be provided in the form required by the Owner. This Paragraph shall not limit other obligations of the Contractor contained elsewhere to provide lien waivers and releases or other documents or data establishing payment or satisfaction of obligations.

§ 9.3.1.4 Applications for Payment shall be submitted on AIA Documents G702 and G703 or other forms approved by Owner. The schedule of values shall be balanced and not contain any "front end loading." On the standard form for each Certificate for Payment, the Contractor shall also certify that all bills and/or Subcontractors have been paid for which previous Certificates of Payment have been issued and upon which payment has been made; if partial payment has been made, then Contractor shall identify payments made to Subcontractors and suppliers. With the final application for payment, the Contractor shall furnish data and documents establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner as set forth in Section 9.10.2(5) below for all Work furnished by the Contractor, Subcontractors, Sub-subcontractors, material suppliers, or other persons furnishing labor or materials for the Work, as a precondition to Final Payment. Notwithstanding the foregoing, in the event that Contractor is unable to furnish such data and documents with the final application for payment to the Owner for all Work furnished by minor Subcontractors, minor Sub-subcontractors, or minor material suppliers (for the purposes of this section 9.3.1.4, collectively referred to as "Minor Subcontractors"), provided that (i) the total amounts claimed to be owed by such Minor Subcontractors does not exceed Twenty Thousand Dollars (\$20,000.00) (the total amounts claimed to be owed are referred to as the "Minor Subcontractors Disputed Amount" for the purposes of this Section 9.3.1.4) and (ii) that Contractor provides a written certification of Contractor to Owner accurately confirming that there is a bona fide dispute between the Contractor and such Minor Subcontractors as to the amounts owed to such Minor Subcontractors, then Owner shall pay Contractor the Final Payment in accordance with the provisions of the Contract Documents but Owner may withhold up to one hundred fifty percent (150%) of the Minor Subcontractors Disputed Amount from such payment(s) which funds Owner shall retain pending resolution of such disputes, which resolution shall include an application or applications for payment from Contractor, and such data and documents establishing payment or satisfaction of obligations as set forth above and in Section 9.10.2(5) below for all such Minor Subcontractors and compliance with all other provisions of the Contract Documents.

§ 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 in writing, payment may similarly be made for materials and equipment suitably stored off the site at a bonded location agreed upon in writing and subject to and any other requirements established by Owner. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with

procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment free and clear of all liens, claims, security interests, or encumbrances whatsoever, that the vesting of such title shall not impose any obligations on Owner or relieve Contractor of any of its obligations under the Contract, and that the Contractor shall remain responsible for protection of the Work, whether completed or under construction, until responsibility for the Work has been accepted by Owner in the manner set forth in the Contract Documents. 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, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.3.4 The Contractor's Applications for Payment shall be accompanied by:

- .1 A list of names and addresses of each person or entity that furnished labor, services, materials or equipment on behalf of the Contractor;
- .2 Partial releases and lien waivers, in a form approved by the Owner, from the Contractor, Subcontractors and Sub-subcontractors for all labor, services, materials and equipment furnished to the Project through the date covered such Application for Payment, conditioned on performance of the Work and receipt of payment, and excluding any permitted retainage and unresolved Claims submitted in accordance with the Contract Documents;
- .3 Applications for Payment and invoices from all persons or entities whose Work is included in the Contractor's Application for Payment;
- .4 A Construction Schedule update prepared in accordance with the Schedule Requirements (as such term is defined in the Agreement), including, without limitation, an accurate and updated cash flow projection for the duration of the Project;
- .5 Written warranties from Subcontractors, manufacturers and installers covering portions of the Work that have reached Substantial Completion; and
- .6 Such other data, accounts and receipts substantiating costs included in the Application for Payment as reasonably requested by the Owner.

§ 9.3.5 The Contractor's Applications for Payment shall be signed and notarized, which signature shall constitute a representation and warranty by the Contractor that:

- .1 the amounts sought are due and earned in accordance with the Contract Documents;
- .2 all applicable taxes are included in such Application for Payment;
- .3 the Work is progressing in accordance with the Construction Schedule and the Substantial Completion date established herein;
- .4 the Contractor shall use the amounts requested to discharge their financial obligations on account of labor, services, materials or equipment furnished to the Project and included in the Application for Payment;
- .5 the Contractor has discharged the Contractor's financial obligations on account of labor, services, materials or equipment furnished to the Project for which the Owner has made payment;
- .6 to the best of the Contractor's knowledge, there are no claims of liens, security interests or encumbrances in favor of persons or entities that provided services, labor, materials and/or equipment to the Project on their behalf; and
- .7 title to all Work covered by the application has passed to the Owner no later than the time of payment.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven (7) days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect recommends is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. Notwithstanding the foregoing, the Owner has final determination as to whether to approve a Certificate of Payment and the amounts properly due.

§ 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 comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents and that the Architect recommends that the Owner release payment to the Contractor in the amount requested. The foregoing representations are subject 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. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment or payment on a Certificate of Payment will not be a representation that the Architect or Owner 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 material 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. Notwithstanding anything to the contrary in the Contract Documents, the Owner shall not be obligated to release payment to the Contractor until the Owner is satisfied that the Work has progressed to the point indicated in the Application for Payment, that the quality of the Work is in accordance with the Contract Documents and that withholding permitted under the Contract Documents is not required. Payment by the Owner on any Certificate for Payment shall not be deemed to waive any of the Owner's rights to later claim that the Work covered by a Certificate for Payment was not properly completed or not completed in accordance with the Contract Documents.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect shall advise the Owner to 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 Owner may withhold payment and the Architect shall 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 Owner's or 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 for claims of nonpayment by Subcontractors of any tier for services or 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;⁷
failure to carry out the Work in accordance with the Contract Documents; or
- .8 losses for which the Owner is entitled to indemnity from the Contractor under the Contract Documents

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

§ 9.5.3 The Owner may, in its sole and absolute discretion, issue joint checks to the Contractor and to any Subcontractor, including, without limitation, Sub-subcontractors (of any tier) or material or equipment suppliers for Work properly performed or material or equipment suitably delivered and such payment shall be deemed to have been made on account of the payee and all tiers between the payee and the Owner. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment. Any payment made by the Owner by joint check shall not be construed as a promise to assume the debt of any joint payee, nor as a continuing obligation to make joint payments, nor as an assumption or establishment of a

direct contractual relationship with the payee unless expressly stated in a separate written agreement with such payee.

§ 9.6 PROGRESS PAYMENTS

§ 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 deemed in default by reason of withholding payment in accordance with the Contract Documents or while any default by Contractor or any Subcontractor remains uncured.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than five (5) days after receipt of payment of good available funds 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 (of all tiers), require each such Subcontractor to make payments to Sub-subcontractors in a similar manner. Upon Owner's request, (i) the Contractor shall provide Owner with proof of payment(s) to Subcontractors; and (ii) Subcontractors (of all tiers) shall provide Owner with proof of payment(s) to Sub-subcontractors.

§ 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 material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact Subcontractors 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, except as may otherwise be required by law.

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

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

§ 9.6.7 Payments received by the Contractor for Work properly performed by Subcontractors and 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.

§ 9.7 FAILURE OF PAYMENT

§ 9.7.1 If, through no fault of the Contractor, the Owner does not pay the Contractor the amount properly due within thirty (30) days after the date established in the Contract Documents for payment, then the Contractor may, upon seven (7) additional days' written 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 shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.2 The Contractor is obligated to continue and complete all its Work and obligations under the Contract when Claims are pending or the Parties are in the process of dispute resolution. The Contractor shall not stop, suspend, or delay any portion of the Work, and will be responsible for all expenses, costs and fees arising from any such stop, suspension or delay.

§ 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. The Work will not be considered suitable for Substantial Completion review, and the Contractor shall not be deemed to have achieved Substantial Completion until: (i) all installations of the Work are complete; (ii) all

Project systems included in the Work have been started up, tested and commissioned, and are operational as designed and scheduled; (iii) to the extent reasonably required, the Contractor has instructed Owner's personnel in the operation of all systems and equipment; and (iv) the Contractor has arranged for and obtained all designated or required governmental inspections and certifications necessary for legal use and occupancy of the completed Project, including without limitation, a permanent or temporary certificate of occupancy and/or a certificate of completion for the Project.

§ 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 and the Owner a comprehensive list of items to be completed or corrected prior to Final Payment, which list shall include a detailed estimate of the Cost of the Work for each of such items (the "Punch List"). Failure to include an item on the Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The amounts set forth in the Application(s) for payment(s) prepared and submitted by the Contractor for Punch List item Work shall approximately match the detailed estimate for such items set for in the Punch List.

§ 9.8.3 Upon receipt of the Contractor's Punch List, the Architect, in consultation with the Owner, will determine whether the Work or designated portion thereof is substantially complete as defined in Section 9.8.1. The Architect shall, if necessary, update the Contractor's Punch List prior to Final Payment as necessary prior to appending it to the Certificate of Substantial Completion. If the Architect's inspection discloses any item, whether or not included on the Contractor's Punch List, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion for review and approval with the Owner. Such Certificate, when approved, shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items, including, without limitation, the Punch List items accompanying the Certificate. Notwithstanding the foregoing, Contractor shall finish all such items on or before the date thirty (30) days after the date of Substantial Completion. If the Contractor fails to complete all such items within such time and is not diligently pursuing completion of such items, Owner shall, after providing Contractor with written notice, have the remaining Work completed by any means in the event Contractor has not completed such items within ten (10) days of such notice. Owner will deduct all expenditures to complete such items from the Final Payment due the Contractor and Contractor shall be liable for any excess costs incurred to complete such items. 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 such Certificate. Upon such acceptance and consent of surety, if any, and upon completion of close out items related to such Work, if any, the Owner shall make payment of a portion of the retainage applying to such Work or designated portion thereof in accordance with the terms of the Agreement. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 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.

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

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, which final Application for Payment shall, in part, be based upon the Punch List, the Architect and Owner will promptly make such inspection and, when the Architect and Owner find the Work acceptable under the Contract Documents and the Contract fully performed, the Architect with the consent of Owner 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 terms and conditions of the Contract Documents, including, without limitation, that all building systems are functioning satisfactorily in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable (the "Final Payment"). The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to Final Payment have been fulfilled.

§ 9.10.2 Neither Final Payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and Owner reasonable evidence of compliance with all requirements of the Contract Documents, including but not limited to: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after Final Payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to Final Payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner; and (6) acceptance of the Work by applicable local and state agencies and departments. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien 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 such lien, including all costs and reasonable attorneys' fees.

§ 9.10.2.1 As a precondition to receiving Final Payment, the Contractor shall deliver to the Owner a complete set of "as-built" Drawings, consisting of marked-up field plans showing final as-built field conditions, dimensions and conditions including, without limitation, those relating to the heating, air-conditioning and ventilation systems and the electrical, plumbing and life safety systems, recording the Work as actually performed to the extent that the information differs from or supplements original Contract Documents. Such complete set of "as-built" Drawings shall be provided by the Contractor to the Owner in (i) a digital media form of electronic media that is capable of being manipulated and/or modified by software (e.g. Revit or other similar software); and (ii) as a PDF document.

§ 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 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 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; or

.3 terms of warranties required by the Contract Documents.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§10.1.2 The Contractor shall comply with all applicable laws and regulations. Notwithstanding any language to the contrary, the Owner shall not have any responsibility for job site inspections or safety recommendations. Any inspections or observations by the Owner or the Architect are solely for the benefit of the Owner and shall not create any duties or obligations to anyone else. The Contractor shall notify the Owner in writing of all bodily injury, property damage, death, theft, or vandalism relating to the Project within one working day of such occurrence. Upon the request of the Owner, the Contractor shall provide the Owner with all safety programs for the Work or any portion of the Work.

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

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. The Contractor shall immediately notify the Owner of any injury to persons or property if damaged on the Project site or related to the Work.

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

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

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

§ 10.2.6 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 or any hazardous 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, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time as promptly as practicable after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. Notwithstanding the foregoing, the Contractor shall promptly report in writing to the Owner and Architect, within forty-eight (48) hours, all accidents arising out of or in connection with the Work that caused death, bodily injury or property damage, giving full details and statements of any witnesses; provided, however, such reports shall be made immediately by telephone or messenger to the Owner and Architect in the event of death, serious bodily injury or serious property damage.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. The Contractor shall take all reasonable precautions to avoid further contamination or the spread or disturbance of potentially hazardous substances or materials. As used in the Agreement and the General Conditions, "hazardous material" shall be defined as any product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity of use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other materials expected to be on the Project site, is either: (1) regulated or monitored by any governmental authority; or (2) a basis for liability of the Owner to any governmental agency or third party under any applicable statute, code, ordinance, regulation, rule and/or common law theory.

§ 10.3.2 Promptly after providing Owner with the Contractor's written notice, the Contractor shall provide Owner with a Change Order proposal for the Contractor to 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, the Contractor shall provide the Owner with a Change Order proposal for the work to be performed by Contractor to cause it to be rendered harmless, which work shall include, without limitation, (i) the Contractor's due diligence and research as to disposal facilities for competitive pricing and scheduling purposes; and (ii) the Contractor's supervision and direction of the abatement (removal or safe containment) of such material or substance in order that such abatement work is performed in the most cost effective manner. The Contractor shall furnish in writing to the Owner and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Owner and the Architect will promptly reply to the Contractor in writing stating whether or not either has reasonable objection to the persons or entities proposed by Contractor. If either the Owner or Architect has an objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner and the Architect have no reasonable objection. When the material or substance has been determined to be or rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, if applicable, the Contract Time may be extended appropriately and the Contract Sum may be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, except to the extent Contractor contributed to or exacerbated the hazardous condition.

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

§ 10.3.4 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently or recklessly 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.

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§ 10.3.5 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 indemnify the Contractor for all cost and expense thereby incurred, unless the Contractor knew or had reason to know that its activities, even if directed by Owner, violated applicable law.

(Paragraph deleted)

§ 10.3.6 Prior to introducing any hazardous materials to the Project site, the Contractor shall provide a material safety data sheet (MSDS), information about precautionary measures necessary to protect persons or property and an indication of the type of labeling system in use.

§ 10.3.7 In the event that during the performance of the Work the activities of the Contractor or any Subcontractor, or any person or entity for which the Contractor is responsible, causes the incursion of mold at the Project site, the Contractor shall be responsible for and bear the entire cost of mitigation of any mold to the satisfaction of the Owner.

§ 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, except to the extent such emergency Work was not attributable to any act, omission, or negligence of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, in which event no additional compensation or extension of time shall be paid or granted.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

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

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

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

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§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance at least fifteen (15) days prior to expiration. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Contractor. The Contractor shall upon receipt of any such prior written notice promptly provide a copy thereof to Owner, but in no event more than ten (10) days after Contractor's receipt of such prior written notice. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. Failure of the Contractor to keep the Contractor's required insurance policies in force during the Work covered by this Agreement or any extensions thereof or extra or additional Work agreed to by the Contractor, shall constitute a material breach of this Agreement, entitling Owner, notwithstanding anything to the contrary contained herein, to immediately cancel and terminate this Agreement for cause.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner and the Architect as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a so-called builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until Final Payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements. Nothing contained in the Contract Documents shall be construed to, nor is intended to, constitute any indemnification of the Contractor by the Owner for any loss, cost or damage arising out of any cause insured under this Paragraph.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs of such deductibles, except to the extent loss is caused by the negligent act, intentional misconduct or omission of the Contractor.

§ 11.3.1.4 This property insurance shall not cover portions of the Work stored off the site or portions of the Work in transit and Contractor shall be responsible for insuring such portions of the Work stored off the site or portions of the Work in transit.

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

§ 11.3.2 BOILER AND MACHINERY INSURANCE

To the extent deemed necessary by the Owner, the Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work with the Owner as the named insured and the Contractor, Subcontractor, and Sub-subcontractors as the named loss payees. Testing and start-up, other than electrical insulation breakdown test or hydrostatic, pneumatic or gas pressure tests, are included under this insurance.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, to the extent covered and paid by such insurance, including consequential losses due to fire or other hazards however caused.

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

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

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

§ 11.3.7 WAIVERS OF SUBROGATION

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

§ 11.3.8 A loss insured under the Owner's property insurance 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 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 The Owner shall deposit in a separate account proceeds received from property insurance purchased pursuant to § 11.3, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor, and at Owner's election, any subcontractor, shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. Any such bonds shall be in an amount equal to the cost of the contract awarded, listing Owner as a dual obligee in the case of Subcontractors, and in a form acceptable to the Owner. The required bonds shall be provided by a surety company or companies acceptable to the Owner, authorized to transact such business in the State of Connecticut.

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

§ 11.5 PROFESSIONAL LIABILITY INSURANCE

§ 11.5.1 The Contractor shall purchase and maintain Professional Liability insurance from the Contractor's usual sources as primary coverage for the Contractor's liability for professional services rendered under the Contract. The cost of purchasing and maintaining such insurance coverage at the rates set forth in Article 6 of the Agreement shall be included in the Contract Sum. The minimum limits of liability purchased with such coverage shall be as set forth in the Contract Documents.

§ 11.5.2 The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Professional Liability Insurance coverage under Section 11.5.

§ 11.6 OWNER'S INSURANCE REQUIREMENTS

§ 11.6.1 In addition to the requirements set forth in this Article 11, certain of the Owner's insurance requirements are set forth in the RFQ/P (as such term is defined in the Agreement), which RFQ/P insurance requirements (the "RFQ/P Insurance Requirements") are deemed a part of and incorporated into this Article 11. In the event of inconsistencies within or between parts of this Article 11 and the RFQ/P Insurance Requirements, the Contractor shall comply with the more stringent requirements; in accordance with the Owner's interpretation.

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

§ 12.1.2 If a portion of the Work has been covered that the Owner or Architect has not specifically requested to examine prior to its being covered, the Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall ensure that all Work is being performed in accordance with the requirements of the Contract Documents. The Contractor shall reject Work which does not conform to the requirements of the Contract Documents. The Contractor shall promptly correct, repair, replace or re-execute Work, whether or not rejected by the Architect or Owner, that is defective or fails to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall correct such defects and any condition resulting therefrom reasonably promptly, or sooner if such condition threatens the safety of the occupants of the Project. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 Contractor covenants and agrees that it will, upon notice from Owner, immediately repair, replace, restore, correct and cure at Contractor's expense, all defects, deficiencies, errors and omissions in workmanship and materials and all failures to comply with the Contract Documents which appear within one (1) year from the date of Substantial Completion of the Project; provided, however, that: (i) this warranty and guarantee on the part of Contractor, and Contractor's obligation to correct defective, deficient or non-conforming Work as hereinbefore provided, shall remain and continue in full force and effect as to those components of the Project specified in the Contract Documents for the extended periods specified in the Contract Documents, likewise commencing on the date of Substantial Completion unless otherwise indicated in the Contract Documents; and (ii) with respect to any incomplete or defective item of Work completed or corrected by Contractor after Final Completion of the Project (i.e., punchlist work) this warranty and guarantee shall commence when such incomplete or defective item of Work is satisfactorily completed or corrected by Contractor in each instance. Contractor shall pay for and, if requested, repair, replace, restore, correct and cure any damage or injury, whenever the same shall occur or appear during the applicable warranty period, resulting from any defects, omissions or failures in workmanship and materials. The foregoing guarantee and warranty shall not shorten any longer warranty period or longer period of Contractor's liability provided for by law or in the Plans, Drawings or Specifications or in any other Contract Document or otherwise received from Contractor or any supplier or Subcontractor or Contractor or from any manufacturer, nor supersede the terms of any special warranty given by Contractor, imposed by law or required by the Contract Documents, but shall be in addition thereto.

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

§ 12.2.2.3 Upon completion of any Work under or pursuant to Section 12.2, the one (1) year correction period in connection with the Work requiring correction shall be renewed and recommence.

§ 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. Notwithstanding anything to the contrary contained herein, it is understood and agreed that the warranty and guarantee set forth in this Paragraph shall not affect, limit or impair Owner's right against Contractor and its surety with regard to latent defects in the Work which do not appear within the applicable warranty period and which could not, by the exercise of reasonable care and due diligence, be ascertained or discovered by Owner within such warranty period. Contractor shall be and remain liable and responsible to correct and cure any such latent defects which are reported to Contractor by Owner in writing within one (1) year after any such latent defects first appear or could, by the exercise of reasonable care and due diligence, be ascertained or discovered by Owner.

§ 12.2.4 Notwithstanding anything to the contrary contained herein, if Contractor fails to promptly commence and diligently perform and complete all corrective Work required under this Paragraph from time to time (whether punch list or warranty work), Owner shall have the right (but not the obligation) in each instance, at Owner's election, to cause such corrective work to be done by others and recover the costs thereof, together with damages and reasonable attorney fees, from Contractor and his surety, in addition to all other rights and remedies available to Owner against Contractor and his surety hereunder and at law and in equity for such default by Contractor.

§ 12.2.5 On Substantial Completion of the Work, representatives of the Contractor and the Owner's Representative

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shall inspect the Project. Any items still incomplete or not consistent with the plans and specifications will be incorporated in a punch list, and the list given to the Contractor who will complete items on the punch list within thirty (30) days of receipt of the punch list. If the Contractor fails to complete all items on the punch list within thirty (30) days, the Owner's Representative or the Owner shall, without further notice to the Contractor, have the remaining Work completed by any means, and the Owner's Designated Representative or the Owner will deduct all expenditures from the Final Payment due the Contractor, and Contractor and Subcontractor shall be liable for any excess costs incurred.

§ 12.2.6 The punch list shall in no way relieve the Contractor of his responsibility to do all the Work specified or shown in the Contract Documents.

§ 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.

§ 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. The Contractor may not assign, transfer, convey, pledge, or otherwise dispose of its interest, or any part thereof, in this Agreement. All such assignments by the Contractor are void. If the Contractor attempts to make such an assignment without such consent, the Contractor shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to the State of Connecticut Department of Education. Further, 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 foregoing to the extent required or requested by Owner.

§ 13.3 WRITTEN NOTICE

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

§ 13.4 RIGHTS AND REMEDIES

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

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

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until

after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 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 13.5.1, 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 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

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

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

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

§ 13.6 INTEREST

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

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law.

§ 13.8 NO WAIVER OR APPROVAL

§ 13.8.1 No action or failure to act by the Owner shall constitute a waiver of a right or duty afforded the Owner under this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach of this Agreement, except as may be specifically agreed in writing. Neither the approval of any Application for Payment, the making of any payment, the giving of any approval or consent, the use of occupancy of the Work, or any part thereof, the making of Final Payment, or any other action or inaction, on the part of the Owner or Architect shall constitute a waiver of claims by the Owner or an acceptance of any Work which is not in accordance with the Contract Documents either by the activities or duties of the representation of the Owner or Architect, or by inspections, tests, or approvals required or performed by the Owner or Architect or anyone else.

§ 13.9 RECORDING

§ 13.9.1 This Agreement shall not be recorded. If this Agreement shall be recorded contrary to this provision, such recording shall be ineffective and Owner is hereby authorized for and on behalf of, and in the name of Contractor to execute and have recorded a discharge of any such recording.

§ 13.10 SEVERABILITY

§ 13.10.1 The invalidity in whole or in part of any article, section, subsection, sentence, clause, phrase or word, or other provision of these General Conditions and any exhibits or documents attached thereto shall not affect the remaining portions thereof.

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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 sixty (60) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- .3 Because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents, after notice has been provided pursuant to Section 9.7.

§ 14.1.2 If one of the reasons described in Section 14.1.1 exists, the Contractor may, upon seven (7) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work properly executed, including reasonable overhead and profit on Work properly executed and actual costs and damages incurred by reason of such termination.

§ 14.1.3 If the Work is suspended by the Owner for a period of ninety (90) consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor 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.

(Paragraph deleted)

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors pursuant to its obligations under this Agreement, after payment by Owner, for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 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, including, without limitation, the failure of the Contractor or the Subcontractors to proceed expeditiously in the performance of the work in accordance with the Construction Schedule;
- .5 breaches any warranty made by the Contractor under or pursuant to the Contract Documents;
- .6 is declared bankrupt, has a petition in bankruptcy filed against it, or if the Contractor files for bankruptcy protection; or
- .7 causes or threatens to cause or create labor unrest, dispute, picketing, slowdowns, work stoppage, strike or disharmony.

§ 14.2.2 When any of the above reasons 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' written notice, terminate employment of the Contractor and may:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery intended to be incorporated into the Project;
- .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 and the Owner's damages arising out of the cause of termination are determined by the Owner.

(Paragraph deleted)

§ 14.2.4 In the event that a termination by the Owner for cause is ultimately deemed wrongful by a trier of fact, such termination shall conclusively be deemed to be a termination for convenience by Owner under 14.4 of this Agreement, and the Contractor's sole rights and remedies against the Owner shall be as set forth in 14.4.3.

§ 14.2.5 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. 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 actual increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1 by Change Order. 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. Under such circumstances, this Agreement shall terminate on the date set forth in the notice from the Owner. The Contractor agrees to immediately prepare to cease performing all services on the date of termination and shall otherwise cease, to the extent practicable, incurring costs chargeable to the Owner under this Contract as of the date of termination. To the extent that the Owner elects (and Contractor hereby grants to the Owner the right to elect to do so in connection with termination of this Contract) to take legal assignment of subcontracts or purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Section and otherwise under this Contract, at the Owner's sole cost and expense, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts or purchase orders and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders. Otherwise, Contractor shall terminate such subcontracts and purchase orders as of the Contract termination date or as soon as possible thereafter. In the event a termination by the Owner for cause is not in accordance with the terms of the Contract Documents or otherwise determined improper, it shall be deemed a termination for convenience under this Section.

§ 14.4.2 Upon receipt of written 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, as directed by Owner, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders or assign them to Owner.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work properly executed, which payment shall consist of the Cost of the Work of such properly executed Work, which Cost of the Work shall include an equitable amount of the Lump Sum General Conditions Amount as determined by the Owner, and the Construction Manager's Fee computed upon the Cost of the Work of such properly executed Work at the rate set forth in Section 5.1.1 of the Agreement and actual and direct costs and damages incurred by reason of such termination, however the Contractor and any party claiming through or under the Contractor shall not be entitled to any overhead or profit on the Work not so executed.

Init.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, 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.

§ 15.1.2 NOTICE OF CLAIMS

Claims by the Contractor or Subcontractors (of any tier) must be initiated by written notice to the Owner and must be initiated within 14 days after occurrence of the event giving rise to such Claim or within 14 days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. If the Contractor fails to make a Claim within the specified time, it hereby acknowledges that its failure to do so greatly prejudices the Owner and the Claim will be deemed waived. Upon receipt from the Contractor of a written notice of Claim as provided in Paragraph 15.1.1, the Owner shall review such Claim and if the Owner determines that any Work in dispute should proceed, Owner shall issue to the Contractor a written order to proceed in which Owner shall approve or deny the Contractor's Claim, in whole or in part, or shall instruct the Contractor to proceed with the Work subject to a later determination by the Owner of the Contractor's right to extra payment.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

To the extent that the Owner, when issuing the written order to proceed described in 15.1.2 approves Contractor's Claim, the Contract Sum shall be subsequently adjusted, as provided in Paragraph 7.2. If the Owner, when issuing a written order to proceed, denies, in whole or in part, Contractor's Claim, the Contractor shall have the right to separately pursue all remedies available under the Contract Documents, but the Contractor shall nonetheless proceed with the Work without delay, in any case and Owner shall continue to make payments in accordance with and subject to the Contract Documents.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

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

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

(Paragraph deleted)

§ 15.1.5.1. If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein 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. In the case of a continuing delay, the Contractor shall file with the Owner written reports on the delay identifying the continuing cause of the delay no less than once a week during the duration of the delay.

§ 15.1.5.2 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 unusually severe for the period of time, could not have been reasonably anticipated and had an adverse effect on the critical path of the scheduled construction.

§ 15.1.5.3 Any change request seeking an extension of the Contract Time shall contain:

- .1 a detailed description of the nature of each cause of delay, the date or dates upon which each cause of delay began and ended (as known or as projected), the number of days of delay attributable to each such cause, and the impact of such delay upon the Construction Schedule;
- .2 the Construction Schedule in effect at the start of the delay, showing that the portion of the Work that was, or will be, delayed is on the critical path and that no float remains or will be available for the delayed activities at the start of the delay;
- .3 a schedule analysis of the impact of the delay on the critical path in the Construction Schedule at the time of the delay, including any proposed adjustment to the Contract Time; and
- .4 such other supporting data that the Owner may reasonably request.

§ 15.1.6 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 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

(Paragraphs 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 15.1.6 shall be subject to mediation as a condition precedent to litigation.

§ 15.3.2 Any Claim which is not resolved by mediation shall be litigated in a court of competent jurisdiction in the location of the Project. The parties waive their rights to a jury trial. Prior to litigation, 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 or other mutually acceptable dispute resolution administrator in accordance with the American Arbitration Association's 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 litigation but, in such event, mediation shall proceed in advance of litigation proceedings, which litigation shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

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

§ 15.4 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 hereof, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction in the location of the Project.

§ 16 LIMITATION OF LIABILITY

The Owner shall be liable only to the extent of its interest in the Project; and no representative, officer, director, partner, agent or employee of the Owner (or any partner of a partner or any agent or employee of a partner) shall ever be personally or individually liable with respect to the Contract Documents or the Work. Each Subcontract shall include the foregoing limitation, which shall be effective if the Owner ever succeeds to the Contractor's rights and obligations under a Subcontract.

(Paragraphs deleted)

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The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the ~~Agreement, Agreement to which this A201, as modified, is attached to and made a part thereof~~, 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) an Approval Letter, (4) a Construction Change Directive or ~~(4)-(5)~~ 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 requirements.~~

...

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. The Contract Documents shall govern the execution of the Work.

...

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, project manuals, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 ~~INITIAL DECISION MAKER~~INITIAL DECISION MAKER

§ 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, results~~ and make the Work complete and operable in all respects, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

§ 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. The Contractor and all Subcontractors shall refer to all of the Drawings, including those showing primarily the Work of the mechanical, electrical and other specialized trades, and to all of sections of the Specifications.

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§ 1.2.3.1 In the event of conflicting provisions among the Contract Documents that were not called to the Owner's or Architect's attention in writing prior to award of the Contract, the Contract Documents shall be construed according to the following priorities:

<u>Highest Priority</u>	<u>Modifications to the Agreement</u>
<u>Second Priority</u>	<u>Agreement</u>
<u>Third Priority</u>	<u>Addenda (later date to take precedence - if any)</u>
<u>Fourth Priority</u>	<u>General Conditions</u>
<u>Fifth Priority</u>	<u>Bidding Requirements</u>
<u>Sixth Priority</u>	<u>Drawings and Specifications</u>

§ 1.2.4 Contractor and all Subcontractors shall refer to all of the drawings, including those showing primarily the work of the mechanical, electrical and other specialized trades, and to all of the documents of the specifications, and shall perform all work reasonably inferable therefrom as being necessary to produce the indicated results. If work is required in a manner to make it impossible to produce work of the quality required by or reasonably inferred from the Contract Documents, or should discrepancies appear among the Contract Documents, the Contractor shall request, in writing, an interpretation from the Architect before proceeding with the Work. If the Contractor fails to make such request, no excuse will thereafter be entertained for failure to carry out Work in the required manner or to provide required guarantees, warranties, or bonds, and the Contractor shall not be entitled to any change in the Contract Sum or the Contract Time on account of such failure.

§ 1.2.5 Should conflict occur in or between the Drawings and Specifications, the Contractor is deemed to have included the better quality and larger quantity of work in the Bid.

§ 1.2.6 All indications or notations which apply to one of a number of similar situations, materials or processes shall be deemed to apply to all such situations, materials, or processes wherever they appear in the Work, except where a contrary result is clearly indicated by the Contract Documents.

§ 1.2.7 Where codes, standards, requirements and publications of public and private bodies are referred to in the Specifications, references shall be understood to be to the latest revision prior to the date of receiving bids, except where otherwise indicated.

§ 1.2.8 Where no explicit quality or standards for materials or workmanship are established for Work, such Work is to be of good quality for the intended use and consistent with the quality of the surrounding Work and of the construction of the Project generally.

§ 1.2.9 All manufactured articles, materials, and equipment shall be applied, installed, connected, erected, used, cleaned, and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise indicated in the Contract Documents.

§ 1.2.10 Mechanical and Electrical Drawings are diagrammatic only, and are not intended to show exact physical locations or configurations of Work. Such Work shall be installed to clear all obstructions, permit proper clearances for the work of other trades, and present an orderly appearance where exposed. Exact locations of fixtures and outlets shall be obtained from Architect before the Work is roughed in; Work installed without such information from Architect shall be relocated at Contractor's expense.

§ 1.2.11 Test boring and soil test information included with the Contract Documents or otherwise made accessible to Contractor was obtained by Owner for use by Architect in the design of the Work. Owner does not hold out such information to the Contractor as an accurate or approximate indication of sub-surface conditions, and no claim for extra cost or extension of time resulting from a reliance by Contractor on such information shall be allowed except as provided in Section 3.7.4.

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§ 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 the Owner shall be the owner of the Instruments of Service and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment 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 this Project is not to be construed as publication in derogation of the Architect's or Architect's Owner or Owner's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them 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, notice acceptable to Owner. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. Owner.

...

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents. The Contractor agrees that use of Instruments of Service in electronic form: (a) is not a substitute for professional judgment; (b) does not relieve the Contractor from applying the appropriate standard of care and skill relevant to the use of the Instruments of Service; and (c) is only to be used as a tool to assist the Contractor in connection with the Project.

...

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

§ 2.2.1 Prior to commencement of the Work, the Contractor 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. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not

~~materially vary such financial arrangements without prior notice to the Contractor. Owner may furnish surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a legal description of the site. To the extent the foregoing are made available to Contractor they are not deemed Contract Documents and there is no warranty or guaranty, either express or implied, that the conditions indicated by such documents are representative of those existing throughout the areas where the Work is to be performed. If Owner or Architect has made investigations of subsurface characteristics or concealed conditions of areas where the Work is to be performed, such investigations, if any, were made solely for the purposes of Owner's study and Architect's design. Neither such investigations nor the records thereof are a part of the Contract between Owner and Contractor. To the extent such investigations or the records thereof are made available to Contractor by Owner or Architect, such information is furnished solely for the convenience of Contractor. Neither the Owner nor Architect assumes any responsibility whatsoever with respect to the sufficiency or accuracy of the investigations thus made, the records thereof, or of the interpretations set forth therein or made by Owner or Architect in its use thereof, and there is no warranty or guaranty, either express or implied, that the conditions indicated by such investigations or records thereof are representative of those existing throughout the areas where the Work is to be performed, or any part thereof, or that unforeseen developments may not occur, or that materials other than or in proportions different from those indicated may not be encountered. In connection with the foregoing, Contractor shall be solely responsible for locating and shall locate prior to performing any Work all utility lines, telephone lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, without limitation, all buried pipelines and buried telephone cables, and shall perform the Work in such a manner so as to avoid damaging any such lines, cables, pipes, and pipelines. Not in limitation of the foregoing, before performing any excavation at the Project Contractor shall use the services of Call Before You Dig.~~

§ 2.2.2 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,~~ the use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 ~~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.~~Section omitted.

§ 2.2.4 ~~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 request for such information or services. To the extent the foregoing are made available to Contractor they are not deemed Contract Documents and there is no warranty or guaranty, either express or implied, that the conditions indicated by such documents are representative of those existing throughout the areas where the Work is to be performed. The Contractor, not the Owner, is responsible for the timeliness of, or interference caused by, Subcontractors, Sub-subcontractors (of any tier), and others directly or indirectly under contract to the Contractor.~~

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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.

...

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, in its sole and absolute discretion and without prejudice to other remedies the Owner may have, correct such deficiencies. (a) furnish, or employ a person or entity to furnish, labor, services, materials or equipment to correct, remove and/or repair such deficiencies, as the Owner deems

most expedient; (b) take such action as the Owner deems necessary to regain and/or maintain the Construction Schedule; and/or (c) withhold payment as permitted under the Contract Documents. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor 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. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 2.5 RIGHTS CUMULATIVE

The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner under the Contract Documents, at law, or in equity.

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§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents. Documents and shall furnish all necessary labor, materials, tools, equipment, and transportation necessary for performance of the Work. The Contractor shall also furnish all necessary water, heat, light, and power.

...

§ 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 (including, without limitation, (i) the location, condition, layout and nature of the Project site and surrounding areas; (ii) anticipated labor and supply costs; and (iii) availability and cost of materials, tools and equipment) and correlated personal observations with requirements of the Contract Documents. During the period that the Contractor is in care, custody and control of the Project site, the Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. During execution of the Work, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, (i) carefully study and compare the various Contract Documents, including, without limitation, the Schematic Design, Design Development and Construction Documents, relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall (ii) verify the Owner's design intent is reflected and incorporated into the Contract Documents, (iii) 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. (iv) observe any conditions and verify all grades, elevations dimensions or locations at the Project site affecting it. Any defects resulting from the Contractor's failure to comply with its obligations under this paragraph shall be promptly rectified by the Contractor, at its cost and expense and without additional cost to the Owner. The Contractor shall at once report to Architect and Owner, as a request for information ("RFI") or in such form as the Owner directs, any error, inconsistency or omission the Contractor may discover. The Contractor shall not proceed with Work affected by such errors, omissions, inconsistencies or variances without the Architect's response to such RFI. Any necessary change shall be ordered as provided in Article 7, subject to the requirements of Article 1 and other provisions of the Contract Documents. If Contractor proceeds with the Work without such notice to the Owner and Architect having discovered such errors, inconsistencies or omissions, or if by reasonable study of the Contract Documents the Contractor should have discovered such errors, inconsistencies or omissions, the Contractor shall bear all costs arising therefrom. 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. In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and the applicable standards, codes and ordinances as they relate to performance of the Work, the Contractor shall (i) provide the better quality or greater quantity of Work, or (ii) comply with the more stringent requirements; either or both in accordance with the Owner's interpretation.

~~§ 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, shall examine the site of the Work and adjacent premises and the various means of approach to the site, and shall make all necessary investigations in order to inform itself thoroughly as to the character and magnitude of all work involved in the complete execution of the work shown in the Contract Documents. The Contractor shall further inform itself as to the facilities for delivering, handling, and installing the construction plant and other equipment and the conditions and difficulties that will be encountered in the performance of the Work.~~

~~§ 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 make 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 as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies, or omissions in the Contract Documents, Documents or 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, Documents unless the Contractor recognized or through the exercise of reasonable diligence should have recognized such errors, inconsistencies, omission, or difference and failed to report it to the Owner and Architect. Contractor shall give Architect and Owner timely and proper notice and documentation of any additional design drawings, specifications, or instructions required to define the Work in greater detail, correct coordination issues, or to permit the proper progress of the Work either prior to starting construction or during construction activities.~~

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~~§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor-Contractor, and not the Owner, shall be solely responsible for, and have control over, charge of and responsibility for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters, notwithstanding any of the rights and authority granted the Owner in the Contract Documents. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and 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, will not be safe with the proper exercise of safety precautions and programs required hereunder, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any responsible for loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.~~

...

~~§ 3.3.4 The Contractor shall inspect all materials delivered to the site and shall reject any materials that will not conform with the Contract Documents when properly installed.~~

~~§ 3.3.5 The Contractor shall be responsible for and coordinate any and all inspections required by any governmental body that has jurisdiction over the Project. Failure to obtain any permits, licenses, or other approvals because of the failure of the Contractor to conform to this requirement shall not extend the Contract Time, and Contractor shall not be entitled to an increase in the Contract Sum therefor.~~

~~§ 3.3.6 The Contractor shall confine all operations (including storage of materials) conducted on the Project site to areas authorized or approved by Owner.~~

§ 3.3.7 The Owner may undertake or award other contracts for additional work at the Project. With regard to the Work of the Owner's third party contractors, subcontractors, and vendors or work that is otherwise not the responsibility of Contractor, Contractor shall fully cooperate with such third parties and shall provide management support to Owner in order to assist the Owner in managing and coordinating such work, which management support shall be limited to providing scheduling input to Owner and the third parties with respect to the delivery and installation of third party services, materials, and equipment that must be integrated with Contractor's Work.

§ 3.3.8 The Contractor shall at all times staff the Project adequately for high quality management and construction work. The Contractor shall have competent supervision continuously on the job during work hours and readily available at all times upon call.

§ 3.3.9 The Contractor shall at all times make provisions to protect the existing building (if any) or new construction from damage due to the Work or due to the weather.

§ 3.3.10 The Owner or the Owner's Designated Representative shall have access to the Work site and all Work. No inspection by the Owner's Designated Representative shall relieve the Contractor of any of its obligations under the Contract Documents or give rise to any duty on the part of the Owner.

§ 3.3.11 If part of the Work is adjacent to or dependent upon work by a separate contractor or the Owner's own forces, the Contractor shall meet and coordinate with such separate contractor or forces prior to proceeding with that portion of the Work.

§ 3.3.12 The Contractor shall ensure that personnel performing the Work comply with an Owner-approved logistics plan for the use of the Project site and its surroundings, parking, temporary facilities, utilities, staging and storage for the Project, including phasing, in coordination with the needs of the Owner and the requirements of governmental authorities.

§ 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. Immediately prior to the Architect's inspection for Substantial Completion, the Contractor shall remove all temporary connections, distribution lines, meters, and associated paraphernalia.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3-12.8 or 7.4, the Contractor may make substitutions only with the written consent of the Owner, after evaluation by the Architect in consultation with the Owner and in accordance with a Change Order or Construction Change Directive-Order, Approval Letter or Construction Change Directive. Substitutions and alternates may be rejected in the Owner's sole discretion. Substitutions and alternates will be considered only if: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations; (ii) specified products are unavailable through no fault of the Contractor or any Subcontractor; (iii) subsequent information discloses the inability of specified products to perform properly or to fit in a designated space; (iv) the manufacturer or fabricator refuses to certify or guaranty the performance of the specified product as required; or (v) when, in the sole judgment of the Owner, a substitution would be substantially in the Owner's best interests in terms of cost, time or other considerations.

§ 3.4.2.1 No time extensions shall be allowed nor any responsibility assumed by the Owner if the Contractor submits a request for a substitution, whether such request is approved or denied.

§ 3.4.2.2 Approval by the Owner of any substitution shall not relieve the Contractor requesting the substitution of any responsibility for additional costs incurred by the Architect and other trades for changes made necessary to accommodate the substituted item. Any additional cost, or any loss or damage arising from the substitution of any material or any method for those originally specified shall be borne by Contractor, notwithstanding approval or acceptance of such substitution by Owner or Architect, unless such substitution was made at the written request or direction of Owner or Architect.

§ 3.4.4 When the Contract Documents require Work, or any part of same, to be above the standards required by applicable laws, ordinances, rules, and regulations, and other statutory provisions pertaining to the Work, such Work shall be performed and completed by Contractor in accordance with the Contract Documents. When the Contract Documents describe the Work in general terms, but not in complete detail, Contractor understands and acknowledges only the best general practice is to be employed. Any design detail furnished by Contractor shall be in conformance with applicable laws and shall be sufficient for the purposes intended. Contractor shall closely inspect all materials as delivered and all Work as performed and shall promptly reject and return all substandard materials and redo all substandard Work without awaiting Architect's inspection and rejection thereof. Such Contractor inspection of all Project materials shall be performed, in part, to confirm and/or verify that no hazardous materials are incorporated in to the Project or Work and the Contractor shall reject any and all Project materials containing hazardous materials unless the Contract Document specifically require such hazardous materials for the Work.

~~The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.~~ § 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements, including substitutions not properly authorized, shall 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. The Contractor shall arrange for the Owner to have the benefit of and right to enforce all warranties by Subcontractors, Sub-subcontractors, suppliers and manufacturers. Manufacturers' warranties and warranties by others shall not relieve the Contractor of any of its responsibilities.

§ 3.5.2 Contractor shall be responsible for determining that all materials furnished for the Work meet all the requirements of the Contract Documents. The Architect or Owner may require Contractor to produce reasonable evidence that a material meets such requirements, such as certified reports of past tests by qualified testing laboratories, reports of studies by qualified experts, or other evidence which, in the opinion of the Owner or Architect, would lead to a reasonable certainty that any material used, or proposed to be used in the Work meets the requirements of the Contract Documents. All such data shall be furnished at Contractor's expense. This provision shall not require Contractor to pay for periodic testing of different batches of the same material, unless such testing is specifically required by Contract Documents to be performed at Contractor's expense.

§ 3.5.3 In all cases in which a manufacturer's name, trade name or other proprietary designation is used in connection with materials or articles to be furnished under this Contract, whether or not the phrase "or equal" is used after such name, Contractor shall furnish the product of the named manufacturer(s) without substitution, unless a written request for a substitute has been submitted by Contractor and approved in writing by Owner and Architect as provided in Subparagraph 3.4.2.

§ 3.5.4 The Contract Documents are intended to produce a building of consistent character and quality of design. All components of the building including visible items of mechanical and electrical equipment have been selected to have a coordinated design in relation to the overall appearance of the building. Architect shall judge the design and appearance of proposed substitutes on the basis of their suitability in relation to the overall design of the Project, as well as for their intrinsic merits.

§ 3.5.5 The warranty provided in this Section 3.5 shall be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise prescribed by law.

§ 3.5.6 Contractor shall procure and deliver to Architect, no later than the date claimed by Contractor as the date of Substantial Completion, all special warranties required by the Contract Documents. Delivery by Contractor shall constitute the Contractor's guarantee to the Owner that the warranty will be performed in accordance with its terms and conditions.

§ 3.5.7 The Contractor's warranty on all materials and equipment shall be for a minimum of 12 months after Substantial Completion of the Work or a portion thereof, unless there is a longer period provided for specific materials and equipment in the Contract Documents.

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

§ 3.6.2 Contractor shall be familiar with the current regulations of the Department of Revenue Services. The tax on materials, supplies, or products purchased for this Project and exempted by such regulations shall not be included in the Contract Sum.

§ 3.7

~~PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS~~
PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by ~~government~~ government, municipal, quasi public and/or regulatory 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. Upon the Owner's request, the Contractor shall cooperate with and assist the Owner in the event the Owner seeks to pursue a reduction of any permit or license fees. Before commencing Work, the Contractor shall submit copies of such permits or written proof that required permits have been obtained.

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§ 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.
any laws, statutes, ordinances, building codes, rules, regulations or recorded covenants or restrictions applicable to the Project Site, Contractor shall assume full responsibility for such work and shall bear and be liable to Owner for the attributable costs and damages arising therefrom and indemnify Owner against the adverse consequences thereof. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, he shall promptly notify the Owner and Architect in writing so that the Owner may take such action as at his discretion the Owner may determine to be necessary. The requirements of the foregoing section do not waive the Contractor's responsibility of complying with the requirements of the Contract Documents when such requirements exceed those of laws, ordinances, rules, regulations, and order of any public authority applicable to the Work.

~~§ 3.7.4 Concealed or Unknown Conditions.~~
§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the Project 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 written notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The ~~Architect-Owner, in consultation with the Architect,~~ Architect-Owner, in consultation with the Architect, will promptly investigate such conditions and, if ~~the Architect determines it is determined~~ determined 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~~ the Contractor shall be entitled to an equitable adjustment 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 in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15. No request by the Contractor for an equitable adjustment to the Contract Sum or Contract Time under this sub-section or the following sub-section shall be allowed, unless the Contractor has given the required written notice. No change in the Contract Time or Contract Sum shall be permitted in connection with a concealed or unknown condition that does not differ materially from those conditions that were disclosed to or that reasonably should have been known to the Contractor in the proper exercise of its obligations hereunder. Further, no request by Contractor for such equitable adjustment shall be allowed if made after the Architect has issued the final Certificate of Payment.~~

§ 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.~~ Architect in writing. 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.

...

- .1 ~~Allowances~~ allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

...

- .3 ~~Whenever~~ 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 may be adjusted accordingly by Change Order or Approval Letter, as applicable.~~ shall be adjusted accordingly by Change Order or Approval Letter, as applicable. The amount of any such Change Order or Approval Letter 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.

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§ 3.9 PROJECT MANAGER AND SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent project manager, 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~~ the Work until the date of Substantial Completion, and for such additional time thereafter as the Owner may determine to be necessary for the expeditious completion of the Work ~~The project manager and superintendent shall be satisfactory to the Architect and the Owner and shall not be changed except with the written consent of the Owner unless the project manager or superintendent ceases to be in the employ of the Contractor. Owner shall have the right, at any time, to direct a change in Contractor's representatives if their performance is unsatisfactory. In the event of such demand, Contractor shall, within seven (7) days after notification thereof, replace said individual(s) with an individual satisfactory to Owner, in Owner's reasonable discretion. Owner shall have no obligation to direct or monitor Contractor's employees. The project manager shall represent the Contractor, and all notices and other communications given to the project manager 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 furnish in writing to the Owner ~~through and the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.~~ project manager and superintendent.

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

...

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current Construction Schedule (as such term is defined in the Agreement) for the Work, including man-loading/labor required to perform the Work. The Construction Schedule shall not exceed time limits established under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work of the Work. The Construction Schedule and all schedule updates shall clearly delineate all Subcontractor start and finish dates, realistic activity sequences and durations, critical dates by which Shop Drawings, Product Data, Samples and other submittals must be processed and the times by which products requiring long delivery lead times must be procured, commissioning and closeout process as well as the anticipated dates for the Owner's other contractors, if any, to coordinate their work with the Contractor's Work. The Contractor shall update the Construction Schedule on a monthly basis, or more frequently as required by the Owner, the condition of the Work or the Project, or as necessary to keep the Owner apprised of the progress of the Work. Construction schedule updates shall conspicuously note any changes to the prior submitted schedule update. The Construction Schedule shall not be modified or extended without the prior approval of the Owner in each instance.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract-Contract, but in no event later than fifteen (15) days after the award of subcontracts or later than the date of the first submittal to be reviewed by the Architect and Owner, and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Owner's and Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and Construction Schedule, (2) allow the Architect reasonable time to review submittals-submittals, and (3) be updated weekly and submitted to the Owner and Architect. If the Contractor fails to submit a 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. The Contractor shall collaborate with the Owner and the Architect to establish and implement procedures for expediting the processing and approval of Shop Drawings, Project Data, Samples and other similar submittals.

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The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed. § 3.11.1 The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders, Approval Letter, Construction Change Directives and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. At the completion of the Work, the Contractor shall certify by signing on them that each of the foregoing marked documents is complete and accurate. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.11.2 No review or receipt of such records by the Architect or Owner shall be considered a waiver of any deviation from the Contract Documents or approved shop drawings, or any way relieve the Contractor from its responsibility to perform the Work in accordance with the Contract Documents.

§ 3.11.3 The Contractor shall maintain at the Project site on a current basis records of all subcontracts, purchase orders, materials, equipment, maintenance and operating manuals and instructions, warranties, and any other related documents and revisions which arise out of any subcontract or the Work. The Contractor will make records stored at its home office available to the Owner at the Project site on the Owner's request. At the completion of the Project, the Contractor shall promptly deliver all such records to the Owner.

§ 3.11.4 The Contractor shall establish and maintain a log of RFI's that includes date submitted, date response required and date returned. This log shall be updated and submitted to the Owner weekly. The Contractor shall submit all RFI's in writing on a pre-approved form, which shall provide space for the requested information and the response.

§ 3.11.5 Contractor's Daily Report. The Contractor shall prepare a Contractor's Daily Report to the Owner that identifies the Contractor's staff, Contractor's direct labor, subcontractors on the Project site and the areas of Work for the day.

...

§ 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 Owner and Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has ~~(1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.~~ determined and verified all dimensions, quantities, field dimensions, relations to existing Work, coordination with Work to be installed later, coordination with information on previously accepted Shop Drawings, Product Data or Samples and verification of compliance with all the requirements of the Contract Documents. The accuracy of all such information is the responsibility of the Contractor. In reviewing and approving Shop Drawings, Product Data and Samples, the Architect shall be entitled to rely upon the Contractor's representation that such information is correct and accurate. The Architect's comments made on the Shop Drawings, Samples, or other submitted data during reviews do not relieve the Contractor from compliance with requirements of the Drawings and Specifications and other Contract Documents. Comments made which are construed by the Contractor as altering the Contract Sum must be reported to the Architect immediately. No work action may be taken prior to a resolution or written consent of Architect. Any Work not shown on the Shop Drawings which is shown in the Contract Documents remains part of the Project requirements. The Architect is not responsible for completeness of the Shop Drawings nor as such shall the Shop Drawings supersede the requirements of the Contract Documents. The Contractor is responsible for: determining quantities; confirming and correlating dimensions; selecting fabrication processes and techniques of construction; coordination for all of the Work; overseeing safety; and executing the Work in a satisfactory manner.

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§ 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 requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing 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-Order, Approval Letter 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 confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.~~ § 3.13.1 The Contractor's right to entry and use thereof arises solely from the permission granted by the Owner under the Contract Documents. The Contractor shall confine operations at the Project site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the Project site with materials or equipment.

§ 3.13.2 The Contractor shall at all times cooperate and coordinate with any other contractors and the Owner with respect to schedules and interferences with the Work so as to complete the Project on schedule.

§ 3.13.3 Protection of construction materials and equipment stored at the Project site from weather, theft, damage and all other such adversity is solely the responsibility of the Contractor.

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§ 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 such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. Structural members shall not be cut except with the prior written permission of the Architect. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.14.3 The Contractor shall in all cases exercise extreme care in cutting operations and perform such operations under adequate supervision by competent mechanics skilled in the applicable trade. Openings shall be neatly cut and shall be kept as small as possible to avoid unnecessary damage. Careless and/or avoidable cutting and damage is not permitted and the Contractor will be held responsible for such avoidable or willful cutting or damage.

...

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the ~~Contract~~ Contract on a daily basis. Furthermore, the Contractor shall be responsible for maintaining cleanliness of surrounding access roads and property adjacent to the Project site. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

...

§ 3.15.3 Burning of waste materials and rubbish at the Project site is not permitted. Removal and proper disposal of all waste material and rubbish is included in the Contract Sum.

...

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 (including liability, costs, and attorney's fees related thereto or to enforcement of this Subparagraph) on account thereof, but shall not be responsible for such 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 the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss (including liability, costs, and attorney's fees related thereto or to enforcement of this Subparagraph) unless such information is promptly furnished to the Architect.

...

§ 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, law, the Contractor hereby agrees to and shall at all times defend, indemnify and hold Owner and its subsidiaries, affiliates, officers, agents, excluding design professionals, and employees, wholly harmless from any and all losses, costs, expenses (including court costs and attorneys' fees, interest and profits), claims, demands, liability, suits by any person or persons, injuries, damages or death and other liabilities of whatsoever kind or nature 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, the performance (or attempted performance) of the Work, or otherwise caused by, incident to, connected with or arising directly or indirectly out of: (a) the performance of this Contract by the~~

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User Notes:

Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, (b) any breach or failure to comply with applicable laws, codes or regulations by Contractor, any Subcontractor or anyone directly or indirectly employed by any of 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, any of them may be liable, or (c) any act, omission, intentional misconduct or negligence of Contractor, any Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. This indemnity shall survive the termination of this Contract.

§ 3.18.2 In any and all claims against any person or entity indemnified under this Section 3.18 by ~~an~~ any employee of the Contractor, ~~a~~ any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts ~~they~~ any of them may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on this Agreement shall not be limited in any way by any limitation on the 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, any Subcontractor under insurance coverage required by the Contract Documents, Workmen's Compensation Acts, disability benefits acts or other employee benefits acts.

§ 3.18.3 If Contractor fails to defend any person or entity indemnified hereunder, such person may defend any suit, action or other legal proceeding and the actual costs thereof (including, without limitation, attorneys' fees) shall be included as part of the loss, cost, damage and expense covered by Contractor's indemnity.

§ 3.18.4 To the fullest extent permitted by law and without limiting any other indemnification obligations of the Contractor, except to the extent caused by the uncured failure by the Owner to make payment when required by the Contract Documents, the Contractor shall indemnify and defend the Owner, its officers, directors, assigns, lenders, agents, and employees from any claims, liens, charges (including attorneys' fees) or encumbrances (including but not limited to mechanic's and materialmen's liens or bond claims) arising out of or in connection with the performance of the Work. The Owner shall be entitled to recover from the Contractor all costs and expenses incurred in enforcing this Agreement, including attorneys' fees.

§ 3.18.5 As pertains to Paragraph 3.18, the Owner reserves the right to retain its own counsel and to charge any reasonable counsel fees to the Contractor where there is not a commonality of interests between the Owner and the Contractor or as to claims that are not insured. The Contractor expressly consents to the Owner's selection of legal counsel and waives any waivable conflict.

§ 3.19 ASSIGNMENT

§ 3.19.1 Neither this Contract nor any payments becoming due hereunder shall be assigned by Contractor without the written consent of Owner.

3.20 ACCESS TO BOOKS AND RECORDS

§ 3.20.1 Upon forty-eight (48) hour prior notice to Contractor, the Owner shall at all times have the right to inspect and copy the books and records (however kept) of the Contractor for verification of work done, payments due, amounts claimed, obligations owed Subcontractors or suppliers, or any other aspect of the Contractor's obligations regarding the Work and this Agreement. In the event of an emergency, the Owner shall have the right to inspect and copy such books and records without prior notice. The Contractor shall keep books and records adequate to support its costs and charges, to comply with generally accepted accounting principles, and to evidence compliance with this Agreement. At the Owner's request, the Contractor shall promptly provide evidence satisfactory to the Owner of the Contractor's compliance with the Contract Documents.

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§ 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~~ Owner and Architect. Consent shall not be unreasonably withheld.

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

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§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will when directed by Owner be an Owner's representative during construction until ~~the date the Architect issues the final Certificate for Payment. Final Payment (as such term is defined in Section 9.10.1).~~ The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents. The Architect shall have no authority to order any extra-contractual work or services, contractually bind the Owner or alter the Owner's rights and obligations under the Contract Documents.

§ 4.2.1.1 The Owner shall in its discretion have the option to have the administration of the Contract performed by the Architect, an Owner's representative, a Construction Manager, or other party. As of the date of this Agreement, the Owner has elected to have the administration of the Contract performed by the Owner.

§ 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~~ familiar with and to keep the Owner informed about 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. The Architect shall report promptly to the Owner any objectionable Work at the time discovered or reasonably should have been discovered. 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, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will ~~keep the Owner reasonably informed~~ issue written reports to Owner and Contractor about the progress and quality of the portion of the Work completed, ~~and report to the Owner which reports shall include all~~ (1) known deviations from the Contract Documents and from the most recent ~~construction schedule~~ Construction Schedule submitted by the Contractor, ~~and~~ (2) defects and deficiencies observed ~~in the Work~~ the Work and (3) any Work rejected by the Architect or additional inspections or testing required by the Architect. 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.

...

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other ~~through the Architect~~ directly about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the ~~Contractor. Contractor unless the Owner indicates otherwise.~~ Communications by and with separate contractors shall be through the Owner.

§ 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, recommending payment on such amounts.~~ The Owner shall make the final decision on whether to make payment to the Contractor in accordance with the Contractor's Applications for Payment, and the Owner shall have the right to communicate with any individual or entity involved in the Project to verify amounts included in Applications for Payment.

§ 4.2.6 The Owner and Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Owner and/or Architect considers it necessary or advisable, ~~the Architect~~ the Architect, with the Owner's consent, will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2

and 13.5.3, whether or not such 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, material and equipment 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.~~ Samples. The purpose of such review is to evaluate conformance with the Contract Documents and all applicable laws, statutes, ordinances, and regulations. The Architect's action will be taken in accordance with the Owner approved 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. The Architect shall endeavor to complete its review within the limits set forth in the Owner approved submittal schedule. 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, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 ~~The Architect will prepare Change Orders and Construction Change Directives, and may If requested by the Owner, the Architect will review Change Orders and Approval Letters prepared by the Contractor and the Architect will prepare Construction Change Directives as directed by the Owner, and the Architect may, at the Owner's direction, authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations make recommendations to the Owner regarding concealed and unknown conditions as provided in Section 3.7.4.~~

§ 4.2.9 ~~The Architect~~ Architect, in consultation with the Owner, will conduct inspections to determine the date or dates of Substantial Completion and the date of final ~~completion; completion.~~ The Architect will 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 duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.~~ Project site.

§ 4.2.11 The Architect will ~~interpret and decide matters concerning performance~~ make recommendations on matters concerning performance of the Contractor under, and requirements of, the Contract Documents on written request of ~~either the Owner or Contractor.~~ the Owner. 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.~~ Contractor.

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§ 4.2.14 The Architect will review and respond to ~~requests for information~~ a RFI about the Contract Documents. The Architect's response to such ~~requests~~ request will be made in writing within any time limits agreed upon or otherwise with reasonable ~~promptness.~~ promptness and in no event later than ten (10) days from the date of the Contractor's request, to ensure that there is no negative impact on the Construction Schedule. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the ~~requests for information.~~ RFI.

...

§ 5.1.2 A Sub-subcontractor (of any tier) 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.

...

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner ~~through and~~ the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The ~~Architect~~ Owner may reply within 14 days to the Contractor in writing stating (1) whether the Owner ~~or the Architect~~ has reasonable objection to any such proposed person or entity or (2) that the ~~Architect~~ Owner requires additional time for review. Failure of the Owner ~~or Architect~~ to reply within the ~~14 day~~ 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 previously selected if the Owner ~~or Architect~~ makes reasonable objection to such substitution. The Owner may reasonably require the Contractor to change any Subcontractor previously approved, and the Contract Sum shall be increased or decreased by the difference in cost occasioned by such change. The Contractor shall supply Owner with a list of the names and addresses of all Subcontractors and material suppliers on request and from time to time.

§ 5.2.5 If any of the Subcontractors or personnel involved in the Project is not fulfilling its responsibilities properly, the Owner may require such personnel to be terminated or removed and replaced as expeditiously as possible with Subcontractors or personnel acceptable to the Owner.

§ 5.2.6 Nothing herein shall be construed as an intent to create a contractual or third party beneficiary relationship between the Owner and any of the Subcontractors, except as provided in § 5.4.

§ 5.2.7 The form of each subcontract shall be submitted to the Owner for its review, which shall not be unreasonably delayed. Each subcontract shall expressly provide for the contingent assignment referred to in Section 5.4.1.

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By appropriate agreement, written where legally required for validity, 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, which the Contractor, by ~~these~~ the 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~~ The Contractor shall require each Subcontractor to enter into similar agreements with ~~Sub-subcontractors.~~ Sub-subcontractors of all tiers. 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, and~~ 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. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

§ 5.3.2 The Contractor shall include in each subcontract an obligation for the Subcontractor to provide immediate notice of any material adverse change to the Subcontractor's financial condition since the date of the award, that there is no action, suit or proceeding, at law or in equity, before or by any court or governmental authority, pending or, to the best of Subcontractor's knowledge, threatened against Subcontractor, wherein an unfavorable decision, ruling or filing would materially adversely affect the performance by Subcontractor of its obligations under its subcontract with Contractor. If the Contractor becomes aware of any material change in the financial condition of a Subcontractor or Sub-subcontractor during the progress of the Project, the Contractor shall give the Owner prompt, written notice of such change.

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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. The Contractor shall, upon the request of Owner, submit a copy of each subcontract signed by Contractor in connection with the Project. Each subcontract shall contain a contingent assignment of the subcontract to the Owner consistent with Section 5.4..

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

§ 5.4.4 Without limitation on the generality of the foregoing, each Subcontract agreement and each Sub-subcontract agreement shall include, and shall be deemed to include, the following provisions:

- .1 An agreement that the Owner is a third-party beneficiary of the Sub-contract (or Sub-subcontract), entitled to enforce any rights thereunder for its benefit, and that the Owner shall have the same rights and remedies against the Subcontractor (or Sub-subcontractor) as the Contractor (or Subcontractor) has, including but not limited to the right to be compensated for any loss, expense, or damage of any nature whatsoever incurred by the Owner resulting from any breach of representations and warranties, express or implied, if any, arising out of the agreement and any error, omission, or negligence of the Subcontractor (or Sub-subcontractor) in the performance of any of its obligations under the agreement;
- .2 A provision that the agreement shall be terminable upon seven (7) days' written notice by the Contractor (or Subcontractor) or, if the Subcontract (or Sub-subcontract) has been assigned to Owner, by Owner;
- .3 A provision that neither the Contractor nor the Subcontractor (or Sub-subcontractor) shall have the right to require arbitrations of any disputes; and
- .4 A provision requiring the Subcontractor (or Sub-subcontractor) to submit releases and certificates and waivers of liens for work completed by it and its Sub-subcontractors as a condition precedent to the disbursement of the progress payment next due and owing.

§ 5.4.5 The Contractor shall be responsible for any and all Subcontractors working under it and shall carry insurance for all Subcontractors or ensure that they are carrying it themselves so as to relieve the Contractor, Owner, Architect, and their respective officers, directors, agents, and employees of any and all liability arising out of the respective subcontractor's work.

§ 5.4.6 The Owner assumes no responsibility for the overlapping or omission of parts of the Work by various Subcontractors in their agreements with the Contractor, such responsibility being solely with the Contractor.

...

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15. The Owner's separate contractors, if any, may have access to those portions of the Project site under construction prior to the anticipated date of Substantial Completion for the purpose of installing items which it is more cost effective for the Owner to have installed during the progress of the Work (i.e., before walls and ceilings are completed). The Owner and Contractor agree to cooperate in scheduling all entries and work by the Owner's separate contractors.

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§ 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 other separate contractors and the Owner in reviewing their construction schedules. The schedule, coordinate and cooperate fully with all other contractors. The Contractor shall take such steps as the Owner and Contractor after joint review and mutual agreement may require to assure scheduling, coordination, and cooperation among the contractors and the~~ Contractor shall make any revisions to the ~~construction schedule~~ Construction Schedule deemed necessary after a joint review and mutual agreement. The ~~construction schedules~~ 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, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.~~

...

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.~~

...

§ 7.1.1 Pursuant to CREC Change Order Process (as such term is defined in the Agreement) procedures and approval process, Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Approval Letter, 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 between the Owner and Contractor; an Approval Letter shall be based upon agreement between the Owner and Contractor; a Construction Change Directive 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~~ Architect, at the direction of the Owner.

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

§ 7.2 CHANGE ORDERS AND APPROVAL LETTERS

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

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

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

- .1 The change in the Work for work that out is outside the scope of work set forth in the Guaranteed Maximum Price Amendment (as such term is defined in the Agreement);
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.1.2 The Architect's signature on a Change Order indicates its recommendation of the change but shall not be a condition to its validity.

§ 7.2.2.1 An Approval Letter is a written instrument prepared by the Contractor and signed by the Contractor and Owner, which states their agreement upon a change in the Work for Work that is part of the scope of work set forth in the Guaranteed Maximum Price Amendment. The cost of such Approval Letter change in the Work is a Cost of the Work included within the Guaranteed Maximum Price established by the Guaranteed Maximum Price Amendment.

§ 7.2.2.2 The Architect's signature on an Approval Letter indicates its recommendation of the change but shall not be a condition to its validity

§ 7.2.3 Architect or Owner shall provide no oral orders or directives to change the Work and Contractor is not obligated to follow any such oral directives or orders. All such directives or orders shall be made in writing by the Owner, upon consultation with the Architect. The Contractor specifically agrees that if it proceeds on an oral order to change the Work, it shall waive any claim for additional compensation for such work and the Contractor shall not be excused from compliance with the Contract Documents. The requirements set forth in this Article 7 are the essence of the Contract Documents. Accordingly, no course of conduct or dealings between the parties, no oral, express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work shall be the basis for any claim to an increase in the Contract Sum or Contract Time. Changes in the Work may be made without notice to Contractor's sureties, and absence of such notice shall not relieve such sureties of any of their obligations to Owner.

§ 7.2.4 Agreement on any Change Order or Approval Letter shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum, Contract Time and the Construction Schedule.

~~§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect. Directives shall be prepared by the Owner or Architect, at the direction of the Owner, 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. Order or Approval Letter.~~

~~§ 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 7.3.7.~~

~~§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated quantities originally contemplated in establishing Unit Prices are materially changed in a proposed Change Order, Order, Approval Letter or Construction Change Directive so that application of such unit prices-Unit Prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices-Unit Prices shall be equitably adjusted.~~

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

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~~§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment adjustment shall be recorded on the basis of reasonable expenditures based upon the costs set forth below 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, overhead, such overhead amount being included in the General Conditions Lump Sum Amount, and profit, such profit amount being included in the Construction Manager's Fee, as such General Conditions Lump Sum Amount and Construction Manager's Fee are adjusted for increases in the Cost of the Work as set forth in Section 5.1.1 the Agreement and, if applicable, in Section 5.1.2 of the Agreement for Subcontractor's overhead and profit. In such case, the Contractor shall keep and present, in such form as the Architect may prescribe, Owner may require, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following: the following costs; provided, however the following costs are not included for the purposes of this Section 7.3.7 to the extent the following costs are under the Contract Documents included in the General Conditions Lump Sum Amount:~~

- ~~.1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance; labor at the rates set forth in labor rates set forth in the Construction Staffing Matrix (the "Labor Rates"), which Construction Staffing Matrix is an exhibit attached to and part of the Agreement;~~
- ~~.2 Costs-Unit Prices for materials, supplies and equipment and if there are no applicable Unit Prices for such then 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; or others (provided that the rates were previously agreed to by the Owner and the Owner shall not be charged for idle time for Contractor-owned equipment including that owned by the Contractor's affiliated companies, the Contractor's officers, owners, or employees, Subcontractors, Sub-subcontractors, or their agents or employees, or any other persons or entities performing any portion of the Work);~~
- ~~.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; the Work at the rates set forth in Article 6 of the Agreement; and~~
- ~~.5 Additional costs of supervision and field office personnel directly attributable to the change-change based upon the labor rates set forth in Article 6 of the Agreement.~~

~~Under no circumstances shall the compensation to the Contractor and Subcontractors in connection with Change Orders or Approval Letters be more than the Contractor's and Subcontractor's costs set forth in this Subparagraph 7.3.7 plus no more than the overhead and profit amounts set forth Sections 5.1.1 and 5.1.2 of the Agreement.~~

~~§ 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-profit, at the~~

rates set forth in Sections 5.1.1 and 5.1.2 of the Agreement 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 not request payment for Work completed under the Construction Change Directive in Applications for Payment. ~~The Architect Payment absent the Owner's express, written consent. The Architect, in consultation with the Owner,~~ 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, and Owner determine~~ 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.~~ change will be recorded as a Change Order.

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~~The Architect has authority to Architect, subject to the Owner's approval, may order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor. the Contractor. The Architect shall provide prompt, written notice to the Owner of any minor change in the Work ordered by the Architect.~~

...

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

...

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the Project site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner, and or prior to receiving written notice to proceed from the Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously in accordance with the Construction Schedule with adequate forces and shall achieve Substantial Completion within the Contract Time. The Contractor shall at all times ensure that each Subcontractor is providing and maintaining sufficient skilled workmen, materials and equipment to achieve Substantial Completion within the Contract Time. Absent Change Orders signed by the Owner or a delay for which the Contractor is entitled to an extension of time by Section 8.3.1, the Contractor shall not make any claims for additional payment of straight time, overtime or premium time in undertaking to achieve Substantial Completion of the Work in accordance with the Construction Schedule.

...

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the ~~Work; Work by Owner or Architect;~~ or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending ~~mediation and arbitration; mediation;~~ or by other causes that the ~~Architect-Owner~~ determines may reasonably justify delay, then the Contract Time shall be extended by Change Order for ~~such a reasonable time as the Architect may determine.~~ determined by Owner.

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§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. Documents; provided, however, Contractor shall be entitled to additional compensation for delays in the progress of the Work only to the extent that the actual Substantial Completion date for the entire Project (including all phases) exceeds thirty (30) days beyond the contractual Substantial Completion date, as may be adjusted by Change Order. Furthermore, the Contractor's sole remedy for delays excusable under Section 8.3.1 is an extension of time as provided herein and additional compensation, exclusive of any damages claimed by the Contractor on account of compensable claims by Subcontractors or suppliers, limited to, as determined by the Owner, either of the following: (i) an equitable adjustment to the General Conditions Lump Sum Amount, or (ii) Contractor's actual costs of supervision and field personnel at the Project site attributable to such delay based upon the Labor Rates.

§ 8.3.4 Contractor shall include in each subcontract the following language: "Subcontractor acknowledges that delays resulting from changes in the work, extreme weather, changes to the sequencing of the work, material shortages, transportation, strikes and other causes are inherent in the construction process. Subcontractor acknowledges that it has accounted for delays in its prices and agrees to bring no claims for money damages as a result of any delay or hindrance. In the event that Subcontractor claims that it has been delayed or hindered, it shall submit a request for a time extension to Contractor in the manner and pursuant to the time periods set forth in the Contract Documents. If it is determined that Subcontractor has been delayed or hindered through no fault of its own, the time for performance hereunder will be extended and the extension of time will be Subcontractor's sole remedy for the delay. Under no circumstances will the Contractor or Owner be liable to the Subcontractor for damages resulting from any delays or hindrances."

§ 8.3.6 The Contractor shall not be entitled to any delay costs for delay to any early completion date elected by the Contractor or those for whom it is responsible.

§ 8.3.7 If, in the opinion of the Owner, the Contractor falls behind the approved Construction Schedule, the Contractor shall take all steps necessary to improve its progress, including those that may be required by the Owner, without additional costs to the Owner. In these circumstances, the Owner may require the Contractor, at no additional cost to Owner, to increase the number of shifts, overtime operations, days of work, and/or the amount of construction planned, and to submit for approval any supplementary schedules or "recovery" schedules in such detail and form as the Owner deems necessary to demonstrate how the approved rate of progress shall be regained.

§ 8.3.8 Requests for extension of time shall set forth in detail the circumstances of such claim, the dates upon which claimed delay began and ended, and the number of days' extension of time requested. The Contractor shall provide supporting documentation as the Owner may require, including a revised critical path method Construction Schedule indicating the effect of the circumstances that form the basis for the claim. The Contractor shall not be entitled to an extension of time for each and every one of a number of causes which have a concurrent and interrelated effect on the progress of the Work.

§ 8.4 The Contractor shall not be entitled to an adjustment of the Contract Sum or Contract Time on account of delays: (i) that it could have avoided or mitigated using the Contractor's commercially reasonable professional efforts; (ii) that do not impact the critical path; (iii) for which there is available float in the chain of activities affected by the delay; (iv) that were caused by, or could have been reasonably anticipated and avoided by, the Contractor or those for whom the Contractor is responsible; or (v) are of a duration of one day or less.

§ 8.5 The Owner may direct the Contractor to take such action, including adding, increasing or supplementing the workforce, the number of shifts, the days of work and/or overtime operations, as necessary to minimize threatened delays to Substantial Completion, and the Contractor shall adjust the Construction Schedule on account of such directives. The Contract Sum may be adjusted on account of such acceleration only to the extent that the acceleration is due to a delay that is excusable under § 8.3.1.

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Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, is attached to and part of the Agreement. This schedule shall be used as a basis for reviewing the Contractor's Applications for Payment.

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User Notes:

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§ 9.3.1 At least ten days before the date established for each progress payment, Timelines for progress payments shall be as set forth in the Agreement. In accordance with such timelines, 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, values for completed portions of the Work. Such application shall be notarized, if required, notarized and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as including, without limitation, copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. Interest shall not accrue or be payable on retainage. The Contractor's applications for payment shall specifically indicate that all applicable taxes are included, and the Contractor shall require the same of its Subcontractors.

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

...

§9.3.1.3 If requested by Owner, the Contractor shall provide lien waivers and releases for itself for the current payment application and for Subcontractors, Sub-subcontractors, and suppliers for the previous payment application before the Contractor has earned or has the right to receive any payment. All lien waivers and releases shall be provided in the form required by the Owner. This Paragraph shall not limit other obligations of the Contractor contained elsewhere to provide lien waivers and releases or other documents or data establishing payment or satisfaction of obligations.

§9.3.1.4 Applications for Payment shall be submitted on AIA Documents G702 and G703 or other forms approved by Owner. The schedule of values shall be balanced and not contain any "front end loading." On the standard form for each Certificate for Payment, the Contractor shall also certify that all bills and/or Subcontractors have been paid for which previous Certificates of Payment have been issued and upon which payment has been made; if partial payment has been made, then Contractor shall identify payments made to Subcontractors and suppliers. With the final application for payment, the Contractor shall furnish data and documents establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner as set forth in Section 9.10.2(5) below for all Work furnished by the Contractor, Subcontractors, Sub-subcontractors, material suppliers, or other persons furnishing labor or materials for the Work, as a precondition to Final Payment. Notwithstanding the foregoing, in the event that Contractor is unable to furnish such data and documents with the final application for payment to the Owner for all Work furnished by minor Subcontractors, minor Sub-subcontractors, or minor material suppliers (for the purposes of this section 9.3.1.4, collectively referred to as "Minor Subcontractors"), provided that (i) the total amounts claimed to be owed by such Minor Subcontractors does not exceed Twenty Thousand Dollars (\$20,000.00) (the total amounts claimed to be owed are referred to as the "Minor Subcontractors Disputed Amount" for the purposes of this Section 9.3.1.4) and (ii) that Contractor provides a written certification of Contractor to Owner accurately confirming that there is a bona fide dispute between the Contractor and such Minor Subcontractors as to the amounts owed to such Minor Subcontractors, then Owner shall pay Contractor the Final Payment in accordance with the provisions of the Contract Documents but Owner may withhold up to one hundred fifty percent (150%) of the Minor Subcontractors Disputed Amount from such payment(s) which funds Owner shall retain pending resolution of such disputes, which resolution shall include an application or applications for payment from Contractor, and such data and documents establishing payment or satisfaction of obligations as set forth above and in Section 9.10.2(5) below for all such Minor Subcontractors and compliance with all other provisions of the Contract Documents.

§ 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, Owner in writing, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing, bonded location agreed upon in writing and subject to and any other requirements established by Owner. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of ~~payment~~ payment free and clear of all liens, claims, security interests, or encumbrances whatsoever, that the vesting of such title shall not impose any obligations on Owner or relieve Contractor of any of its obligations under the Contract, and that the Contractor shall remain responsible for protection of the Work, whether completed or under construction, until responsibility for the Work has been accepted by Owner in the manner set forth in the Contract Documents. 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, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.3.4 The Contractor's Applications for Payment shall be accompanied by:

- .1 A list of names and addresses of each person or entity that furnished labor, services, materials or equipment on behalf of the Contractor;
- .2 Partial releases and lien waivers, in a form approved by the Owner, from the Contractor, Subcontractors and Sub-subcontractors for all labor, services, materials and equipment furnished to the Project through the date covered such Application for Payment, conditioned on performance of the Work and receipt of payment, and excluding any permitted retainage and unresolved Claims submitted in accordance with the Contract Documents;
- .3 Applications for Payment and invoices from all persons or entities whose Work is included in the Contractor's Application for Payment;
- .4 A Construction Schedule update prepared in accordance with the Schedule Requirements (as such term is defined in the Agreement), including, without limitation, an accurate and updated cash flow projection for the duration of the Project;
- .5 Written warranties from Subcontractors, manufacturers and installers covering portions of the Work that have reached Substantial Completion; and
- .6 Such other data, accounts and receipts substantiating costs included in the Application for Payment as reasonably requested by the Owner.

§ 9.3.5 The Contractor's Applications for Payment shall be signed and notarized, which signature shall constitute a representation and warranty by the Contractor that:

- .1 the amounts sought are due and earned in accordance with the Contract Documents;
- .2 all applicable taxes are included in such Application for Payment;
- .3 the Work is progressing in accordance with the Construction Schedule and the Substantial Completion date established herein;
- .4 the Contractor shall use the amounts requested to discharge their financial obligations on account of labor, services, materials or equipment furnished to the Project and included in the Application for Payment;
- .5 the Contractor has discharged the Contractor's financial obligations on account of labor, services, materials or equipment furnished to the Project for which the Owner has made payment;
- .6 to the best of the Contractor's knowledge, there are no claims of liens, security interests or encumbrances in favor of persons or entities that provided services, labor, materials and/or equipment to the Project on their behalf; and
- .7 title to all Work covered by the application has passed to the Owner no later than the time of payment.

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§ 9.4.1 The Architect will, within seven (7) days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect ~~determines~~ recommends is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. Notwithstanding the foregoing, the Owner has final determination as to whether to approve a Certificate of Payment and the amounts properly due.

§ 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 comprising the Application for Payment, that, to the best of the

Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. ~~Documents and that the Architect recommends that the Owner release payment to the Contractor in the amount requested.~~ 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. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment or payment on a Certificate of Payment will not be a representation that the Architect or Owner 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 material 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. Notwithstanding anything to the contrary in the Contract Documents, the Owner shall not be obligated to release payment to the Contractor until the Owner is satisfied that the Work has progressed to the point indicated in the Application for Payment, that the quality of the Work is in accordance with the Contract Documents and that withholding permitted under the Contract Documents is not required. Payment by the Owner on any Certificate for Payment shall not be deemed to waive any of the Owner's rights to later claim that the Work covered by a Certificate for Payment was not properly completed or not completed in accordance with the Contract Documents.

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§ 9.5.1 The Architect ~~may~~ shall advise the Owner to 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 ~~Owner may withhold payment and the Architect shall~~ 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 Owner's or 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

...

- .3 failure of the Contractor to make payments properly to Subcontractors or for claims of nonpayment by Subcontractors of any tier for services or labor, materials or equipment;

...

- .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~~ repeated delay; ~~7~~ failure to carry out the Work in accordance with the Contract Documents;
- .8 losses for which the Owner is entitled to indemnity from the Contractor under the Contract Documents

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§ 9.5.3 ~~If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, The Owner may, in its sole and absolute discretion, issue joint checks to the Contractor and to any Subcontractor Subcontractor, including, without limitation, Sub-subcontractors (of any tier) or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. delivered and such payment shall be deemed to have been made on account of the payee and all tiers between the payee and the Owner. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment. Any payment made by the Owner by joint check shall not be construed as a promise to assume the debt of any joint payee, nor as a continuing obligation to~~

make joint payments, nor as an assumption or establishment of a direct contractual relationship with the payee unless expressly stated in a separate written agreement with such payee.

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§ 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 deemed in default by reason of withholding payment in accordance with the Contract Documents or while any default by Contractor or any Subcontractor remains uncured.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than ~~seven-five (5)~~ seven (7) days after receipt of payment of good available funds 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 (of all tiers), require each such Subcontractor to make payments to Sub-subcontractors in a similar manner. Upon Owner's request, (i) the Contractor shall provide Owner with proof of payment(s) to Subcontractors; and (ii) Subcontractors (of all tiers) shall provide Owner with proof of payment(s) to Sub-subcontractors.

...

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact Subcontractors 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, except as may otherwise be required by law.

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§ 9.6.7 ~~Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments~~ Payments received by the Contractor for Work properly performed by Subcontractors and 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, ~~shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.~~ Contractor.

...

~~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' written 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 shut down, delay and start up, plus interest as provided for in the Contract Documents.~~ § 9.7.1 If, through no fault of the Contractor, the Owner does not pay the Contractor the amount properly due within thirty (30) days after the date established in the Contract Documents for payment, then the Contractor may, upon seven (7) additional days' written 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 shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.2 The Contractor is obligated to continue and complete all its Work and obligations under the Contract when Claims are pending or the Parties are in the process of dispute resolution. The Contractor shall not stop, suspend, or delay any portion of the Work, and will be responsible for all expenses, costs and fees arising from any such stop, suspension or delay.

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§ 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. The Work will not be considered suitable for Substantial Completion review, and the Contractor shall not be deemed to have achieved Substantial Completion until: (i) all installations of the Work are complete; (ii) all Project systems included in the Work have been started up, tested and commissioned, and are operational as designed and scheduled; (iii) to the extent reasonably required, the Contractor has instructed Owner's personnel in the operation of all systems and equipment; and (iv) the Contractor has arranged for and obtained all designated or required governmental inspections and certifications necessary for legal use and occupancy of the completed Project, including without limitation, a permanent or temporary certificate of occupancy and/or a certificate of completion for the Project.

§ 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 and the Owner a comprehensive list of items to be completed or corrected prior to ~~final payment.~~ Final Payment, which list shall include a detailed estimate of the Cost of the Work for each of such items (the "Punch List"). Failure to include an item on ~~such list~~ the Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. The amounts set forth in the Application(s) for payment(s) prepared and submitted by the Contractor for Punch List item Work shall approximately match the detailed estimate for such items set for in the Punch List.

§ 9.8.3 Upon receipt of the Contractor's list, ~~the Architect will make an inspection to~~ Punch List, the Architect, in consultation with the Owner, will determine whether the Work or designated portion thereof is substantially complete, complete as defined in Section 9.8.1. The Architect shall, if necessary, update the Contractor's Punch List prior to Final Payment as necessary prior to appending it to the Certificate of Substantial Completion. If the Architect's inspection discloses any item, whether or not included on the Contractor's ~~list,~~ Punch List, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion ~~that for review and approval with the Owner.~~ Such Certificate, when approved, shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which ~~the Contractor shall finish all items on the list accompanying the Certificate.~~ the Contractor shall finish all items, including, without limitation, the Punch List items accompanying the Certificate. Notwithstanding the foregoing, Contractor shall finish all such items on or before the date thirty (30) days after the date of Substantial Completion. If the Contractor fails to complete all such items within such time and is not diligently pursuing completion of such items, Owner shall, after providing Contractor with written notice, have the remaining Work completed by any means in the event Contractor has not completed such items within ten (10) days of such notice. Owner will deduct all expenditures to complete such items from the Final Payment due the Contractor and Contractor shall be liable for any excess costs incurred to complete such items. 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 such Certificate. Upon such acceptance and consent of surety, if any, and upon completion of close out items related to such Work, if any, the Owner shall make payment of a portion of the retainage applying to such Work or designated portion thereof; ~~thereof~~ in accordance with the terms of the Agreement. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

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§ 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 as required under Section 11.3.1.5 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.~~

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§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, which final Application for Payment shall, in part, be based upon the Punch List, the Architect and Owner will promptly make such inspection and, when the Architect finds and Owner find the Work acceptable under the Contract Documents and the Contract fully performed, the Architect with the consent of Owner 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 terms and conditions of the Contract Documents, including, without limitation, that all building systems are functioning satisfactorily 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-payable (the "Final Payment"). 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~~ Final Payment have been fulfilled.

§ 9.10.2 Neither ~~final payment~~ Final Payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and Owner reasonable evidence of compliance with all requirements of the Contract Documents, including but not limited to: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after ~~final payment~~ Final Payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to ~~final payment~~ Final Payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the ~~Owner~~ Owner; and (6) acceptance of the Work by applicable local and state agencies and departments. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien 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 such lien, including all costs and reasonable attorneys' fees.

§ 9.10.2.1 As a precondition to receiving Final Payment, the Contractor shall deliver to the Owner a complete set of "as-built" Drawings, consisting of marked-up field plans showing final as-built field conditions, dimensions and conditions including, without limitation, those relating to the heating, air-conditioning and ventilation systems and the electrical, plumbing and life safety systems, recording the Work as actually performed to the extent that the information differs from or supplements original Contract Documents. Such complete set of "as-built" Drawings shall be provided by the Contractor to the Owner in (i) a digital media form of electronic media that is capable of being manipulated and/or modified by software (e.g. Revit or other similar software); and (ii) as a PDF document.

§ 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 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 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~~ Final Payment, except that it shall not constitute a waiver of claims.

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

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.3 terms of ~~special~~ warranties required by the Contract Documents.

§ 9.10.5 Acceptance of ~~final payment by the Contractor~~, Final Payment by the Contractor, or any final payment by a Subcontractor or material 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.

...

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

§10.1.2 The Contractor shall comply with all applicable laws and regulations. Notwithstanding any language to the contrary, the Owner shall not have any responsibility for job site inspections or safety recommendations. Any inspections or observations by the Owner or the Architect are solely for the benefit of the Owner and shall not create any duties or obligations to anyone else. The Contractor shall notify the Owner in writing of all bodily injury, property damage, death, theft, or vandalism relating to the Project within one working day of such occurrence. Upon the request of the Owner, the Contractor shall provide the Owner with all safety programs for the Work or any portion of the Work.

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§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. The Contractor shall immediately notify the Owner of any injury to persons or property if damaged on the Project site or related to the Work.

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§ 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~~ personnel.

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§ 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 or any hazardous condition.

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

Notwithstanding the foregoing, the Contractor shall promptly report in writing to the Owner and Architect, within forty-eight (48) hours, all accidents arising out of or in connection with the Work that caused death, bodily injury or property damage, giving full details and statements of any witnesses; provided, however, such reports shall be made immediately by telephone or messenger to the Owner and Architect in the event of death, serious bodily injury or serious property damage.

...

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. The Contractor shall take all reasonable precautions to avoid further contamination or the spread or disturbance of potentially hazardous substances or materials. As used in the Agreement and the General Conditions, "hazardous material" shall be defined as any product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity of use, manufacture, disposal, transportation, spill, release or effect, either by itself or in combination with other materials expected to be on the Project site, is either: (1) regulated or monitored by any governmental authority; or (2) a basis for liability of the Owner to any governmental agency or third party under any applicable statute, code, ordinance, regulation, rule and/or common law theory.

§ 10.3.2 ~~Upon receipt of the Contractor's written notice, the Owner shall~~ Promptly after providing Owner with the Contractor's written notice, the Contractor shall provide Owner with a Change Order proposal for the Contractor to 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 the Contractor shall provide the Owner with a Change Order proposal for the work to be performed by Contractor to cause it to be rendered harmless, which work shall include, without limitation, (i) the Contractor's due diligence and research as to disposal facilities for competitive pricing and scheduling purposes; and (ii) the Contractor's supervision and direction of the abatement (removal or safe containment) of such material or substance in order that such abatement work is performed in the most cost effective manner. The Contractor shall furnish in writing to the Contractor-Owner and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor-Owner and the Architect will promptly reply to the Owner-Contractor in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner-Contractor. If either the Contractor-Owner or Architect has an objection to a person or entity proposed by the Owner, the Owner-Contractor, the Contractor shall propose another to whom the Contractor-Owner and the Architect have no reasonable objection. When the material or substance has been determine to be or rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, if applicable, the Contract Time shall may be extended appropriately and the Contract Sum shall may be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up-start-up, except to the extent Contractor contributed to or exacerbated the hazardous condition.

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

§ 10.3.4 ~~The Owner shall not be responsible under this Section 10.3 for materials or substances Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for 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 and negligently or recklessly handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.~~

~~§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance 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. 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 indemnify the Contractor for all cost and expense thereby incurred, unless the Contractor knew or had reason to know that its activities, even if directed by Owner, violated applicable law.~~

~~§ 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 indemnify the Contractor for all cost and expense thereby incurred.~~

§ 10.3.6 Prior to introducing any hazardous materials to the Project site, the Contractor shall provide a material safety data sheet (MSDS), information about precautionary measures necessary to protect persons or property and an indication of the type of labeling system in use.

§ 10.3.7 In the event that during the performance of the Work the activities of the Contractor or any Subcontractor, or any person or entity for which the Contractor is responsible, causes the incursion of mold at the Project site, the Contractor shall be responsible for and bear the entire cost of mitigation of any mold to the satisfaction of the Owner.

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 7-7, except to the extent such emergency Work was not attributable to any act, omission, or negligence of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, in which event no additional compensation or extension of time shall be paid or granted.

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§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a ~~Subcontractor~~ Subcontractor, or by a sub-subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

...

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

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of ~~insurance~~ insurance at least fifteen (15) days prior to expiration. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the ~~Owner~~ Contractor. The Contractor shall upon receipt of any such prior written notice promptly provide a copy thereof to Owner, but in no event more than ten (10) days after Contractor's receipt of such prior written notice. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section

9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. Failure of the Contractor to keep the Contractor's required insurance policies in force during the Work covered by this Agreement or any extensions thereof or extra or additional Work agreed to by the Contractor, shall constitute a material breach of this Agreement, entitling Owner, notwithstanding anything to the contrary contained herein, to immediately cancel and terminate this Agreement for cause.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) ~~the Owner, the Architect and the Architect's consultants~~ Owner and the Architect as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

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§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a so-called builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost ~~basis without optional deductibles basis~~. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until ~~final payment~~ Final Payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, ~~falsework, testing and startup,~~ temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, ~~and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss requirements.~~ Nothing contained in the Contract Documents shall be construed to, nor is intended to, constitute any indemnification of the Contractor by the Owner for any loss, cost or damage arising out of any cause insured under this Paragraph.

...

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs ~~not covered because of such deductibles~~ of such deductibles, except to the extent loss is caused by the negligent act, intentional misconduct or omission of the Contractor.

§ 11.3.1.4 This property insurance shall not cover portions of the Work stored off the site, and also site or portions of the Work in transit and Contractor shall be responsible for insuring such portions of the Work stored off the site or portions of the Work in transit.

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~~The~~ To the extent deemed necessary by the Owner, the Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds. Work with the Owner as the named insured and the Contractor, Subcontractor, and Sub-subcontractors as the named loss payees. Testing and start-up, other than electrical insulation breakdown test or hydrostatic, pneumatic or gas pressure tests, are included under this insurance.

...

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, to the extent covered and paid by such insurance, including consequential losses due to fire or other hazards however caused.

...

§ 11.3.5 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~~ Final Payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

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

...

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

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§ 11.3.9 ~~If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary.~~ The Owner shall deposit in a separate account proceeds ~~so received,~~ received from property insurance purchased pursuant to § 11.3, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. ~~If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.~~

...

§ 11.4.1 The Owner shall have the right to require the Contractor to Contractor, and at Owner's election, any subcontractor, shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. Any such bonds shall be in an amount equal to the cost of the contract awarded, listing Owner as a dual obligee in the case of Subcontractors, and in a form acceptable to the Owner. The required bonds shall be provided by a surety company or companies acceptable to the Owner, authorized to transact such business in the State of Connecticut.

...

§ 11.5 PROFESSIONAL LIABILITY INSURANCE

§ 11.5.1 The Contractor shall purchase and maintain Professional Liability insurance from the Contractor's usual sources as primary coverage for the Contractor's liability for professional services rendered under the Contract. The cost of purchasing and maintaining such insurance coverage at the rates set forth in Article 6 of the Agreement shall be included in the Contract Sum. The minimum limits of liability purchased with such coverage shall be as set forth in the Contract Documents.

§ 11.5.2 The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor's Professional Liability Insurance coverage under Section 11.5.

§ 11.6 OWNER'S INSURANCE REQUIREMENTS

§ 11.6.1 In addition to the requirements set forth in this Article 11, certain of the Owner's insurance requirements are set forth in the RFO/P (as such term is defined in the Agreement), which RFO/P insurance requirements (the "RFO/P Insurance Requirements") are deemed a part of and incorporated into this Article 11. In the event of inconsistencies within or between parts of this Article 11 and the RFO/P Insurance Requirements, the Contractor shall comply with the more stringent requirements; in accordance with the Owner's interpretation.

...

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

§ 12.1.2 If a portion of the Work has been covered that the Owner or Architect has not specifically requested to examine prior to its being covered, the Architect-Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

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The Contractor shall promptly correct Work rejected by the Architect or failing ensure that all Work is being performed in accordance with the requirements of the Contract Documents. The Contractor shall reject Work which does not conform to the requirements of the Contract Documents. The Contractor shall promptly correct, repair, replace or re-execute Work, whether or not rejected by the Architect or Owner, that is defective or fails to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall correct such defects and any condition resulting therefrom reasonably promptly, or sooner if such condition threatens the safety of the occupants of the Project. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

...

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after Contractor covenants and agrees that it will, upon notice from Owner, immediately repair, replace, restore, correct and cure at Contractor's expense, all defects, deficiencies, errors and omissions in workmanship and materials and all failures to comply with the Contract Documents which appear within one (1) year from 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 an 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. 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 2.4. Project; provided, however, that: (i) this warranty and guarantee on the part of Contractor, and Contractor's obligation to correct defective, deficient or non-conforming Work as hereinbefore provided, shall remain and continue in full force and effect as to those components of the Project specified in the Contract Documents for the extended periods specified in the Contract Documents, likewise commencing on the date of Substantial Completion unless otherwise indicated in the Contract Documents; and (ii) with respect to any incomplete or defective item of Work completed or corrected by Contractor after Final Completion of the Project (i.e., punchlist work) this warranty and guarantee shall commence when such incomplete or defective item of Work is satisfactorily completed or corrected by Contractor in each instance. Contractor shall pay for and, if requested, repair, replace, restore, correct and cure any damage or injury, whenever the same shall occur or appear during the applicable warranty period, resulting from any defects, omissions or failures in workmanship and materials. The foregoing guarantee and warranty shall not shorten any longer warranty period or longer period of Contractor's liability provided for by law or in the Plans, Drawings or Specifications or in any other Contract Document or otherwise received from Contractor or any supplier or Subcontractor or Contractor or from any manufacturer, nor supersede the terms of any special warranty given by Contractor, imposed by law or required by the Contract Documents, but shall be in addition thereto.

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

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2. Upon completion of any Work under or pursuant to Section 12.2, the one (1) year correction period in connection with the Work requiring correction shall be renewed and recommence.

§ 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. Notwithstanding anything to the contrary contained herein, it is understood and agreed that the warranty and guarantee set forth in this Paragraph shall not affect, limit or impair Owner's right against Contractor and its surety with regard to latent defects in the Work which do not appear within the applicable warranty period and which could not, by the exercise of reasonable care and due diligence, be ascertained or discovered by Owner within such warranty period. Contractor shall be and remain liable and responsible to correct and cure any such latent defects which are reported to Contractor by Owner in writing within one (1) year after any such latent defects first appear or could, by the exercise of reasonable care and due diligence, be ascertained or discovered by Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents. Notwithstanding anything to the contrary contained herein, if Contractor fails to promptly commence and diligently perform and complete all corrective Work required under this Paragraph from time to time (whether punch list or warranty work), Owner shall have the right (but not the obligation) in each instance, at Owner's election, to cause such corrective work to be done by others and recover the costs thereof, together with damages and reasonable attorney fees, from Contractor and his surety, in addition to all other rights and remedies available to Owner against Contractor and his surety hereunder and at law and in equity for such default by Contractor.

~~§ 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.~~ On Substantial Completion of the Work, representatives of the Contractor and the Owner's Representative shall inspect the Project. Any items still incomplete or not consistent with the plans and specifications will be incorporated in a punch list, and the list given to the Contractor who will complete items on the punch list within thirty (30) days of receipt of the punch list. If the Contractor fails to complete all items on the punch list within thirty (30) days, the Owner's Representative or the Owner shall, without further notice to the Contractor, have the remaining Work completed by any means, and the Owner's Designated Representative or the Owner will deduct all expenditures from the Final Payment due the Contractor, and Contractor and Subcontractor shall be liable for any excess costs incurred.

§ 12.2.6 The punch list shall in no way relieve the Contractor of his responsibility to do all the Work specified or shown in the Contract Documents.

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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~~ Final Payment has been made.

...

The Contract shall be governed by the law of the place where the Project is located ~~except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern~~ Section 15.4. located.

...

§ 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 The Contractor may not assign, transfer, convey, pledge, or otherwise dispose of its interest, or any part thereof, in this Agreement. All such assignments by the Contractor are void. If the Contractor attempts to make such an assignment without such consent, that party the Contractor shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to the State of Connecticut Department of Education. Further, 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 such assignment the foregoing to the extent required or requested by Owner.

...

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

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Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may 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, the rate set forth in the Agreement

...

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, 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 13.7. law.

§ 13.8 NO WAIVER OR APPROVAL

§ 13.8.1 No action or failure to act by the Owner shall constitute a waiver of a right or duty afforded the Owner under this Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach of this Agreement, except as may be specifically agreed in writing. Neither the approval of any Application for Payment, the making of any payment, the giving of any approval or consent, the use of occupancy of the Work, or any part thereof, the making of Final Payment, or any other action or inaction, on the part of the Owner or Architect shall constitute a waiver of claims by the Owner or an acceptance of any Work which is not in accordance with the Contract Documents either by the activities or duties of the representation of the Owner or Architect, or by inspections, tests, or approvals required or performed by the Owner or Architect or anyone else.

§ 13.9 RECORDING

§ 13.9.1 This Agreement shall not be recorded. If this Agreement shall be recorded contrary to this provision, such recording shall be ineffective and Owner is hereby authorized for and on behalf of, and in the name of Contractor to execute and have recorded a discharge of any such recording.

§ 13.10 SEVERABILITY

§ 13.10.1 The invalidity in whole or in part of any article, section, subsection, sentence, clause, phrase or word, or other provision of these General Conditions and any exhibits or documents attached thereto shall not affect the remaining portions thereof.

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§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of ~~30~~ sixty (60) consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

...

- ~~.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; or
- ~~.4~~ The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1, Documents, after notice has been provided pursuant to Section 9.7.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, 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. If one of the reasons described in Section 14.1.1 exists, the Contractor may, upon seven (7) days' written notice to the Owner and Architect, terminate

the Contract and recover from the Owner payment for Work properly executed, including reasonable overhead and profit on Work properly executed and actual costs and damages incurred by reason of such termination.

~~§ 14.1.3~~ If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven the Work is suspended by the Owner for a period of ninety (90) consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor 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 payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages, as provided in Section 14.1.3.

~~§ 14.1.4~~ If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor 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.

...

- ~~.1~~ repeatedly-refuses or fails to supply enough properly skilled workers or proper materials;
- ~~.2~~ fails to make payment to Subcontractors pursuant to its obligations under this Agreement, after payment by Owner, for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- ~~.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-~~Documents~~, including, without limitation, the failure of the Contractor or the Subcontractors to proceed expeditiously in the performance of the work in accordance with the Construction Schedule;
- ~~.5~~ breaches any warranty made by the Contractor under or pursuant to the Contract Documents;
- ~~.6~~ is declared bankrupt, has a petition in bankruptcy filed against it, or if the Contractor files for bankruptcy protection; or
- ~~.7~~ causes or threatens to cause or create labor unrest, dispute, picketing, slowdowns, work stoppage, strike or disharmony.

~~§ 14.2.2~~ When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, 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' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety, may:

- ~~.1~~ Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor; intended to be incorporated into the Project;

...

~~§ 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-finished and the Owner's damages arising out of the cause of termination are determined by the Owner.

~~§ 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.~~

§ 14.2.4 In the event that a termination by the Owner for cause is ultimately deemed wrongful by a trier of fact, such termination shall conclusively be deemed to be a termination for convenience by Owner under 14.4 of this Agreement, and the Contractor's sole rights and remedies against the Owner shall be as set forth in 14.4.3.

§ 14.2.5 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. This obligation for payment shall survive termination of the Contract.

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

...

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Under such circumstances, this Agreement shall terminate on the date set forth in the notice from the Owner. The Contractor agrees to immediately prepare to cease performing all services on the date of termination and shall otherwise cease, to the extent practicable, incurring costs chargeable to the Owner under this Contract as of the date of termination. To the extent that the Owner elects (and Contractor hereby grants to the Owner the right to elect to do so in connection with termination of this Contract) to take legal assignment of subcontracts or purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Section and otherwise under this Contract, at the Owner's sole cost and expense, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts or purchase orders and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders. Otherwise, Contractor shall terminate such subcontracts and purchase orders as of the Contract termination date or as soon as possible thereafter. In the event a termination by the Owner for cause is not in accordance with the terms of the Contract Documents or otherwise determined improper, it shall be deemed a termination for convenience under this Section.

...

- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, as directed by Owner, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders, orders or assign them to Owner.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work properly executed, which payment shall consist of the Cost of the Work of such properly executed Work, which Cost of the Work shall include an equitable amount of the Lump Sum General Conditions Amount as determined by the Owner, and the Construction Manager's Fee computed upon the Cost of the Work of such properly executed Work at the rate set forth in Section 5.1.1 of the Agreement and actual and direct costs and damages incurred by reason of such termination, along with reasonable overhead and profit on the Work not however the Contractor and any party claiming through or under the Contractor shall not be entitled to any overhead or profit on the Work not so executed.

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~~Claims by either the Owner or Contractor the Contractor or Subcontractors (of any tier) must be initiated by written 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 must be initiated within 21 Owner and must be initiated~~

within 14 days after occurrence of the event giving rise to such Claim or within 21-14 days after the claimant Contractor first recognizes the condition giving rise to the Claim, whichever is later. If the Contractor fails to make a Claim within the specified time, it hereby acknowledges that its failure to do so greatly prejudices the Owner and the Claim will be deemed waived. Upon receipt from the Contractor of a written notice of Claim as provided in Paragraph 15.1.1, the Owner shall review such Claim and if the Owner determines that any Work in dispute should proceed, Owner shall issue to the Contractor a written order to proceed in which Owner shall approve or deny the Contractor's Claim, in whole or in part, or shall instruct the Contractor to proceed with the Work subject to a later determination by the Owner of the Contractor's right to extra payment.

...

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 To the extent that the Owner, when issuing the written order to proceed described in 15.1.2 approves Contractor's Claim, the Contract Sum shall be subsequently adjusted, as provided in Paragraph 7.2. If the Owner, when issuing a written order to proceed, denies, in whole or in part, Contractor's Claim, the Contractor shall have the right to separately pursue all remedies available under the Contract Documents, but the Contractor shall nonetheless proceed with the Work without delay, in any case and Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker, and subject to the Contract Documents.

...

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

§ 15.1.5.1. If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein 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. In the case of a continuing delay, the Contractor shall file with the Owner written reports on the delay identifying the continuing cause of the delay no less than once a week during the duration of the delay.

§ 15.1.5.2 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-unusually severe for the period of time, could not have been reasonably anticipated and had an adverse effect on the critical path of the scheduled construction.

§ 15.1.5.3 Any change request seeking an extension of the Contract Time shall contain:

- .1 a detailed description of the nature of each cause of delay, the date or dates upon which each cause of delay began and ended (as known or as projected), the number of days of delay attributable to each such cause, and the impact of such delay upon the Construction Schedule;
- .2 the Construction Schedule in effect at the start of the delay, showing that the portion of the Work that was, or will be, delayed is on the critical path and that no float remains or will be available for the delayed activities at the start of the delay;
- .3 a schedule analysis of the impact of the delay on the critical path in the Construction Schedule at the time of the delay, including any proposed adjustment to the Contract Time; and
- .4 such other supporting data that the Owner may reasonably request.

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§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, 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 arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless

~~the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.~~

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

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

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

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

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

~~§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

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

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

~~§ 15.3.1 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 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution-litigation.~~

~~§ 15.3.2 Any Claim which is not resolved by mediation shall be litigated in a court of competent jurisdiction in the location of the Project. The parties waive their rights to a jury trial. Prior to litigation, 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 or other mutually acceptable dispute resolution administrator in accordance with the American Arbitration Association's 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 of binding dispute resolution proceedings-litigation but, in such event, mediation shall proceed in advance of binding dispute resolution-litigation proceedings, which litigation 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.

...

§ 15.4 ARBITRATION BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 hereof, the method of binding dispute resolution shall be litigation in a court of competent jurisdiction in the location of the Project.

§ 16 LIMITATION OF LIABILITY

The Owner shall be liable only to the extent of its interest in the Project; and no representative, officer, director, partner, agent or employee of the Owner (or any partner of a partner or any agent or employee of a partner) shall ever be personally or individually liable with respect to the Contract Documents or the Work. Each Subcontract shall include the foregoing limitation, which shall be effective if the Owner ever succeeds to the Contractor's rights and obligations under a Subcontract.

~~§ 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. 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 Either party, at its sole discretion, 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 Either party, at its sole discretion, 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 the Owner and Contractor under this Agreement.~~

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Victor Morgenthaler, 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 13:11:58 on 01/15/2015 under Order No. 6247178839_1 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™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

EXHIBIT L – BIM CONTRACT DOCUMENTS

This Exhibit dated the «Twenty-third-» day of «October-» in the year «Two Thousand Fourteen-» is incorporated into the agreement (the “Agreement”) between the Parties for the following Project:

(Name and location or address of the Project)

«CREC New Two Rivers High School»
«Bloomfield, CT»

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA
- 3 DIGITAL DATA PROTOCOLS
- 4 BUILDING INFORMATION MODELING PROTOCOLS
- 5 OTHER TERMS AND CONDITIONS

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 This Exhibit provides for the establishment of protocols for the development, use, transmission, and exchange of Digital Data for the Project. If Building Information Modeling will be utilized, this Exhibit also provides for the establishment of the protocols necessary to implement the use of Building Information Modeling on the Project, including protocols that establish the expected Level of Development for Model Elements at various milestones of the Project, and the associated Authorized Uses of the Building Information Models.

§ 1.2 The Parties agree to incorporate this Exhibit into their agreements with any other Project Participants that may develop or make use of Digital Data on the Project. Prior to transmitting or allowing access to Digital Data, a Party may require any Project Participant to provide reasonable evidence that it has incorporated this Exhibit into its agreement for the Project, and agreed to the most recent Project specific versions of AIA Document G201™–2013, Project Digital Data Protocol Form and AIA Document G202™–2013, Project Building Information Modeling Protocol Form.

§ 1.2.1 The Parties agree that each of the Project Participants utilizing Digital Data on the Project is an intended third party beneficiary of the Section 1.2 obligation to incorporate this Exhibit into agreements with other Project Participants, and any rights and defenses associated with the enforcement of that obligation. This Exhibit does not create any third-party beneficiary rights other than those expressly identified in this Section 1.2.1.

§ 1.3 Adjustments to the Agreement

§ 1.3.1 If a Party believes that protocols established pursuant to Sections 3.2 or 4.5, and memorialized in AIA Documents G201–2013 and G202–2013, will result in a change in the Party’s scope of work or services warranting an adjustment in compensation, contract sum, schedule or contract time, the Party shall notify the other Party. Failure to provide notice as required in this Section 1.3 shall result in a Party’s waiver of any claims for adjustments in compensation, contract sum, schedule or contract time as a result of the established protocols.

§ 1.3.2 Upon such notice, the Parties shall discuss and negotiate revisions to the protocols or discuss and negotiate any adjustments in compensation, contract sum, schedule or contract time in accordance with the terms of the Agreement.

§ 1.3.3 Notice required under this Section 1.3 shall be provided within thirty days of receipt of the protocols, unless otherwise indicated below:

(If the Parties require a notice period other than thirty days from receipt of the protocols, indicate the notice period below.)

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§ 1.4 Definitions

§ 1.4.1 **Building Information Model.** A Building Information Model is a digital representation of the Project, or a portion of the Project, and is referred to in this Exhibit as the “Model,” which term may be used herein to describe a Model Element, a single model or multiple models used in the aggregate, as well as other data sets identified in AIA Document G202–2013, Project Building Information Modeling Protocol Form.

§ 1.4.2 **Building Information Modeling.** Building Information Modeling or Modeling means the process used to create the Model.

§ 1.4.3 **Model Element.** A Model Element is a portion of the Model representing a component, system or assembly within a building or building site.

§ 1.4.4 **Level of Development.** The Level of Development (LOD) describes the minimum dimensional, spatial, quantitative, qualitative, and other data included in a Model Element to support the Authorized Uses associated with such LOD.

§ 1.4.5 **Authorized Uses.** The term “Authorized Uses” refers to the permitted uses of Digital Data authorized in the Digital Data and/or Building Information Modeling protocols established pursuant to the terms of this Exhibit.

§ 1.4.6 **Model Element Author.** The Model Element Author is the entity (or individual) responsible for managing and coordinating the development of a specific Model Element to the LOD required for an identified Project milestone, regardless of who is responsible for providing the content in the Model Element. Model Element Authors are to be identified in Section 3.3, Model Element Table, of AIA Document G202–2013.

§ 1.4.7 **Digital Data.** Digital Data is information, including communications, drawings, specifications and designs, created or stored for the Project in digital form. Unless otherwise stated, the term Digital Data includes the Model.

§ 1.4.8 **Confidential Digital Data.** Confidential Digital Data is Digital Data containing confidential or business proprietary information that the transmitting party designates and clearly marks as “confidential.”

§ 1.4.9 **Written or In Writing.** In addition to any definition in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, “written” or “in writing” shall mean any communication prepared and sent using a transmission method set forth in this Exhibit, or the protocols developed pursuant to this Exhibit, that permits the recipient to print the communication.

§ 1.4.10 **Written Notice.** In addition to any terms in the Agreement to which this Exhibit is attached, for purposes of this Exhibit and the Agreement, “written notice” shall be deemed to have been duly served if transmitted electronically to an address provided in this Exhibit or the Agreement using a transmission method set forth in this Exhibit that permits the recipient to print the communication.

§ 1.4.11 **Party and Parties.** The terms “Party” and “Parties” refer to the signing parties to the Agreement.

§ 1.4.12 **Project Participant.** A Project Participant is an entity (or individual) providing services, work, equipment or materials on the Project and includes the Parties.

ARTICLE 2 TRANSMISSION AND OWNERSHIP OF DIGITAL DATA

§ 2.1 The transmission of Digital Data constitutes a warranty by the Party transmitting Digital Data to the Party receiving Digital Data that the transmitting Party is the copyright owner of the Digital Data, or otherwise has permission to transmit the Digital Data for its use on the Project in accordance with the Authorized Uses of Digital Data established pursuant to the terms of this Exhibit.

§ 2.2 If a Party transmits Confidential Digital Data, the transmission of such Confidential Digital Data constitutes a warranty to the Party receiving such Confidential Digital Data that the transmitting Party is authorized to transmit the Confidential Digital Data. If a Party receives Confidential Digital Data, the receiving Party shall keep the Confidential Digital Data strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 2.2.1.

§ 2.2.1 The receiving Party may disclose Confidential Digital Data as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The receiving Party may also disclose the Confidential Digital Data to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Digital Data as set forth in this Exhibit.

§ 2.3 By transmitting Digital Data, the transmitting Party does not convey any ownership right in the Digital Data or in the software used to generate the Digital Data. Unless otherwise granted in a separate license, the receiving Party’s right to use, modify, or further transmit Digital Data is specifically limited to designing, constructing, using, maintaining, altering and adding to the Project consistent with the terms of this Exhibit, and nothing contained in this Exhibit conveys any other right to use the Digital Data.

§ 2.4 Where a provision in this Article 2 conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Article 2 shall prevail.

ARTICLE 3 DIGITAL DATA PROTOCOLS

§ 3.1 Anticipated Types of Digital Data. The anticipated types of Digital Data to be used on the Project are as follows: *(Indicate below the information on the Project that shall be created and shared in a digital format. If the Parties indicate that Building Information Modeling will be utilized on the Project, the Parties shall also complete Article 4.)*

Anticipated Digital Data	Applicability to the Project <i>(Indicate Applicable or Not Applicable)</i>	Location of Detailed Description <i>(Section 3.1.1 below or in an attachment to this exhibit and identified below)</i>
Project Agreements and Modifications	Applicable	
Project communications	Applicable	
Architect’s pre-construction submittals	Applicable	
Contract Documents	Applicable	
Contractor’s submittals	Applicable	
Subcontractor’s submittals	Applicable	
Modifications	Applicable	
Project payment documents	Applicable	
Notices and claims	Applicable	
Building Information Modeling	Applicable	

§ 3.1.1 Insert a detailed description of the anticipated Digital Data identified in Section 3.1, if not further described in an attachment to this Exhibit.

«[Refer to AIA Document E201 dated October 23, 2014.](#) »

§ 3.2 As soon as practical following execution of the Agreement, the Parties shall further describe the uses of Digital Data, and establish necessary protocols governing the transmission and Authorized Uses of Digital Data, in consultation with the other Project Participants that are expected to utilize Digital Data on the Project.

§ 3.2.1 Unless another Project Participant is identified below, the Architect shall prepare and distribute to the other Project Participants Digital Data protocols for review, revision and approval.
(If a Project Participant other than the Architect shall be responsible for preparing draft and final Digital Data protocols, identify that Project Participant.)

« »

§ 3.2.2 The agreed upon Digital Data protocols shall be set forth in AIA Document G201–2013 and each Project Participant shall memorialize their agreement in writing to such Digital Data protocols.

§ 3.2.3 The Parties, together with the other Project Participants, shall review and, if necessary, revise the Digital Data protocols at appropriate intervals as required by the conditions of the Project.

§ 3.3 The Parties shall transmit, use, store and archive Digital Data in accordance with the Digital Data protocols set forth in the latest version of AIA Document G201–2013 agreed to by the Project Participants.

§ 3.4 Unauthorized Use

§ 3.4.1 Prior to Establishment of Digital Data Protocols

If a Party receives Digital Data prior to the agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, that Party is not authorized to use or rely on the Digital Data. Any use of, or reliance on, such Digital Data is at that Party's sole risk and without liability to the other Party and its contractors, consultants, agents and employees.

§ 3.4.2 Following Establishment of Digital Data Protocols

Following agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, if a Party uses Digital Data inconsistent with the Authorized Uses identified in the Digital Data protocols, that use shall be at the sole risk of the Party using the Digital Data.

§ 3.5 Digital Data Management

§ 3.5.1 Centralized electronic document management system use on the Project shall be:

(Check the appropriate box. If the Parties do not check one of the boxes below, the default selection shall be that the Parties will not utilize a centralized electronic document management system on the Project.)

[] The Parties intend to use a centralized electronic document management system on the Project.

[] The Parties do not intend to use a centralized electronic document management system on the Project.

§ 3.5.2 If the Project Participants intend to utilize a centralized electronic document management system on the Project, the Project Participants identified in Section 3.5.3 shall be responsible for managing and maintaining such system. The Project Participants responsible for managing and maintaining the centralized electronic document management system shall facilitate the establishment of protocols for transmission, use, storage and archiving of the centralized Digital Data and assist the Project Participants identified in Section 3.2.1 above in preparing Digital Data protocols. Upon agreement to, and documentation of, the Digital Data protocols in AIA Document G201–2013, the Project Participants identified in Section 3.5.3 shall manage and maintain the centralized electronic document management system consistent with the management protocols set forth in the latest version of G201–2013 approved by the Project Participants.

§ 3.5.3 Unless responsibility is assigned to another Project Participant, the Architect shall be responsible for managing and maintaining the centralized electronic document management system. If the responsibility for management and maintenance will be assigned to another Project Participant at an identified Project milestone, indicate below the Project Participant who shall assume that responsibility, and the Project milestone.

(Identify the Project Participant responsible for management and maintenance only if the Parties intend to utilize a centralized electronic document management system on the Project.)

Responsible Project Participant

«Architect »

Project Milestone

LOD 100 – 350

ARTICLE 4 BUILDING INFORMATION MODELING PROTOCOLS

§ 4.1 If the Parties indicate in Section 3.1 that Building Information Modeling will be used on the Project, specify below the extent to which the Parties intend to utilize Building Information Modeling and identify the provisions of this Article 4 governing such use:

[] The Parties shall utilize Building Information Modeling on the Project for the sole purpose of fulfilling the obligations set forth in the Agreement without an expectation that the Model will be relied upon by the other Project Participants. Unless otherwise agreed in writing, any use of, transmission of, or reliance on the Model is at the receiving Party's sole risk. The remaining sections of this Article 4 shall have no force or effect.

[] The Parties shall develop, share, use and rely upon the Model in accordance with Sections 4.2 through 4.10 of this Exhibit.

§ 4.2 Anticipated Building Information Modeling Scope. Indicate below the portions of the Project for which Modeling will be used and the anticipated Project Participant responsible for that Modeling.

Project Portion for Modeling

Responsible Project Participant

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§ 4.3 Anticipated Model Authorized Uses. Indicate below the anticipated Authorized Uses of the Model for the Project, which Authorized Uses will be agreed upon by the Project Participants and further described for each LOD in AIA Document G202–2013.

<< >>

§ 4.4 Ancillary Modeling Activities. Indicate additional Modeling activities agreed upon by the Parties, but not to be included in AIA Document G202–2013, if any.

(Describe any Modeling activities, such as renderings, animations, performance simulations, or other similar use, including the anticipated amount and scope of any such Modeling activities.)

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§ 4.5 Modeling Protocols. As soon as practical following execution of the Agreement, the Parties shall, in consultation with the other Project Participants that are expected to utilize Building Information Modeling on the Project, further describe the Authorized Uses of the Model and establish necessary protocols governing the development of the Model utilizing AIA Document G202–2013.

§ 4.5.1 The Modeling protocols shall address the following:

- .1 Identification of the Model Element Authors;
- .2 Definition of the various LOD for the Model Elements and the associated Authorized Uses for each defined LOD;
- .3 Identification of the required LOD of each Model Element at each identified Project milestone;
- .4 Identification of the construction classification systems to be used on the Project;
- .5 The process by which Project Participants will exchange and share the Model at intervals not reflected in Section 3.3, Model Element Table, of AIA Document G202–2013;
- .6 The process by which the Project Participants will identify, coordinate and resolve changes to the Model;
- .7 Details regarding any anticipated as-designed or as-constructed Authorized Uses for the Model, if required on the Project;
- .8 Anticipated Authorized Uses for facilities management or otherwise, following completion of the Project; and
- .9 Other topics to be addressed by the Modeling protocols: *(Identify additional topics to be addressed by the Modeling Protocols.)*

§ 4.5.2 Unless responsibility is assigned to another Project Participant identified below, the Architect shall prepare and distribute Modeling protocols to the other Project Participants for review, revision and approval. (If a Project Participant other than the Architect shall be responsible for preparing draft and final Modeling protocols, identify that Project Participant.)

§ 4.5.3 The agreed upon Modeling protocols shall be set forth in AIA Document G202–2013 and each Project Participant shall memorialize their agreement in writing to such Modeling protocols.

§ 4.5.4 The Parties, together with the other Project Participants, shall review, and if necessary, revise the Modeling protocols at appropriate intervals as required by the conditions of the Project.

§ 4.6 The Parties shall develop, use and rely on the Model in accordance with the Modeling protocols set forth in the latest version of AIA Document G202–2013, which document shall be included in or attached to the Model in a manner clearly accessible to the Project Participants.

§ 4.7 Unauthorized Use

§ 4.7.1 Prior to Establishment of Modeling Protocols

If a Party receives any Model prior to the agreement to, and documentation of, the Modeling protocols in AIA Document G202–2013, that Party is not authorized to use, transmit, or rely on the Model. Any use, transmission or reliance is at that Party’s sole risk and without liability to the other Party and its contractors, consultants, agents and employees.

§ 4.7.2 Following Establishment of Modeling Protocols

Following agreement to, and documentation of, the Modeling protocols in AIA Document G202–2013, if a Party uses or relies on the Model inconsistent with the Authorized Uses identified in the Modeling protocols, such use or reliance shall be at the sole risk of the Party using or relying on the Model. A Party may rely on the Model Element only to the extent consistent with the minimum data required for the identified LOD, even if the content of a specific Model Element includes data that exceeds the minimum data required for the identified LOD.

§ 4.8 Model Management

§ 4.8.1 The requirements for managing the Model include the duties set forth in this Section 4.8. Unless assigned to another Project Participant, the Architect shall manage the Model from the inception of the Project. If the responsibility for Model management will be assigned to another Project Participant, or change at an identified Project milestone, indicate below the identity of the Project Participant who will assume that responsibility, and the Project milestone.

Responsible Project Participant

Project Milestone

[«Architect »](#)

[LOD 100 – 350](#)

[Construction Manager](#)

[LOD 400](#)

[Architect<=>](#)

[LOD 500](#)

§ 4.8.2 Model Management Protocol Establishment. The Project Participant responsible for managing the Model, in consultation with the other Project Participants that are expected to utilize Building Information Modeling on the Project, shall facilitate the establishment and revision of Model management protocols, including the following:

- .1 Model origin point, coordinate system, precision, file formats and units
- .2 Model file storage location(s)
- .3 Processes for transferring and accessing Model files
- .4 Naming conventions
- .5 Processes for aggregating Model files from varying software platforms
- .6 Model access rights
- .7 Identification of design coordination and clash detection procedures.
- .8 Model security requirements
- .9 Other: (Identify additional Model management protocols to be addressed.)

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§ 4.8.3 Ongoing Responsibilities. The Project Participant responsible for managing the Model shall do so consistent with the Model management protocols, which shall also include the following ongoing responsibilities:

- .1 Collect incoming Models:
 - .1 Coordinate submission and exchange of Models
 - .2 Create and maintain a log of Models received
 - .3 Review Model files for consistency with Sections 4.8.2.1 through 4.8.2.5
 - .4 Maintain a record copy of each Model file received
- .2 Aggregate Model files and make them available for Authorized Uses
- .3 Maintain Model Archives and backups consistent with the requirements of Section 4.8.4 below
- .4 Manage Model access rights
- .5 Other: *(Identify additional responsibilities.)*

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§ 4.8.4 Model Archives. The individual or entity responsible for Model management as set forth in this Section 4.8 shall compile a Model Archive at the end of each Project milestone and shall preserve it without alteration as a record of Model completion as of that Project milestone.

§ 4.8.4.1 Additional Model Archive requirements, if any, are as follows:

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§ 4.8.4.2 The procedures for storing and preserving the Model(s) upon final completion of the Project are as follows:

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§ 4.9 Post-Construction Model. The services associated with providing a Model for post-construction use shall only be required if specifically designated in the table below as a Party’s responsibility. *(Designate below any anticipated post-construction Model and related requirements, the Project Participant responsible for creating or adapting the Model to achieve such uses, and the location of a detailed description of the anticipated scope of services to create or adapt the Model as necessary to achieve such uses.)*

Post-Construction Model	Applicability to Project <i>(Applicable or Not Applicable)</i>	Responsible Project Participant	Location of Detailed Description of Requirements and Services <i>(Section 4.10 below or in an attachment to this exhibit and identified below)</i>
§ 4.9.1 Remodeling	Not Applicable		
§ 4.9.2 Wayfinding and Mapping	Not Applicable		
§ 4.9.3 Asset/FF & E Management	Applicable	Architect	
§ 4.9.4 Energy Management	Applicable	Architect	
§ 4.9.5 Space Management	Not Applicable		
§ 4.9.6 Maintenance Management	Not Applicable		

§ 4.10 Insert a detailed description of the requirements for each Post-Construction Model identified in Section 4.9 and the anticipated services necessary to create each Post-Construction Model, if not further described in an attachment to this Exhibit.

<< TBD >>

ARTICLE 5 OTHER TERMS AND CONDITIONS

Other terms and conditions related to the transmission and use of Digital Data are as follows:

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EXHIBIT M – SCHEDULING REQUIREMENTS

CM SCHEDULING REQUIREMENTS I

Capitol Region Education Council

Construction Division

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1. GENERAL

1.1 Project Schedules

- A. Prepare for approval a **CPM Project Schedule**, using the OPM System as specified herein. Show in the schedule the sequence in which the Construction Manager (CM) proposes to perform the work and dates on which the CM contemplates starting and completing all schedule activities. The scheduling of the entire project, including but not limited to all submittals, review and approvals, procurement, third party approvals/reviews and construction sequences, is required. The scheduling of construction design and construction is the responsibility of the Construction Manager's Project Manager (CMPM). CM management personnel shall actively participate in its development. Contractors, subcontractors and suppliers working on the project shall also contribute in developing and maintaining an accurate Project Schedule. Provide a schedule that is a forward planning as well as project monitoring tool.
- B. The Project Schedule will include Pre-Construction and Construction phases of work. All Contract Parties, including the Owner, the Owner's Project Controls Manager (OPCM), Owner's Project Manager (OPM), Architect (Arch), Construction Manager (CM) and Trade Contractors (Contractors), shall be engaged in the development and updating of the Project Schedules.
- C. Use the **Baseline Schedule** to measure the progress of the work and to aid in evaluation of time extensions. The Schedule shall be SOV loaded and resource loaded for Field Labor. In addition, each activity shall be organized in a Work Breakdown Structure format.
- D. Provide **Updates** to the Record Baseline Schedule on a weekly, bi-weekly and monthly basis. If, in the opinion of the OPM, the CM falls behind the approved schedule, take steps necessary to improve its progress including those that maybe required by the OPM, without additional cost to Owner. In this circumstance, the OPM may require the CMPM to increase the number of shifts, overtime operations, days of work, and/or the amount of construction plant, and to submit for approval any supplementary schedule or schedules as the OPM deems necessary to demonstrate how the approved rate of progress will be regained. The schedule will provide the basis and substantiation for all progress payments. If the CM fails to submit any schedule within the time prescribed, the OPM may withhold approval of progress payments until the CM submits the required schedule.
- E. Failure of the CM to comply with the requirements of the OPM shall be grounds for a determination, by the OPM, that the CM is not prosecuting the work with sufficient diligence to ensure completion within the time specified in the contract. Upon making this determination, the OPM may recommend the Owner terminate the CM

right to proceed with the work, or any separable part of it, in accordance with the default terms of the contract.

- F. Failure of the CM to meet the requirements of this specification will result in the disapproval of the schedule. The CM will work aggressively with the OPM / OPCM to meet these Schedule Requirements.

1.2 Owner's Project Management (OPM) System

- A. The OPM has a standardized integrated Schedule Management and Control Program for all projects in the Pre-Construction and Construction portfolio. This system enables collaborative scheduling amongst the Owner's Project Controls Manager (OPCM), Owner's Project Manager (OPM), Architect (Arch), Construction Manager (CM) and Trade Contractors (Contractors) as they work together towards a successful project completion.
- B. The OPM System is the web based project management system, **Oracle Primavera P6 Enterprise Project Portfolio Management (P6 EPPM)**. It will be used by the CM and Contractors to produce and update all Project Schedule submissions. This system may be referred to interchangeably as "OPM System" and "P6 EPPM".
- C. The OPM System is hosted by the OPCM / OPM. The CM and Contractors will be afforded the access rights to the System for the duration of the project. The system will be accessible via web browsers (Internet Explorer, Firefox, Chrome) or mobile devices (iPad, iPhone, Android). CM and Contractors will be required to purchase the necessary application licenses; as further presented in *Section 4*.
- D. Risks on attaining contractual completion dates remain challenging on schedule-driven projects. These risks are greatly reduced when Contract Parties communicate, frequently, openly, honestly and collaboratively when developing and executing their project plan. The OPM System facilitates these principles of effectiveness as all Contract Parties work to the common project goals.

1.3 Responsibilities

- A. Owner's Project Director (OPD): Responsible for Executive leadership and guidance of the OPCM and OPM; conducts oversight of the contractual and managerial obligations with the Construction Manager and Architect; attends the Quarterly Executive Sponsorship / Risk Management Meetings.
- B. Owner's Project Controls Manager (OPCM): Responsible for the interpretation and enforcement of this Requirement. Will provide and incorporate additional reports, codes and standards as required to maintain the intent of the OPM System. Is designated as the Owner's Primary Reviewer for most submittals contained within this requirement. A duly authorized representative of the OPCM is considered an equal substitute for the OPCM.

- C. Owner's Project Manager (OPM): In addition to responsibilities identified in the Contract Documents, the OPM is responsible for: conducting reviews of submittals as either the primary or secondary reviewer contained within this requirement; provide oversight and quality assurance of the Construction Manager's project execution.
- D. Construction Manager's Project Officer (CMPO): Responsible for Executive leadership and guidance of the CM / CMPM; conducts oversight of the contractual and managerial obligations to the Owner; attends and co-chairs the Quarterly Executive Sponsorship / Risk Management Meeting during the Construction Phase.
- E. Construction Manager's Project Manager (CM or CMPM): In addition to responsibilities identified in the Contract Documents, the CM is responsible for: the leadership, development and execution of the project schedule / plan and the overall completion of the project in accordance with this requirement and all contract documents; responsible for the thoroughness and quality of all Submittals contained in this requirement; responsible for collaboration and communication with Trade Contractors and Architect to ensure they are inclusive and instrumental in the development and submission of Project Schedules.

All CM project management and administrative personnel, to include the Project Manager, Project Engineers, and Superintendents, shall have a working knowledge of the Project Schedules and Schedule Requirements. They all shall be daily participants in the development and updating processes. They each shall have been trained and experienced in the use of the P6 EPPM System.

- F. Construction Manager's Project Scheduler (CMPS): Responsible for: the development and preparation of all submittals contained in this requirement; the communication and collaboration with Trade Contractors and Architect in obtaining their buy-off on planned activities and collection of the status of activities and resources; reviewing and obtaining buy-off from the CM Project Manager before submissions to the OPCM/OPM; responsible for maintaining the project scheduling data in the OPM System.
- G. Trade Contractors' Project Manager (Contractor or TCPM): In addition to responsibilities identified in the Contract Documents, the Contractor is responsible for: providing baseline and update schedule data to the CMPM/CMPS as specified in this requirement; be a proactive participant in the communication and collaboration daily / weekly on the execution of their scoped activities; maintain project scheduling data in the OPM System as directed by the Contract Documents or CMPM / CMPS.
- H. Architect's Project Officer (APO): Responsible for Executive leadership and guidance of the Architect / APM; conducts oversight of the contractual and managerial obligations to the Owner; attends and co-chairs the Quarterly Executive Sponsorship / Risk Management Meeting during the Pre-Construction Phase.
- I. Architect's PM (APM): In addition to responsibilities identified in the Contract Documents, the APM is responsible for: the coordination and collaboration of

designs, responses to RFI, and Submittals; providing baseline and update schedule data to the CPM/CMPS as specified in this requirement; be a proactive participant in the communication and collaboration weekly on the execution of their scoped activities; maintain project scheduling data in the OPM System as directed by the CPM or CMPS.

1.4 Project Scheduler Qualifications

The Construction Manager (CM) shall have in its employ (or hire a Consultant) for the specific purposes of this contract a Project Scheduler with the minimum qualifications:

- A. The CM Project Scheduler (**CMPS**) shall possess a minimum of five (5) years Scheduling experience
- B. Project Scheduler that have at least five (5) years K-12 School Construction Scheduling experience will rank higher in the selection process.
- C. Proficient in Oracle Primavera P6 Enterprise Project Portfolio Management (EPPM) release 8.2 or later.
- D. Proficient with Oracle Primavera P6 EPPM R8.2 or later in cost or price loading. Must be able to demonstrate based upon past work or project experience completed projects for which cost or price loading was required on a project value that exceeds \$20 million dollars.
- E. Proficient with Oracle Primavera P6 EPPM R8.2 or later in manpower resource loading. Must be able to demonstrate based upon past work or project experience completed projects for which resource loading was required on a project value that exceeds \$20 million dollars. Non-Labor resource loading shall not be required.
- F. Possess Oracle Primavera P6 EPPM (Web) Fundamentals R8.2 (or later) and Oracle Primavera P6 EPPM (Web) Advanced R8.2 (or later) training certificates or pre-approved equivalent.
- G. Scheduler Resume, Oracle University Primavera Training Certificates and Project list shall be submitted to the OPM for review and approval through the submittal process.
- H. The OPM reserves the right to reject the Construction Manager's proposed Scheduler if in OPM opinion, the proposed Scheduler will not meet the intent set forth by the Program.

2. MEETINGS AND SUBMITTALS

2.1 General

All requirements identified in Section 2 apply to Pre-Construction and Construction phases unless otherwise specified.

2.1.1 Meetings

- A. Contract Parties will chair, attend or participate in the specified Meetings as designated in the Attendees section.
- B. The designated Chair / Co-Chair for each meeting shall be responsible for providing enough hardcopy handouts for all Meeting Attendees.
- C. The designated Chair / Co-Chair shall be responsible for preparing and distributing Documentation of the Meeting within 2 work days after the meeting or work session in accordance with the requirements. Substitute reports require prior approval of the OPCM.

2.1.2 Submittals

- A. Project Schedule Submittals are to be prepared and submitted for use by the Owner, the OPCM, the OPM, the CMPM, the Contractors, the Architects and other Agencies collaborating on this project. Each of these submittals shall be prepared in accordance with this section and the *Detailed Requirements* specified in *Section 3*.
- B. All Schedule Reports required in the Submittals shall be generated from the Standard Dashboards, Views or Layouts contained in the P6 EPPM System. Activity filters, data columns, and bar chart settings, etc. will be standardized by the OPCM for use by the CM, CMPS, TCPM, and APM.
- C. All reports and submittals will be identified with a CM Submittal Number. A table of Submittals will be provided by the OPCM at the *OPM/CM Baseline Schedule Development Kick-Off Meeting* similar to the format provided below.

CM Scheduling Requirements Reports & Submittals List (Example)

Submittal No	Submittal Name	Frequency	Pdf Req'd	Primary Reviewer	Secondary Reviewer

- D. Any Schedule Report (View or Layout) included in the Submittals List identified as "pdf required" will be produced in Adobe Acrobat PDF file format; formatted to fit 11in x 17in Landscape size paper.
- E. Submittals shall be emailed "TO" the designated Primary Reviewer (p) and "CC" to the designated Secondary Reviewer (s).
- F. The Primary Reviewer shall have five (5) working days to respond to all original schedule submittals; and three (3) working days to respond to all resubmitted schedule submittals.

2.2 Baseline Schedules

2.2.1 General

Baseline Schedules will be prepared in the Pre-Construction and Construction phases of the project. The requirements in this Section 2.2 are repeated for Pre-Construction and Construction phases. The CM has the primary responsibility of developing the Baseline Schedule with the DIRECT input from the Architect and Sub-consultants (Pre-Construction Phase) and Trade Contractors Project Managers and Vendors (Construction Phase).

2.2.2 Meetings

- A. Baseline Schedule Development Kick-Off Meeting.
 1. When: Held within 5 business days of the Notice of Award or Notice to Proceed, whichever occurs first.
 2. Attendees: OPM, CMPM, CMPS, APM
 3. Attendees:
 - i. Pre-Construction Phase: OPCM (Chair), OPM, CMPM, CMPS, APM.
 - ii. Construction Phase: OPCM (Chair), OPM, CMPM, CMPS, CM Superintendent
 4. Purpose: To review the Schedule Requirements as they pertain to the development of the Submittals; to answer any questions the CM may have; to provide log-in access to the P6 EPPM System; to provide quick-start instructions on how to login and use the System.
- B. Baseline Schedule Development Work Sessions.
 1. When: Held weekly on an agreed upon date.
 2. Attendees: OPCM, OPM, CMPM, CMPS (Chair), APM
 3. Purpose: To present the progress of the development of the Baseline Schedule; to collaborate with the OPM and APM in the development of the plan; to identify any open business items or issues.
 4. Meeting Documentation: Baseline Development Notebook Entry, Project Issues and Project Risks entered into the P6 EPPM Project within 2 work days after meeting. Substitute reports require prior approval of the OPCM.
- C. Baseline Schedule Review (Initial and Record) Conferences.
 1. When: To be held within 5 business days after the Baseline Development achieves 100% complete.
 2. Attendees: OPCM, OPM, CMPM (Chair), CMPS, APM
 3. Purpose: To present the Baseline Plan for the detailed Pre-Construction or Construction schedule and the summary level Construction schedule; to obtain feedback and buy-off from the OPM and APM; to identify any open business items or issues.

4. Meeting Documentation: Baseline Development Notebook Entry, Project Issues and Project Risks entered into the P6 EPPM Project. Substitute reports require prior approval of the OPCM.

2.2.3 Initial Baseline Submittals

- A. Baseline Schedule Development “Schedule”
 1. Description: Provide a schedule of the steps in the Baseline Schedule development process in P6 EPPM System.
 2. Due: 1st Pre-Construction Baseline Schedule Development Work Session.
 3. Reviewers: OPCM (p), OPM (s)
- B. Standard **Work Breakdown Structure (WBS)** in the Template Project provided by the OPCM with required modifications.
- C. **Project Breakdown Structure (PBS)** in the designated P6 EPPM EPS Nodes provide by the OPCM. Prior approval required for any suggested modifications.
- D. Milestones Report
- E. All Activities Schedule Report
- F. Schedule Variance Report
- G. Critical Path Schedule Report
- H. Near Critical Activities Schedule Report
- I. Scheduling Calculation Log (provided after running the *Scheduler* function in P6 EPPM)
- J. Narrative Report. Content of the Narrative Report shall be provided by the OPCM at the OPM/CM Baseline Schedule Development Kick-Off Meeting.

2.2.4 Record Baseline Submittals

- A. Baseline Schedule Development “schedule” including the steps in the development process and scheduling of Baseline Schedule Development Work Sessions.
- B. Milestones Report
- C. All Activities Schedule Report
- D. Schedule Variance Report
- E. Critical Path Schedule Report
- F. Near Critical Activities Schedule Report
- G. Scheduling Calculation Log (provided after running the Scheduler function in P6 EPPM)
- H. All Resources Analysis Report or Profiles
- I. Critical Resources Analysis Report or Profiles
- J. Resource Leveling Log (provided after running the *Leveler* function in P6 EPPM)
- K. Narrative Report. Content of the Narrative Report shall be provided by the OPCM at the OPM/CM Baseline Schedule Development Kick-Off Meeting.

2.3 Update Schedules

Open, honest, candid and dynamic communication between contract parties is critical throughout the project. The Owner's Communication Plan includes four frequencies of communication and reporting, weekly, bi-weekly, monthly and quarterly, each further described in this section.

2.3.1 Weekly (Construction Phase Only)

This Weekly control and reporting requirement only applies to the Construction Phase.

A. Focus

1. Schedule Work Plan for each Contractor examining the One Week Look-Back and 3 Week Look-Ahead.
2. Field Labor Resourcing Plan for each Contractor examining the One Week Look-Back and 3 Week Look-Ahead.

B. General Requirements

1. Recording of Actual Start and Finish Dates in the P6 EPPM System.
2. Recording of the Actual Field Labor Head Count versus Planned for the previous week.
3. Distribution of 3 week schedule and resource plan (Field Labor Head Count).
4. Identification of any schedule or resource deviations between the Field Level Work Plan and the Bi-Weekly Update Schedule.
5. The P6 EPPM System will NOT be scheduled, leveled or re-calculated.
6. Detailed requirements can be found in *Section 3.4*.

C. CM / Contractor Coordination (CMCC) Meeting (Weekly)

1. When: Held weekly, during construction, on an agreed upon date. Held the day prior to the Bi-Weekly Project Controls (PC) Meeting.
2. Attendees (Construction Phase only): OPM (Optional Attendee), CMPM, CMPS (Co-Chair), CM Superintendent (Co-Chair), TCPMs
3. Purpose: Trade Contractor Project Managers will report out on the past week's progress and their 3 week look-ahead. CM and Contractors will work together to get an agreement on the work accomplished in the past week and a documented, hard plan for the next 3 weeks.
4. Meeting Documentation: Project Issues and Project Risks entered into the P6 EPPM Project within 2 work days after meeting.

D. Submittals

1. One Week Look-Back & 3 Week Look-Ahead
2. Schedule Variance Report (3 week window)
3. Resource Demand Profile / Spreadsheet for each Trade
4. Issues Report of any Negative Schedule Variance

2.3.2 Bi-Weekly

A. Focus

1. Past 2 week progress of schedule and resource as reported from the Update Schedule.
 2. Project Baseline versus Update Variance and Total Float of the Baseline **Interim Milestones.**
 3. Presentation and Assessment of Interim Milestone Completion Issues (Schedule, Resource, and Other) identified and recorded in the past 2 weeks.
- B. General Requirements
1. The P6 EPPM System will be actualized, scheduled and leveled on the Bi-Weekly Data Date.
 2. Recording of the Actual Field Labor Head Count versus Planned for the previous 2 weeks.
 3. The Data Date shall be 2 working days prior to the Bi-Weekly Meeting.
 4. Detailed requirements can be found in *Section 3.4.*
- C. Project Controls (PC) Meeting (Bi-Weekly)
1. When: Held Bi-Weekly the day after the CMCC Meeting. Expected duration 30 – 60 min.
 2. Attendees:
 - i. Pre-Construction Phase: OPM (Optional Attendee), CMPM (Co-Chair), CMPS (Co-Chair), APM and select Sub consultant PMs (as necessary)
 - ii. Construction Phase: OPM, CMPM (Co-Chair), CMPS (Co-Chair), CM Superintendent
 3. Purpose: In addition to discussing the Weekly Agenda, the Bi-Weekly agenda will present the status and progress of attaining the Interim Milestones.
 4. Meeting Documentation: Meeting Report, Project Issues and Project Risks entered into the P6 EPPM Project within 2 work days after meeting.
- D. Submittals
1. Milestones Report
 2. All Activities Schedule Report
 3. Schedule Variance Report
 4. Critical Path Schedule Report
 5. Near Critical Activities Schedule Report
 6. Scheduling Calculation Log (provided after running the Scheduler function in P6 EPPM)
 7. All Resources Analysis Report or Profiles
 8. Critical Resources Analysis Report or Profiles
 9. Resource Leveling Log (provided after running the Leveler function in P6 EPPM)

10. Narrative Report. Content of the Narrative Report shall be provided by the OPCM at the OPM/CM Baseline Schedule Development Kick-Off Meeting.
11. Issues Report of all Schedule and Resource Issues.

2.3.3 Monthly

A. Focus

1. Inclusive of all Focus items in the Bi-Weekly Update Schedule in addition to the additional following items.
2. Schedule Status of the Baseline **Project Milestones** from the most current Bi-Weekly Update Schedule.
3. Presentation, Review and Buy-Off of Change Fragments incorporated into the Integrated Update Schedule from the past month.
4. Discussion of Resolution Options of Milestone Completion Risks, Schedule Issues, and Resource Issues identified in the past 4 weeks.
5. Detailed requirements can be found in *Section 3.4*.

B. Change Management (CM) Meeting (Monthly)

1. When: Held monthly after the scheduled Bi-Weekly Meeting. Expected duration 1 – 2 hours after the Bi-Weekly Agenda.
2. Attendees:
 - i. Pre-Construction Phase: OPCM (Optional Attendee), OPM, CMPM (Co-Chair), CMPS (Co-Chair), APM and select Sub consultant PMs (as necessary).
 - ii. Construction Phase: OPCM (Optional Attendee), OPM, CMPM (Co-Chair), CMPS (Co-Chair), APM (as required).
3. Purpose: In addition to discussing the Weekly Agenda, the Bi-Weekly agenda will present the status and progress of attaining the Interim Milestones.
4. Meeting Documentation: Meeting Report, Project Issues and Project Risks entered into the P6 EPPM Project within 2 work days after meeting.

C. Submittals

1. Milestones Report
2. All Activities Schedule Report
3. Schedule Variance Report
4. Critical Path Schedule Report
5. Near Critical Activities Schedule Report
6. Scheduling Calculation Log (provided after running the Scheduler function in P6 EPPM)
7. All Resources Analysis Report or Profiles
8. Critical Resources Analysis Report or Profiles
9. Resource Leveling Log (provided after running the Leveler function in P6 EPPM)
10. Narrative Report. Content of the Narrative Report shall be provided by the OPCM at the OPM/CM Baseline Schedule Development Kick-Off Meeting.
11. Issues Report of all Schedule and Resource Issues.

12. Executive Status Report (Sample list of sections)
 - i. Executive Summary Narrative.
 - ii. Current Status: Key / Driving Resource Headcount
 - iii. Current Status: Contract Milestones
 - iv. Period Performance
 - v. Critical / Near Critical Paths
 - vi. Preliminary Findings of Delays
 - vii. Recovery / Acceleration Plans with Assumptions

2.3.4 Quarterly

A. Focus

1. Inclusive of all Focus items in the Monthly Update Schedule in addition to the additional following items.
2. Schedule Status of the Baseline **Project Milestones** from the most current Bi-Weekly Update Schedule.
3. Discussion of Resolution Options of Milestone Completion Risks, Schedule Issues, and Resource Issues identified in the past quarter.
4. Detailed requirements can be found in *Section 3.4*.

B. Executive Sponsorship / Risk Management (ESRM) (Quarterly Meeting)

1. When: Held quarterly after the scheduled Monthly Meeting. Expected duration 1 – 2 hours after the Monthly Agenda.
2. Attendees:
 - i. Pre-Construction Phase: OPD, OPCM, OPM, CMPM, CMPS, APO (Co-Chair), APM (Co-Chair).
 - ii. Construction Phase: OPD, OPCM, OPM, CMPO (Co-Chair), CMPM (Co-Chair), CMPS, APM (as required).
3. Purpose: Identify Risks and work on resolutions to Risks and Issues.
4. Meeting Documentation: Meeting Report, Project Issues and Project Risks entered into the P6 EPPM Project within 2 work days after meeting.

3. DETAILED REQUIREMENTS

3.1 General

3.1.1 Critical Path Method

- A. Use the **Critical Path Method** (CPM) of network calculation to generate the Project Schedule. Prepare the Project Schedule using the Precedence Diagram Method (PDM).
- B. The **Critical Path** shall be defined as the longest path with a Total Float of positive or 0 float.
- C. **Ownership of Float.** Float available in the schedule, at any time, shall be considered for the exclusive use of either the OPM or the CM.

3.1.2 Schedules' Life Cycle

- A. The schedules' life cycle shall extend from NTP date to the required contract completion date.
- B. The contract completion activity (Project Complete) shall finish based on the required contract duration in the accepted contract proposal, as adjusted for any approved contract time extensions.
- C. The first scheduled work period shall be the day after NTP is received by the Contractor.
- D. The schedule shall start no earlier than the date on which the NTP was acknowledged. Include as the first activity in the project schedule an activity called "NTP". The "NTP" activity shall have an Early Start constraint date equal to the date that the NTP was acknowledged, and zero day duration. Constraint shall be a 'Start On' constraint.
- E. The last activity shall have a late finish constraint equal to the **Contract Completion Date** and the schedule will calculate sufficient positive float to allow for contingency time in the overall schedule.

3.1.3 Project Breakdown Structure (PBS)

- A. A separate Project Id / Project Name will be designated for each Contract Party (Architect, CM, and individual Trade Contractors) within the Project's parent **Enterprise Project Structure** (EPS) node. Each Project will be unique to each Contract Party and shall not contain multiple Contract Parties. This will allow for efficient filtering and security of project data between Contract Parties.
- B. Projects will be integrated together by using the inter-project relationship capabilities within the P6 EPPM system thus providing the ability to establish relationship ties between separate projects. Each Contractor / Trade package shall be integrated through a series of "touchpoints", creating an integrated project schedule.
- C. Standard PBS included in the OPM System include the following P6 EPPM projects.
 - 1. Milestones
 - 2. CM General Conditions
 - 3. Submittals / Procurement

The CM will be required to create 2 Project Ids / Names for each Trade Contractor, one for Pre-Construction activities and another for Construction activities.

3.1.4 Work Breakdown Structure (WBS)

- A. A Template WBS will be provided in the P6 EPPM System by the OPCM. This WBS will be utilized on all of the Architect / Contractor / Trade packages.
- B. The CM will have the opportunity to suggest and make revisions to the WBS based on receiving prior authorization from the OPCM.
- C. The WBS will contain standard elements for:
 - 1. Milestones

2. TouchPoints
 3. General Conditions
 4. Stored Material
 5. Site Prep
 6. Site Finishes
 7. Commissioning
 8. Punchlist & Closeout
- D. Other WBS elements will provided for building areas, locations, floors, etc.; specific to the building layout for the project.
- E. All Additional / Extra Work Scope of Work will be contained in added, uniquely identified WBS elements. Each WBS Element will have a WBS ID and Name consist with the Change Document Number and Name (i.e. RFI #, PCO #, PR #)

3.1.5 Milestones / Activity Constraints

- A. The OPCM will create **Interim and Final Completion Milestone** activities contained within the standard *Milestone* Project. These Milestones shall be used in the development of the Project Schedule by the CM and Contractors.
- B. Milestone activities will be created for significant project event including but not limited to: construction phases; design complete; foundation/substructure construction complete; superstructure construction complete; building dry-in or enclosure complete to allow the initiation of finish activities; permanent power complete; and building systems commissioning complete.
- C. The OPCM will assign **Constraint Dates** to applicable Milestone activities which have Contractual Completion Dates as stipulated in Contract Documents or other Contractual Directives issued to the CM. Typically, a "Finish On or Before" constraint date will be applied.
- D. The Project Schedules shall have no constrained dates other than those specified by the OPCM. The use of **artificial float constraints** such as "zero free float", "as late as possible" or "zero total float" are typically prohibited. Use of these constraints will require prior approval by the OPM before incorporation into the Project Schedule.

3.1.6 Open Ended Activities / Float Suppression

- A. There shall only be 2 **open ended activities** in all Project Schedules: Start Project (or NTP) with no predecessor relationship and End Project with no successor relationship.
- B. The CM shall not use any **Float Suppression** techniques to include but not limited to: inflating original durations, periodic changes to original durations without substantiation, and calendars with weather days.

3.1.7 Level of Detail

Develop the Project Schedule to a **Level of Detail** that results in the identification of discrete critical and near-critical paths. Failure to develop the Project Schedule to an appropriate level of detail, as determined by the OPM, will result in its disapproval. The OPM will consider, but is not limited to, the following characteristics and requirements to determine appropriate level of detail:

- A. Reasonable **Activity Durations** are those that allow the progress of ongoing activities to be accurately determined between update periods. The maximum duration allowed per activity shall not exceed 20 working days. Procurement activities are defined herein.
- B. Include **Design and Permit Activities** with the necessary conferences and follow up actions and design package submission dates. Include the design schedule in the project schedule, showing the sequence of events involved in carrying out the project design tasks within the specific contract period. This shall be at a detailed level of scheduling sufficient to identify all major design tasks, including those that control the flow of work. The schedule shall include review and correction periods associated with each item.
- C. The schedule must include **Procurement Activities** associated with the submittal, approval, procurement, fabrication and delivery of long lead materials, equipment, fabricated assemblies and supplies. Long lead procurement activities are those with an anticipated procurement sequence of over 90 calendar days. A typical procurement sequence includes the string of activities: prepare & submit, review & approve, procure, fabricate, and deliver. The Monthly Progress Updates must include the Review & Approve revision cycle for all rejected submittals.
- D. **Other Required Activities** that are to be included and properly scheduled:
 1. Submission, review and acceptance of design packages
 2. Submission of mechanical/electrical/information systems layout drawings
 3. Submission and approval of O&M manuals
 4. Submission and approval of as-built drawings
 5. Submission and approval of testing and air balance (TAB)
 6. Submission and TAB specialist design review report
 7. Submission and approval of fire protection specialist
 8. Submission and approval of HVAC testing and balancing and Building Commissioning Plan, test data and reports: Prepare a schedule with integrated logic systems. The schedule shall be at a level of detail which identifies activities and integrates specific activity durations and interdependencies of tasks related to all building testing and commissioning of systems. The logic shall be tied to the overall building testing and commissioning will be completed prior to submission of building commissioning report and subsequent contract completion.
 9. Air and water balancing

10. HVAC Commissioning
 11. Controls testing plan submission
 12. Controls testing
 13. Performance Verification testing
 14. Other systems testing, if required
 15. Contractor's pre-final inspection
 16. Correction of punch list from Contractor's pre-final inspection
 17. Correction of punch list from pre-final inspection
 18. Final Inspection
- E. Show **Owner, State of Connecticut** and **other Stakeholder activities** that could impact progress. These activities include, but are not limited to: approvals, design review, environmental permit approvals by State regulators and Municipalities, inspections, utility tie-in, Owner Furnished Equipment (FF&E) and Notice to Proceed (NTP) for phasing requirements.

3.1.8 Activity Calendars

- A. All Schedule activities shall be assigned an **Activity Calendar** to which the activity logically belongs.
- B. Activities may be assigned to a 7 day calendar when the contract assigns calendar day durations for the activity such as an Owner Reviews / Approvals, Submittals, and Procurement activities.
- C. If the CM intends to perform physical work less than seven days per week, schedule the associated activities on a calendar with non-work periods identifies including weekends and holidays.
- D. Assign the Category of Work Code – Weather Sensitive Installation to those activities that are weather sensitive.
- E. Original durations must account for anticipated normal adversus weather. The OPM will interpret all work periods not identified as no-work periods on each calendar as meaning the CM intends to perform work during those periods.
- F. Work may be performed on Owner holidays if approved by OPM. Those days may be counted towards recovery or acceleration.
- G. Activity Calendars provided in the OPM System (P6 EPPM) shall be used.

3.1.9 Activity Coding

Activity coding requirements may be adjusted by the OPCM as dictated by the Scope of Work and Work Breakdown Structure. These considerations will be discussed at the Baseline Development Kick-Off Meeting.

- A. Assign **Responsibility Code** for all activities to the CM, Contractors, design team or Owner agent responsible for performing the activity. Code all activities not coded with an Owner's agent responsibility Code to the CM or Contractor responsible to

perform the work. Activities shall not have more than one Responsibility code. Responsibility Code Values provided in the OPM System (P6 EPPM) shall be used.

- B. Assign **Work Area Code** to activities based upon the work area in which the activity occurs. Define work areas based on resource constraints or space constraints that would preclude a resource, such as a particular trade or craft work crew, from working in more than one work area at a time due to restraints on resources or space. Examples of Work Area Coding include different areas within a floor of a building, different floors within a building, and different buildings within a complex of buildings. Activities shall not have more than one Work Area Code. Not all activities are required to be Work Area coded. A lack of Work Area coding will indicate the activity is not resource or space constrained. Work Area Code Values provided in the OPM System (P6 EPPM) shall be used.
- C. Assign **Phase of Work Code** to all activities based upon the phase of work in which the activity occurs. Code activities to either a Design Phase or a Construction Phase. If the contract specifies construction phasing with separately defined performance periods, identify a Construction Phase Code to allow filtering and organizing the schedule accordingly. Each activity shall be identified with a single project phase and have only one Phase of Work code. Phase of Work Area Code Values provided in the OPM System (P6 EPPM) shall be used.
- D. Assign **Category of Work Code** to all Activities based upon the category of work to which the activity belongs. Category of Work Code must include, but is not limited to: design submittal, design reviews, review conferences, permits, construction submittals, construction submittal approvals, Acceptance, Procurement, Fabrication, Delivery, Weather Sensitive Installation, Non-Weather Sensitive Installation, Start Up, Test and Turnover. Assign a Category of Work Code to each activity. Each activity shall have only one Category of Work Code. Category of Work Area Code Values provided in the OPM System (P6 EPPM) shall be used.

3.1.10 Resource Coding and Loading

- A. The nature of schedule driven GMP projects requires the use of all project assets to accomplish projects on time and on budget. Resource planning, control and management is a critical asset to attain the project stakeholder's goals. The Owner has enabled a Resource Management System in this requirement to provide the OPM and CMPM with the "3rd dimension" of Resource Demand versus Capacity.
- B. Resources are used in the system for **Price** (dollars) and **Field Labor** (labor hours and head count).
 - 1. *Price* resources include *Bid Price (IGMP, GMP), Allowance, and Change.*
 - 2. *Field Labor* resources include each of the occupations / trades utilized on the project. Examples include Electrician, Carpenter (Finish), Carpenter (Sheetrocker), Laborer (Plaster Tender), Laborer (Common).

3. *Equipment* resource loading of critical equipment will be determined by the OPCM at the Schedule Development Kick-Off Meeting or by the OPM during the course of the project if the Risks dictate.
 4. The use of these resources are included in specific Project Schedule sections below (Baseline, Update, etc.)
- C. Unique and secure Resource IDs and Names are provided for each CM and project in the OPM System (P6 EPPM).
 - D. All Duration Types for activities will be *Fixed Duration and Units* unless otherwise specific herein or directed by the OPCM.

3.1.11 Schedule Logic and Relationships

- A. Negative Lag values on activity relationships are not allowed.
- B. Positive lags shall not be used unless approved by the OPM.
- C. Start to Finish (SF) relationships are not allowed.
- D. Only Physical Relationships will be incorporated into the schedule logic. Discretionary Relationships, to include resource logic, crew sequence logics, etc, will not be acceptable. Resource leveling will accomplish the prioritizing of resources to work activities and act as the discretionary logic ties.

3.1.12 Project Scheduling Options

All schedule calculations shall have the following settings in the General section unless otherwise specified. P6 EPPM *Scheduler* feature will be used.

Select project scheduling options

Ignore relationships to and from other projects

Make open-ended activities critical

Use Expected Finish Dates

Level resources during scheduling

Recalculate assignment costs after scheduling

When scheduling progressed activities use

Retained Logic Progress Override Actual Dates

Calculate Start-to-Start lag from

Early Start Actual Start

Define critical activities as:

Total Float less than or equal to

Longest Path

Calculate float based on finish date of

Each Project Opened Projects

Compute Total Float as ▼

Calendar for scheduling Relationship Lag ▼

3.1.13 Resource Leveling

- A. All Project Schedules will required to be leveled for all Field Labor on the project using the *Leveler* feature in P6 EPPM.
- B. Leveling will occur after the Project Schedule has been Scheduled using the *Scheduler* feature in P6 EPPM.
- C. All Leveling will have the Leveling Priorities of *Activity Leveling Priority* (Descending) then *Late Start* (Ascending). The Activity Leveling Priorities (Top, High, Normal, Low, Lowest) may be adjusted for activities on an as-need basis; and shall be identified in documentation included on all project schedule reports to the OPM. The default priority is *Normal*.
- D. Leveling will be conducted using 2 scenarios.
 - 1. Resource Driven and Leveled: Determines the latest date the project is calculated to be completed using the Field Labor assigned to the project.
 - 2. Schedule Driven and Resource Leveled: Determines the Field Labor required to maintain the Contractual Completion date.

3.1.14 Other Standards

Any data, coding or settings standards that are not included in this requirement shall be provided for in the P6 EPPM System by the OPCM and utilized by the CM and Contractors in the development of all Project Schedules and Submittals.

3.2 Pre-Construction Baseline Schedule

The requirements in this section are included for all Work included in the scope of work of Pre-Construction services. The Pre-Construction Baseline is used to control the design development process and estimate the construction time and effort.

All requirements in Section 3.3 will apply to the Pre-Construction Phase with the exception that Trade Contractors are not yet part of the process.

3.2.1 General

- A. Estimate **Resources - Field Labor** to all Activities. This will allow for the estimating of labor hours and costs for use in the development of the Construction Cost Estimate.
- B. By Package by Geo.
- C. Architect will provide a Work Breakdown Structure of activities broken out into Design Development phases and Design Disciplines. (i.e. Schematic Mechanical, etc.)
- D. Architect to provide activity durations and Prof Labor Hours
- E. Interim Milestones for Design Development.

3.3 Construction Baseline Schedule

3.3.1 General

- A. The OPCM will provide the CM with a **Baseline Development Charter** at the *Baseline Schedule Development Kick-Off Meeting* held between the OPM and CM. This

Charter provides the expectations and steps required of each Contractor in the development of the Baseline Schedule. Each responsible manager from the Contractor and the CM's Project Manager will be required to sign the Charter; of which a copy is to be submitted with each Monthly Report.

- B. Assign and load the dollar value for the **Bid Price** and **Allowances Resources** to all activities to match the approved Schedule of Values Line Item (SVLI) to which the activity belongs. The maximum amount of the price assigned to an activity shall be \$100,000. An activity shall not contain more than one Resource – Bid Price Code or Resource – Allowance code. Submittal, Review and Approve and Procurement items shall not be price loaded unless approved by the OPCM.
- C. Assign **Resources - Field Labor** to all Activities using the Resource IDs for Occupations / Trades provided in the P6 EPPM Resource Dictionary.
 - 1. Each Contractors' on-site activity contained in the project schedule shall be assigned one or more Resource – Field Labor.
 - 2. For each Field Labor, the Contractor shall provide the *Planned Maximum Headcount* and the *Available Capacity Headcount*.
 - i. *Planned Maximum Headcount*: Maximum number of full time tradespersons planned for the project.
 - ii. *Available Capacity Headcount*: Maximum number of tradespersons available. This figure would be higher than the *Planned Maximum*.
 - 3. The limits in the Resource dictionary will be entered for the *Planned Maximum Headcount* in hours / day (i.e. 1 person = 8 hrs/day, 2 persons = 16 hrs/day) in the *Max Units/Time* field in the *Units and Prices* tab.
- D. The Baseline Schedule shall be developed in the following Steps.
 - 1. Submittals and Procurement
 - 2. Activities List and Bid Price (Schedule of Values)
 - 3. Activity Assignment to include Calendars, Original Duration, Resource Assignment and Loading, Activity Coding
 - 4. Schedule Logic and Touch Points.
 - 5. CM & Contractor Baseline Plan Review and Buy-Off

3.3.2 Initial

- A. The Initial Baseline Schedule shall contain the schedule for all Trade Packages that are precedent to the Weather Tight milestone.
- B. All WBS elements and activities will include all 5 Steps of the Baseline Development process.

3.3.3 Original Record

- A. Balance of the Contract through Subst Completion
- B. Risk Register

1. Each Contractor shall provide a list of potential risks in the form of a “Risk Register” prior to the *Baseline Plan Review Conference*. This list will be reviewed and discussed at the Conference. Example risks include “material manufacturing delays”, “permit delays”, “site access restricted for 2 weeks”, etc.
 2. The Risk Register shall be in the form of a table and include the following for each risk:
 - i. Risk No.
 - ii. Risk Name
 - iii. Activities that would be impacted
 - iv. Probability of Occurring using the scale: VH, H, M, L, VL.
 - v. Schedule Impact using the scale: VH, H, M, L, VL.
 - vi. Cost Impact using the scale: VH, H, M, L, VL.
- C. Early Project Completion.
1. In the event the Complete Baseline Schedule submitted for Record calculates an early completion date of the last activity prior to the contract completion date, the CM shall identify those activities that it intends to accelerate and/or those activities that are scheduled in parallel to support the CM’s “early” completion.
 2. The OPM will not approve an early completion schedule with zero float on the longest path. The OPM is under no obligation to accelerate activities for which it is responsible to support a proposed early contract completion.

3.3.4 Revised Record

- A. The *Record Baseline Schedule* will NOT be maintained with Directed Changes (Owner), Elective Changes (CM), Accelerated Plans (Compensable Delays), or Recovery Plans (Non-Compensable Delays).
- B. An Approved Update Schedule that incorporates any critical changes made since the Record Baseline Schedule or latest Revised Baseline Schedule will be designated the **Revised Baseline Schedule** by the OPCM.
- C. The Revised Baseline Schedule will be designated by the OPCM / OPM as the Project Baseline (BL Project) in the P6 EPPM for the P6 project(s).
- D. The Project Baseline (Revised Baseline Schedule) will be utilized for all performance measurements and project metrics.

3.4 Schedule Updates

3.4.1 General

- A. The Project Schedule shall be updated at the frequencies of Weekly, Bi-Weekly, and Monthly, each with a defined update window and required reporting.
- B. The OPCM will provide the CM with a **Schedule Update Charter** at the *Baseline Plan Review Conference* held between the OPM and CM. This Charter provides the

expectations and steps required of each Contractor in the conduct of their Weekly Updates. Each responsible manager from the Contractor and the CM's Project Manager will be required to sign the Charter; of which a copy is to be submitted with each Monthly Report. The OPCM will also conduct a tutoring session on the use of the P6 EPPM Team Member Web mobile application at the *Baseline Plan Review Conference*.

C. Schedule Calculation Methods

1. Use of *Update Progress* and/or *Apply Actuals* features in P6 EPPM are disallowed. Automatically **updating Actual Start and Actual Finish** dates using these default mechanisms provide an inaccurate and untrustworthy record of activities accomplished. Activity Actual Start (AS) and Actual Finish (AF) dates assigned during the updating process shall match those dates provided by Contractor reports and/or Three-Week Look-Ahead Reports. Failure of the Contractor to document the AS and AF dates for every in-progress or completed activity shall result in the disapproval of the Contractor's updated schedule and the inability of the OPM to evaluate the CM and Contractor's progress for payment purposes.
2. Updating of the **percent complete and the remaining duration** of any activity shall be independent functions. Disable program features which calculate one of these parameters from the other.
3. Activities that have progressed before all preceding logic has been satisfied is known as **Out-of-Sequence Progress (OOS)**. OOS will be allowed only on a case-by-case basis subject to approval by the OPM. Propose logic corrections to eliminate all out of sequence progress or justify not changing the sequencing for approval prior to submitting a Project Schedule Update. Correct out of sequence progress that continues for more than two update cycles by logic revision, and as approved by the OPM.

3.4.2 Weekly (3 Week Snapshot)

- A. This update is conducted at the Field Level by the Contractors every week, on a date agreed upon with the OPM. It includes an update of activity and labor progress along with an examination of the 3 week look-ahead plan for schedule and labor.
- B. The Weekly Schedule Update will be a Three-Week Look-Ahead Report of each Active Trade Contractor projects.
- C. Each Trade Contractor will be responsible to:
 1. Enter the Actual Start and/or Actual Finish dates for the past week.
 2. Provide Actual Headcounts for the past week.
 3. Make adjustments to the remaining 3 weeks in the look-ahead report to include modifying planned start and planned finish dates, remaining durations
 4. Make adjustments to the Planned Headcounts for the remaining 2 weeks.

- D. Methods of conducting the Weekly Updates include:
 - 1. Tablet / iPad update using P6 Team Member App.
 - 2. Excel spreadsheet format.
 - 3. Hardcopy form printed from P6 EPPM.
- E. The CMPS will NOT schedule, level or re-calculate the CPM Schedule in the P6 EPPM System.

3.4.3 Bi-Weekly (Interim Milestone Snapshot)

- A. Produce an Update Schedule that is actualized, scheduled and leveled on the Bi-Weekly Data Date.
- B. Conduct a comparison of the Weekly Plan against the CPM calculated early and late dates in the P6 EPPM System. Make activity schedule adjustments in the P6 EPPM to ensure the System coincides with the 3 Week Look-Ahead plan from the Contractors.
- C. Conduct a Comparative Analysis of the Interim Milestone dates against the current Record Baseline Schedule. Any Interim Milestone with a negative early finish variance AND a TF value of less than 14 calendar days shall be classified as a *Milestone Completion Risk*. All *Milestone Completion Risks* shall be logged into the P6 EPPM System as a *Risk* including the following: Type, Status, Owner, Probability Rating, Schedule Impact Rating, Cost Impact Rating, Response Plan, Impacted Activities, Description of Risk, Cause, Effect, and Additional Notes.
- D. Conduct a Schedule Activity Comparative Analysis of all *Driving* Activities against the current Record Baseline Schedule. A *Driving Activity* is identified as an activity that has either has all of its predecessors completed and is not yet started OR is currently in progress. Any *Driving Activity* with a negative early finish variance AND a TF value of less than 14 calendar days shall be classified as a *Schedule Issue*. All *Schedule Issues* shall be logged into the P6 EPPM System as an *Issue* with an explanation of the cause and a recommended solution to the issue.
- E. Conduct a Field Labor Resource Profile Comparative Analysis of the current Record Baseline Planned versus Actual. Any *Field Labor Resource Profile* with an over-allocation of 25% or greater of its Maximum Limit using the early dates shall be classified as a *Resource Issue*. All *Resource Issues* shall be logged into the P6 EPPM System as an *Issue* with an explanation of the cause and a recommended solution to the issue.
- F. Schedule Revisions are NOT allowed beyond the window of Data Date plus 4 weeks, including but not limited to:
 - 1. Adding or deleting Activities.
 - 2. Revising Activity Calendar or Original Durations.
 - 3. Adding, deleting, or revising Relationships and Lags.
 - 4. CM Elective changes necessary to maintain Intermediate Milestones.

3.4.4 Monthly (Project Milestone Snapshot)

- A. Revise the limits in the Resource dictionary for any adjustments to the *Planned Maximum Headcount* in the *Max Units/Time* field in the *Units and Prices* tab.
- B. Assign **Contract Change Code** to any activity or sequence of activities added to the schedule as a result of a Contract Modification (Change Order), when approved by the OPM, with a Contract Change Code. Any activity or sequence of activities added to the schedule as a result of alleged constructive changes made by the Owner may be added to a copy of the current schedule, subject to the approval of the OPM. Key the code values to the CM's PCO numbering system. Approval to add these activities does not necessarily mean that the Owner accepts responsibility and, therefore, liability for such activities and any associated impacts to the schedule, but rather the Owner recognizes such activities are appropriately added to the schedule for the purposes of maintaining a realistic and meaningful schedule. Such activities shall not be Responsibility Coded to the Owner unless approved by OPM. An activity shall not have more than one Contract Change Code. The Contract Change Code shall identify the Potential Change Order Number (PCO). Each activity in the Change Event Fragnet shall contain the proper Contract Change Code. The Price resource shall be defined in the Resource Dictionary by PCO numbers with the Resource defined as 'Material' and the unit of measure defined as Lump Sum. Add the Contract Change Code Values to the Contract Change Code dictionary provided in the OPM System (P6 EPPM).
- C. **Basis for Payment and Cost Loading.** Use schedule as the basis for determining contract earnings during each update period and therefore the amount of each progress payment. Lack of an approved schedule update, or qualified scheduling personnel, will result in the inability of the OPM to evaluate contract earned value for the purposes of payment. Failure of the CM to provide all required information will result in the disapproval of the preliminary, initial and subsequent scheduling updates. In the event schedule revisions are directed by the OPM, and those revisions have not been included in subsequent revisions or updates, the OPM may hold retainers up to the maximum allowed by contract, each payment period, until such revisions to the Project Schedule have been made. Activity cost loading shall be reasonable, as determined by the OPM. The aggregate value of all activities coded to a contract Schedule of Values shall equal the value of the Line Item in the approved Schedule of Values.
- D. Each Monthly Schedule Update will be stored as a Baseline, using the P6 EPPM **Baselining** function, after each submission.

3.5 Directed Changes

- A. All Owner Changes will require a Schedule Network to be added to the unique P6 EPPM Project identified for incorporating Proposed Changes to the Project Schedule.

- B. All Owner Changes will be each be contained in uniquely identified WBS elements as further detailed in the requirements for WBS above.

4. OPM'S SYSTEM (ORACLE PRIMAVERA P6 EPPM)

4.1 General

The license cost will be in the general conditions.

EPPM Application User License: 5 min (2 reserved for the OPCM/OPM)

TM Web Application User License: 10 min

A copy of purchase Invoice and Oracle proof of purchase with Customer Support Identifier (CSI) number shall be provided 14 calendar days before the scheduling of the Pre-Construction Baseline Schedule Development Meeting.

4.2 Access

The OPCM will provide Users with the following:

- A. URL
- B. User Name and Temporary Password
- C. Access Rights to the Project specific data

4.3 Support

The OPCM will provide all Users with the necessary support to maintain a working and functional system.

4.4 Standards

The following elements will be standardized by the OPCM in the P6 EPPM System:

- A. Enterprise Project Structure (EPS)
- B. Project IDs and Names
- C. Template Project
- D. Project Codes and Values
- E. Activity Codes and Values (Global and EPS)
- F. Resource IDs and Names

4.5 Project Data File Backup

- A. The OPCM will provide the ability to the CM to obtain backup of the project files for each Project Schedule submittal including the Pre-Construction Baseline, the Construction Baseline and the Monthly Updates.
- B. Backups will be provided using the *Primavera XML* Export Type. Primavera XER formats will only be considered with prior approval of the OPCM.

EXHIBIT N – CREC EQUITY PROGRAM

The CREC Equity Program will be released through an addendum.