



# AIA® Document A201® – 2017

## General Conditions of the Contract for Construction

**for the following PROJECT:**

*(Name and location or address)*

**COCALICO MIDDLE SCHOOL RENOVATIONS**

650 South 6<sup>th</sup> Street  
Denver, PA 17517-1199

**THE OWNER:**

*(Name, legal status and address)*

**COCALICO SCHOOL DISTRICT**

800 South 4<sup>th</sup> Street  
Denver, PA 17517

**THE ARCHITECT:**

*(Name, legal status and address)*

**AEM ARCHITECTS, INC.**

3700 Perkiomen Avenue  
Reading, PA 19606

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

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

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the ~~Agreement, Conditions of the Contract (General, Supplementary Instructions to Bidders, Sample Forms, the Contractor's Executed Bid Form and Bid Bond, the Performance and Payment Bonds, the Agreement, Conditions of the Contract (General and other Conditions),~~ Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, ~~Instructions to Bidders, sample forms, and~~ other information furnished by the Owner in anticipation of receiving bids or proposals, ~~the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements-proposals.~~ The Contract Documents shall apply to all Prime Contracts and each Prime Contractor shall be responsible for the Content of them all.

#### § 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.

§ 1.1.3.1 Nothing in this Contract shall be interpreted as imposing on either the Owner or Architect, or their respective agents, employees, officers, directors or consultants, any duty, obligation or authority with respect to any items that are not intended to be incorporated into the completed Project, or that do not comprise the Work, including, but not limited to, the following: shoring; scaffolding; hoists; weatherproofing; or any temporary facility; or activity; since these are the sole responsibility of each Contractor.

#### § 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.

§ 1.1.5.1 The Drawings are diagrammatical and show the general arrangement and extent of the Work; exact locations and arrangements of operating systems shall be determined as the Work progresses and shall be subject to the Architect's approval. No extra compensation will be allowed due to conflicts, inconsistencies, or discrepancies between actual dimensions and those indicated. The right is reserved by the Architect to make any reasonable change in location of equipment, ductwork and piping, prior to roughing in without involving additional expense. Each Prime Contractor shall coordinate its Work with the Work of others, so that interference between mechanical and electrical work and architectural and structural work does not occur. Each Prime Contractor shall furnish and install offsets, bends, turns, and the like in connection with its Work to avoid interference with Work of other Prime Contractors, to conceal Work where required, and to secure necessary clearance and access for operation and maintenance.

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### § 1.1.6 The Specifications

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

### § 1.1.7 Instruments of Service

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

### § 1.1.8 Initial Decision Maker

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

## § 1.2 Correlation and Intent of the Contract Documents

~~§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. Invalidation of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.~~

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

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

~~If a minor change in the Work is found necessary due to actual field conditions, each Contractor shall submit detailed drawings of such departure for approval by the Architect before making the change.~~

~~§ 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. In the event of conflicts, inconsistencies or discrepancies between the Contract Documents and applicable standards, codes, laws, ordinances, regulations and/or requirements of any state, federal or any other governmental agency, the Contractor shall: (1) provide the better quality or greater quantity of Work or (2) comply with the more stringent requirement or both, at no additional cost, in accordance with the Architect's interpretation. The terms and conditions of this Section, however, shall not relieve the Contractor of any of the obligations set forth in Sections 3.2 and 3.7 and their Subparagraphs.~~

~~§ 1.2.4 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:~~

- ~~1. The Agreement.~~
- ~~2. Addenda, with those of later date having precedence over those of earlier date.~~
- ~~3. The General Conditions of the Contract for Construction, including revisions.~~
- ~~4. Division 01 and Multiple Contract Summary Section 01 12 00.~~
- ~~5. Drawings and Specifications.~~

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In the case of a conflict, inconsistency or discrepancy between Drawings and Specifications or within either document not clarified by Addendum, the better quality or greater quantity of Work shall be provided in accordance with Architect's interpretation, at no additional cost.

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

§ 1.2.6 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.

§ 1.2.7 The Drawings and Specifications, as a part of the Contract Documents, are for the purpose of illustrating and describing the general character and extent of the work; and are intended to agree and be mutually explanatory. Further, it is the intention that these instruments of the Contract shall be complete in their meaning, and shall represent completeness in design as well as any portion thereof. It is the intent and purpose of the Specifications and Drawings to cover and include each item of material, machinery, apparatus, equipment, labor and services necessary to properly install, equip, adjust and put into perfect operation the respective portions of the installations specified, and to so interconnect the various items or sections of the work as to form a complete and operating whole, and deliver the Work in the specified time. Any apparatus, machinery, material, equipment, labor and services not specifically mentioned which may be found necessary to complete or perfect any portion of the construction in a substantial manner, and in compliance with the requirements stated, implied or intended in the Contract Documents, shall be furnished without extra cost to the Owner. This shall include all material, devices or methods peculiar to the type of construction furnished and installed by the Contractor.

§ 1.2.8 If the Contractor, in the course of the work, finds any discrepancy between the Drawings and the physical conditions of the locality, or any errors in Drawings or in the layout as given by the points and instruction, the Contractor shall immediately inform the Architect in writing, and the Architect, with reasonable promptness, shall verify the same. Any work done after such discovery, until authorized, shall be done at the Contractor's risk.

§ 1.2.9 Drawings may show work fully drawn out, or only a portion thereof, the remainder being in outline. The drawn out portion shall be understood as applying to other like or similar places. Ornament, carving, materials, or other similar items, where indicated on Drawings by a starting only of the detail, shall be considered as being repeated or continued through the area, courses or parts in which the drawings, furring or other approved methods of obtaining such finished surface shall be provided.

§ 1.2.10 In case of discrepancy between the Drawings and Specifications, such conflict shall be promptly referred to the Architect for review, direction, interpretation, and final decision.

§ 1.2.11 In multiple prime construction, where the Contract Documents duplicate the same work or materials under more than one contract or subcontract, such duplication shall be settled by the Architect in writing upon request of a concerned Contractor prior to submission of a Bid. Any such duplication which may exist in documents after Bids are received will be interpreted by the Architect as having duplicate values in the several contracts or subcontracts and proper credit to the Owner, therefore shall be made by the affected Contractor(s) as the Architect shall designate.

§ 1.2.12 Work shown diagrammatically on Drawings shall be agreed upon for exact location before being installed. Where work of various trades is in close proximity, each Contractor shall confer with other Contractors concerned before making installation. Work installed in an arbitrary manner without regard for work of other Contractors will be rejected where an undesirable condition or a hardship for others results.

§ 1.2.13 Certain terms used in Contract Documents are defined in this Section. Definitions and explanations of this Section are not necessarily either complete or exclusive, but are general for the Work to the extent they are not stated more explicitly in other provisions of the Contract Documents. These terms are:

1.2.13.1 Relocate: The term "relocate" shall mean "move from the existing location to the new location installed complete and ready for use" for all items noted on the Drawings and/or indicated in the Specifications.

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1.2.13.2 Coordinate: The term "coordinate" means to cooperate with related trades to furnish and install all connections between the trades in correct sequence, size, and location to create a complete system ready for the intended use.

1.2.13.3 Verify: The term "verify" means to measure, investigate, review, test, and check the accuracy or correctness of and prove by demonstration, evidence, or testimony, the location, size, dimension, and condition of an item.

1.2.13.4 Regulations: The term "Regulations" includes, without limitation, laws, statutes, ordinances and lawful orders issued by authorities having jurisdiction, as well as rules, conventions and agreements within the construction industry that control performance of the Work.

1.2.13.5 "Dispute": The term "Dispute" means any disagreement between two parties to the Contract Documents, including, without limitation, a disagreement relating to the obligations of the Contractors under the Contract Documents, a disagreement relating to the interpretation of the Contract Documents or any disagreement arising out of or relating to the Contract Documents.

1.2.13.6 "Agreement" and "Contract" may be used interchangeably.

### § 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 and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

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

### § 1.6 Notice

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

The term "Notice" as used in the Contract Documents shall mean Written Notice. Notice to a Contractor shall be effective upon (a) actual receipt of an email by the intended recipient, (b) in-person delivery to the intended recipient, (c) delivery by overnight courier service or any other means to the intended recipient at the intended recipient's place of business, or (d) depositing the notice in the U.S. Mail by any means to the intended recipient at the intended recipient's place of business.

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

§ 1.6.1.2 Written Notice shall be deemed to have been served the Owner if delivered in person or sent by Registered or Certified Mail to the following:

1. Dr. Ella Musser, Superintendent  
COCALICO SCHOOL DISTRICT  
800 South Fourth Street  
Denver, PA 17517-1199

2. With a copy to the School District's Solicitor:  
Jeffrey D. Litts, Esq.  
SAXTON & STUMP, LLC  
280 Granite Run Drive, Suite 300  
Lancaster, PA 17601

### **§ 1.7 Digital Data Use and Transmission**

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. ~~The parties will use AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data form, unless otherwise already provided in the Agreement or Contract Documents.~~

### ~~§ 1.8 Building Information Models Use and Reliance~~

~~Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™ 2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.~~

## **ARTICLE 2 OWNER**

### **§ 2.1 General**

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

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

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

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

~~**§ 2.2.2** Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require;~~

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

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

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

§ 2.1.1.1 The designation Owner in the Contract Documents shall refer to the Cocalico School District, 800 South Fourth Street, Denver, PA 17517-1199.

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

~~§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. The Contractor represents that it is familiar with the Project site and has received all information it needs concerning the condition of the Project site. The Contractor represents that it has inspected the location of the Work and has satisfied itself as to the condition thereof, including, without limitation, all structural, surface and reasonably ascertainable subsurface conditions.~~

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

~~§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and may employ a successor whose status under the Contract Documents shall be that of the Architect.~~

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

~~§ 2.3.4.1 The Owner will furnish all land and right-of-way necessary for the carrying out of the Agreement and the completion of the work therein contemplated.~~

~~§ 2.3.4.2 The Contractor shall confirm the location of all utilities on the site prior to the commencement of any work on site. To the extent required for the execution of the Work, the Contractor shall provide all temporary or permanent connections, terminations, removal or alterations of the utility services to the site. Individual responsibilities of the separate Prime Contractors are delineated further in the Specifications.~~

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

~~§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. Contractors have been furnished with a full set of Contract Documents in electronic format for bidding and construction purposes. If any Contractor wishes to purchase hard copies of the Contract Documents, they will be provided by the Architect only after receipt of payment in the amount established in the Advertisement for Bids and/or the Instructions to Bidders.~~

#### § 2.4 Owner's Right to Stop the Work

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

§ 2.4.1 This right shall be in addition to and not in restriction or derogation of the Owner's rights under Article 14 hereof. The Owner's right to stop the work shall not relieve the Contractor of any of its responsibilities and obligations under or pursuant to the Contract Documents.

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

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ~~ten-day~~ seven-day calendar period after receipt of notice from the Owner to commence ~~and and/or~~ continue correction of such ~~default or neglect deficiency(s), default, neglect, or failure,~~ with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such ~~default or neglect deficiency(s), default, neglect, or failure.~~ Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, ~~including Owner's expenses default or neglect, including Owner's expenses, including, without limitation, legal fees and compensation for the Architect's additional services and expenses and its respective Consultants' additional services and expenses made necessary by such deficiency(s), default, neglect, or failure.~~ If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.5.1 The right of the Owner to carry out the Work pursuant to this Section 2.5 shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor, another Prime Contractor, or any other person or entity. Nothing in this Section shall obligate the Owner to carry out the work for the benefit of any Contractor, person or entity. The Owner's rights set forth in Sections 2.4 and 2.5 shall be in addition to all other rights of the Owner granted in the Contract Documents, at law, or in equity.

#### § 2.6 Limitation of Responsibility

§ 2.6.1 In no event shall the Owner and Architect have control over, charge of, or any responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents. Hence, the Owner and Contractor hereby acknowledge and agree that the Owner has retained the Contractor as an independent contractor to perform the Work on the Project. It is expressly understood and agreed that the presence on the jobsite of the Owner's visiting officers or employees, the Owner, Architect or supervisory personnel employed by Owner and the making by such personnel of any observations of the Contractor's Work, materials, tools or equipment, or inspections of the finished Work of the Contractor and approval of same, or failure to take exception thereto, shall in no way relieve the Contractor from its absolute responsibility to perform its Work and furnish its materials in accordance with the requirements of the Contract Documents. It is further understood that under no circumstances shall the Contractor urge, for any purpose whatsoever, that the presence of the Owner, Architect, any supervisory personnel, and visiting officers or employees of the Owner or Architect and any failure by such personnel to take

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exception to any Work of the Contractor, constitute a ratification or approval of the Work or work methods employed by the Contractor if the same did not in fact comply with the requirements of the Contract Documents.

### 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 as~~ required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

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

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

§ 3.1.4 Prime Contractor: Contractor that has entered into a direct contract agreement for construction activities with the Owner, as defined in the Instructions to Bidders. Further, any reference in the Drawings and Specifications (Contract Documents) to Contractor refers to Prime Contract (Contractor).

#### § 3.2 Review of Contract Documents and Field Conditions by Contractor

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

§3.2.1.1 The submission of a Bid by the Contractor is evidence that such an examination has been made and later claims for labor, equipment or materials required, or for difficulties encountered that could have been foreseen if an examination had been made, will not be recognized.

~~§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. Project site affecting the Work. Any errors, inconsistencies, omissions, or variations of any kind noted by a Contractor shall be reported immediately to the Architect. Any work performed involving such errors, inconsistencies, omissions, or variations in the Contract Documents due to the Contractor's failure to verify any such location or dimensions shall be promptly rectified by the Contractor without any additional cost to the Owner. The Contractor shall satisfy itself as to the accuracy of all dimensions and locations and the interconnection of its Work with existing or other Work. By submission of a Bid, the Contractor acknowledges that the Contract Documents are full and complete, are sufficient to have enabled it to determine the Contract Sum and that the Drawings, the Specifications and all Addenda are sufficient to enable the Contractor to construct the Work outlined therein in accordance with applicable laws, statutes, ordinances, codes, building codes and regulations of any state, federal or any other governmental agency, and otherwise to fulfill all of its obligations under the Contract Documents. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.~~

§ 3.2.2.1 Except as to any reported error, inconsistencies or omissions, and to concealed or unknown conditions defined in Section 3.7.4 by executing the Contract, the Contractor represents the following:

§ 3.2.2.1.1 The Contract Documents are sufficiently complete and detailed for the Contractor to: (1) perform the Work required and to produce the results intended by the Contract Documents; and (2) comply with all requirements of the Contract Documents.

§ 3.2.2.1.2 The Work required by the Contract Documents, including, without limitation, all construction details, construction means, methods, procedures, and techniques necessary to perform the Work, use of materials, selection of equipment, and requirements of product manufacturers are consistent with: (1) good and sound practices within the construction industry; (2) generally prevailing and accepted industry standards applicable to Work; (3) requirements of any warranties applicable to the Work; and (4) all laws, ordinances, regulations, rules, orders, codes and building codes of any state, federal or any other governmental agency having jurisdiction over each Contractor's performance of the Work.

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

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

### § 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§3.3.1.1 At any time during the performance of the Work, the Owner shall have the right and authority to require replacement of any of the Contractor's supervisory personnel, including but not limited to, the Project Manager, Superintendent or Foreman.

§ 3.3.1.2 The Owner shall have the right and authority but not the duty to direct the Contractor to assign additional supervisory personnel to insure compliance with the project schedule and quality requirements of the Contract at no additional cost to the Contract Sum. The Contractor shall not change or replace the assigned Project Manager or Superintendent without prior written consent of the Owner so long as they remain in the Contractor's employ.

§ 3.3.1.2.1 When more than one major phase is being constructed at different locations on the project site, the Contractor shall provide supervision for each phase as it is being performed. When performing construction activities to maintain progress of the Work requires extended hours, multiple shifts and/or additional work days, adequate supervision shall be provided by each Contractor during these times. The competence level and ability of supervisory personnel shall be adequate to perform required construction activities.

§ 3.3.1.2.2 Although the additional supervisory personnel may be reassigned during the course of the Work, each Contractor shall retain one superintendent with full responsibility while performing the Work.

§ 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.

§ 3.3.2.1 Contractors whose failure to perform their work or whose negligence in performing their work impacts other Prime Contractors shall be responsible for costs or damages incurred by the other Contractors that are necessary to maintain the Project Schedule.

§ 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 schedule of any work affecting existing installations or facilities shall be coordinated with the Owner and Architect. At no time shall any work or operations leading to work defined in the Contract Documents interfere in any way with the Owner's day-to-day activities, service of power, light, heat, water, telephone, utilities, etc., which must be maintained. Shutdown of utilities or equipment affecting existing operations are not permitted except as provided herein. Any premium time or additional cost to comply with these requirements shall be at the expense of the Contractor and considered to be included in their bid. No shutdowns, except by special permission, shall be scheduled between 5:00 a.m. and 6:00 p.m. All required shutdowns require prior written approval of the Owner.

§ 3.3.5 In multiple prime contract construction, each Contractor shall be responsible for intermeshing of other contracts and its own work, so that no part will be left in an unfinished condition owing to disagreement among Contractors as to where the work of one begins and ends with reference to the work of another. Each Contractor shall deliver a fully completed project to the Owner.

§ 3.3.6 No alleged verbal agreement or conversation with any officer, agent or employee of the Architect, Architect's Consultants, or Owner, either before or after the execution of the Contract, shall affect or modify the terms or obligations herein contained. Failure to comply with any of these requirements will not relieve the Contractor from the responsibility of properly estimating the difficulty or cost of successful completion of the work, nor from the responsibility for faithful performance of the provisions of this Contract. Modifications or changes shall be made in writing and agreed to be incorporated by both parties. This requirement may not be waived.

### § 3.4 Labor and Materials

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

§ 3.4.1.1 The Contractor shall not deviate from any specified kind, quality, size, design, performance, brand or manufacturer without the Architect's written approval.

§ 3.4.1.2 Any material specified by reference to the number, symbol or title of a specified standard, such as a Commercial Standard, a Federal Specification, a trade association standard or other similar standard, shall comply with the requirements in the latest revision thereof, and any amendment or supplement thereto in effect on the date of submission of Proposal, except as limited to type, class or grade, or modified in such reference. The standards referred to, except as modified in the Specifications, shall have full force and effect as though printed in full in the Specification.

§ 3.4.1.3 The specific mention of a manufacturer's name, brand of material, equipment, etc., shall be considered as indicating a standard of quality, grade or type desired. Materials of manufacturers other than those mentioned throughout these specifications may be accepted if they are equal in quality and performance to those specified and written approval is given by the Architect. Substitution procedures are further defined in the "Instructions to Bidders" and Division 01 Section "Product Requirements".

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

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

§ 3.4.3.1 Contractors' personnel shall not make any remarks to any students or Owner's personnel that violate decency or cause embarrassment to that individual or the Owner. Failure to comply with this will result in dismissal from the Project.

§ 3.4.3.2 The Contractor shall abide by the following requirements:

- a. Contractor's employees shall not socialize with students, faculty, staff, visitors or patrons.
- b. Smoking and other use of tobacco is prohibited in buildings and on the grounds owned by or under the control of the Owner. The Contractors and their employees are similarly prohibited from using tobacco of any kind in the buildings, on the site and on all property owned by the Owner. This prohibition also includes the use of e-cigarettes, vaping and the like.
- c. Use of radios on the site for music or entertainment purposes is not permitted.
- d. Workers shall not possess or consume alcoholic beverages when on site.
- e. Use of any illegal substances (i.e., alcohol, drugs, etc.) is expressly prohibited.

Failure to comply with requirements "a" through "e" above may result in the Owner requesting the offending party to be removed from the project and not allowed to return.

§ 3.4.3.3 The Contractor shall remove from the Work such employees of the Contractor or of any subcontractor as the Owner or Architect requests be removed, with or without a reason. Contractor shall require the employees of the Contractor and of all subcontractors to comply with Owner's rules and regulations.

§ 3.4.4 The equipment and procedures used on portions of the work shall be such that no damage to adjacent property or roadways will result from their use. No work of any kind shall be installed or stored in a manner which will endanger the structure of the building.

§ 3.4.5 All products on this Project shall be asbestos-free. If any suspected asbestos-containing or hazardous material is installed, the Owner has the right to have the material in question tested and if proven to contain asbestos, or be a health hazard, the Contractor shall remove all material in question and replace it with new acceptable material at no additional cost to the Owner and shall pay for all costs associated with testing of the suspected material.

§ 3.4.6 Material Shipments: The Contractor in making or ordering shipments shall not consign or have consigned materials, equipment or any other items in the name of the Architect, or the Owner. Neither the Architect or the Owner shall be under any obligation to make payment for charges on shipments made by or to the Contractor.

§ 3.4.7 Labor to be Employed: The Contractor shall not employ workers, means, materials or equipment which may cause strikes, work stoppages or any disturbances by workmen employed by the Contractor or the Owner or other Contractors or Subcontractors in connection with the Work of the Project or the location thereof. The Contractor agrees that all disputes as to jurisdiction of trades shall be adjusted in accordance with any plan for the settlement of jurisdictional disputes which may be in effect either nationally or in the locality in which the Work is being done and that it shall be bound and abide by all such adjustments and settlements of jurisdictional disputes, provided that the provisions of this Article shall not be in violation of or in conflict with any provisions of law applicable to the settlement of such disputes. Should the Contractor fail to carry out or comply with any of the foregoing provision, the Owner shall have the right, in addition to any other rights and remedies provided by the Contract Documents or by law, after three (3) days' notice mailed or delivered to the last known address of the Contractor, for all or any portion of the Work, and, for the purpose of completing the Work, to enter upon the Premises and take possession, in the same manner, to the same extent and upon the same terms and conditions as set forth in Article 14.2 of the General

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§ 3.4.8 Overtime: Any work necessary to be performed after regular working hours, on Saturday, Sunday or Legal Holidays, shall be performed without additional expense to the Owner (see Section 3.3.4).

§ 3.4.9 Should extra time, in any form, such as shift work, overtime, premium time or weekend work become necessary to meet contractual deadlines regardless of trade, costs for the same shall be included in the bid. The Contractor's failure to include costs in its bid for extra time shall not relieve them from utilizing shift work, overtime, premium time, or weekend work in the performance of its Contract responsibilities nor entitle them to additional compensation.

§ 3.4.10 Contract Sum Not Adjusted for Rising Costs: Notwithstanding any other provision in the Contract Documents to the contrary, each Contractor's Contract Sum is intended to include all increases in cost, foreseen or unforeseen, including, without limitation, increases in costs arising from supply shortages, unusual delay in deliveries, increases in market prices for materials, labor, taxes and/or other causes beyond the Owner's control, all of which are to be borne solely by the applicable Contractor supplying the materials and/or labor to the Project. All loss and/or damage arising from any of the Work performed under this Agreement through unforeseen or unusual obstructions, difficulties or delays which may be encountered in the prosecution of same shall be borne solely by the applicable Contractor prosecuting 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 of good quality and free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

**§ 3.5.3** The Contractor hereby guarantees the Work to the full extent provided in the Drawings, Specifications, General Conditions, and other Contract Documents.

**§ 3.5.4** The Contractor shall remove, replace and/or repair at its own expense and at the convenience of the Owner any faulty, defective or improper work, material or equipment discovered at any time during construction or after Project completion.

**§ 3.5.4.1** Without limitation by the foregoing, the Contractor shall pay in addition for all damage to the Project resulting from defects in the Work and all costs and expenses necessary to correct, remove, replace and/or repair the Work and any other work or property which may be damaged in correcting, removing, replacing or repairing the Work, as well as any consequential damages the Owner may suffer.

**§ 3.6 Taxes**

~~The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.~~  
**§ 3.6.1** 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** The Contractor hereby accepts and assumes full and exclusive liability for payment of all sales taxes, state and municipal taxes including, without limitation, business privilege taxes, use taxes, and all contributions and payroll taxes under the provisions of State or Federal law, including, without limitation, the laws of the Commonwealth of Pennsylvania, and Social Security Acts, as to all employees engaged in the performance of the Work subject to this

Agreement, and further agrees to meet all requirements that may be specified under regulations of government officials having jurisdiction over the Work. All sales taxes, state and municipal taxes, business privilege taxes and use taxes are expressly included within the compensation owed to the Contractor under the terms of this Agreement. It is further agreed that the Owner shall have the right to deduct the amount of any and all such taxes from the compensation owed to the Contractor under the terms of this Agreement at any time, in the Owner's sole discretion, as the Owner deems advisable, it being agreed that the Owner shall have the right to deduct any and all such moneys from the next payments due under this Agreement and from the retained percentages.

§ 3.6.3 The Contractor hereby accepts and assumes full and exclusive liability for and shall indemnify, protect and save harmless the Architect and Owner from and against the payment of:

- .1 All contributions, taxes or premiums (including, without limitation, interest and penalties thereon) which may be payable under any unemployment insurance laws of any state, the Older Workers Benefit Protection Act of 1990 (OWBPA) (P.L. 101-433, October 16, 1990, 104 Stat. 978), as amended from time to time, the Federal Social Security Act, as amended from time to time, Federal, State, County and/or Municipal tax withholding laws, or any other laws, measured upon the payroll of or required to be withheld from employees, by whomever employed, engaged in the Work,
- .2 All sales, use, personal property and other taxes (including, without limitation, interest and penalties thereon) required by any Federal, State, County, Municipal or any other laws to be paid or collected by the Contractor or any of its Subcontractors or vendors or any other person acting for, through or under it or any of them by reason of the performance of the Work or the acquisition, ownership, furnishing or use of any materials, equipment, supplies, labor, services or other items for or in connection with the Work,
- .3 All pension, welfare, vacation, annuity and other union benefit contributions payable under or in connection with labor agreements with respect to all persons, by whomsoever employed, engaged in the Work,
- .4 In the event that any law is or has been passed, or any rule or regulation pursuant thereof is enacted, which requires the Owner to pay, either directly or indirectly, the amount of any such sales, use, personal property and other taxes (including, without limitation, interest and penalties thereon) required by any Federal, State, County, Municipal or any other laws or should any such law, rule or regulation direct the Owner to collect the same, or make the Owner liable for the collection thereof, or make the Owner responsible therefor, it is covenanted and agreed that the Contractor shall fully and completely make all payments therefor, and shall fully and completely indemnify and save the Owner harmless from any and all such taxes.

§ 3.6.4 The Contractor shall base its Bid on the properly charged, collected and remitted sales tax due on only those "construction activities" which are presumed to become a permanent part of the real estate in accordance with 61 Pa. Code Section 31.11, et seq., as amended from time to time. The Contractor shall not include in its Bid any tax for "sales activities" which do not become a permanent part of the real estate in accordance with 61 Pa. Code Section 31.11, et seq., as amended from time to time. For all such "sales activities" the Contractor will receive an appropriate executed blanket exemption certificate from the Owner.

§ 3.6.5 The Contractor shall keep detailed records of all materials, equipment and labor furnished in connection with the Work and shall keep such full and detailed accounts as may be necessary for the proper financial management under this Agreement and the system utilized by the Contractor shall be satisfactory to the Owner. The Owner or its representative shall be afforded access to the Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, certifications and similar data relating to this Agreement. Further, the Owner or its representative shall have the authority, but not the obligation, to require the Contractor to provide the Owner with certified payroll records for the labor furnished by the Contractor in connection with the Work.

§ 3.6.5.1 The Contractor shall preserve all such records for a period of three (3) years, or for such longer period as may be required by law, after final payment. To the extent requested by Owner, copies of such records will be provided by the Contractor. Also, the Contractor shall immediately transmit to the Owner copies of all invoices and receipts for materials, equipment and labor furnished in connection with the Work by the Contractor and any other materials that reflect sales and use tax paid or not paid.

§ 3.6.6 If any sales or use tax exemption is available for the Project, the Owner agrees to provide the Contractor with the necessary certification to obtain any such tax exemption. The Contractor agrees to assign and transfer to the Owner all of its rights to sales and use tax which may be refunded as a result of a claim for refund for materials and/or equipment purchased for the Project. The Contractor further agrees that it will not file a claim for refund for any sales or use tax which is the subject of this assignment. This assignment will include, without limitation, any tax erroneously paid by the Contractor. Further, the Contractor agrees to execute all such documents as may be necessary to effectuate such an assignment.

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

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

§ 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.

§ 3.7.2.3 The Contractor at all times shall observe and comply with all Federal and State Laws and local ordinances and regulations in any manner affecting the conduct of Work and all such orders or decrees as exist at present and those which may be enacted later by bodies or tribunals having jurisdiction or authority over the Work and shall indemnify and hold harmless the Owner and all his officers, agents and servants against any claim or liability arising from or based on the violation of any such law, ordinance, regulations, order or decree, whether by itself or its employees.

§ 3.7.2.4 Each and every provision of law and clause required by law to be inserted in this Contract shall be deemed to be inserted herein and the Contract shall be read and enforced as though it were included herein, and if through mistake or otherwise such provision is not inserted, or is not correctly inserted, then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion.

§ 3.7.3 If the Contractor-Contractor, or any of its Subcontractors or Sub-subcontractors, performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

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

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

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

### § 3.8 Allowances

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

§ 3.8.1.1 Cash allowances are prohibited.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

### § 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. At the request of the Architect or Owner, the Contractor's superintendent shall attend project meetings, whether the project meetings are prior to the start of the Contractor's work or subsequent to the completion of the Contractor's work.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, within fifteen (15) days of issuance of the Notice to Proceed, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. The proposed superintendent's resume shall include at least three (3) recent projects of similar size and scope, with the names and telephone numbers of Owner and Architect representatives for each project. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

§ 3.9.4 The superintendent shall be on site full time and shall not be changed except with the consent of the Owner and Architect, unless the superintendent proves to be unsatisfactory to the Contractor and ceases to be in the Contractor's employ. If the Contractor should at any time fail to provide adequate supervision and superintendence, as may be evidenced by incomplete or non-conforming work, the Owner may provide supervision and superintendence and the cost thereof, including compensation for additional professional services, shall be charged to the Contractor in the form of a Change Order incorporating an appropriate reduction in the Contract Sum. If the payments due the Contractor are not sufficient to cover such amount, Contractor shall pay the difference to the Owner.

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

§ 3.10.1 The Contractor, promptly after being awarded the Contract, within ten (10) days of issuance of the Notice to Proceed, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the expeditious and orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

~~§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, within fifteen (15) days of issuance of the Notice to Proceed, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. The Contractor shall thereafter maintain a current submittal schedule at all times.~~

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

~~§ 3.10.4 In multiple prime contract construction, the General Contractor shall receive initial and progress schedules from all other Prime Contractors, correlate the information, and prepare a single construction schedule encompassing all Contracts; which schedule shall be signed by each Prime Contractor as being correct and as being the official schedule upon which delivery and performance of the Work will be based.~~

~~§ 3.10.5 Each Contractor shall cooperate and consult with the other Prime Contractors during the Work of this Project. Contractor shall schedule and execute its work to avoid delay to other Contractors. The Contractor shall be financially responsible for undue delay they caused to other Prime Contractors on the project. The Contractor shall defend and hold harmless the Owner and Architect for any claims, losses or delays of any kind whatsoever made by other Contractors arising from delays caused by the Contractor.~~

~~§ 3.10.6 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operations of other Contractors or of the Owner's premises or any of the Owner's operations. The Contractor shall, upon the Owner's request, schedule any portion of the Work affecting other Contractors or the operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling, or performance of the Work under this Section may be grounds for an extension of the Contract Time, if permitted under Section 8.3.~~

~~§ 3.10.7 Progress payments to the Contractor shall not occur until the Contractor has met the requirements of schedule information stated in Section 3.10 and the Contract Documents.~~

~~§ 3.10.8 Failure of Contractor to fully comply with requirements of Section 3.10, and the other Contract Documents regarding scheduling shall constitute default by Contractor of its obligations, sufficient for termination of the Contract.~~

### **§ 3.11 Documents and Samples at the Site**

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

### **§ 3.12 Shop Drawings, Product Data and Samples**

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

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

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

**§ 3.12.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in

the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

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

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

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

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

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

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

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

§ 3.12.11 Shop Drawings, Product Data, and Samples shall be submitted in quantity and procedure as directed by the Architect. In multiple prime contract construction, it shall be the responsibility of each Contractor to prepare and furnish to other Contractors engaged on the project, copies of Shop Drawings as may be required by such other Contractors for the proper installation of its work. Failure of the Contractor to furnish such information shall make it responsible for any other expenses incurred in carrying out the provisions of such other related contracts.

§ 3.12.12 Under no circumstances shall the Architect or Engineer's review of any shop drawing be construed as an approval of extra cost or time for any work shown thereon. Any claim for extra cost shall be made as specified before the time of submitting Shop Drawings.

§ 3.12.13 All expenses incurred in delivering, transporting, packing, collecting, etc., of samples of materials or equipment shall be paid by the Contractor, whether samples are delivered to the Project, to the Architect or to the laboratory. The cost of testing and mill inspection of all material required to be furnished under this contract shall be borne by the Contractor. Any sample destroyed in the course of testing cannot be returned to the Contractor. Certain approved material, such as hardware, valves, fittings, fire alarm signals, in good condition and not subject to destructive tests, may be used in the Work by the Contractor. This material to be the last of its particular kind to be incorporated in the building, may not be removed from the Architect's office until just previous to its use. Any material delivered to the Project will be compared with the approved sample on file in the Architect's office and if necessary, an additional test shall be made on this material.

§ 3.12.14 To better facilitate the Shop Drawings process, copies of the contract drawings will be made available in electronic format to all Prime Contractors subject to the following provisions:

.1 The data contained in any and all electronic files is copyright protected by the Architect and shall be used solely for the facilitation of the Shop Drawing process on this Project only. Any other use that is not consistent with this intended use is strictly prohibited. Any misuse will be punishable to the fullest extent of the law.

.2 Electronic media will only be made available to Prime Contractors. Direct requests from Subcontractors will not be honored. The Contractors shall bear the responsibility and cost of distribution to their Subcontractors, if desired. Requests shall be made in writing directly to the Architect and shall indicate the list of drawings requested (indicate by drawing number). Drawings will be provided in AutoCAD.dwg format via appropriate electronic media.

The Architect will then calculate the cost of compiling the request and issue a total price to the Prime Contractor. **Payment, by the Prime Contractor, must be received in full prior to the Architect preparing and releasing any electronic files.** Checks shall be made payable to AEM Architects, Inc.

.3 The cost of electronic files is hereby established as follows:

Discipline	Drawings Included	Cost
Architectural	A-3, A-6 through A6D	\$500
Plumbing	P-A1 through P-C2	\$500
Fire Protection	FP-1	\$250
HVAC	H-A1 through H-C3	\$500
Electrical	E-A1 through E-C4	\$650

.4 The Contractor shall thoroughly check all information and details of the drawings and be satisfied that all information and details are correct. Information concerning existing conditions, if applicable, shall be thoroughly field checked and verified. Incorrect information and details shall immediately be called to the attention of the Architect. **Please note that Addenda Information will not be included on the electronic**

files. The Prime Contractor shall be responsible for incorporating all pertinent Addenda information.

.5 The Owner, Architect, and Architect's Consultants shall not be held responsible for any cost or other liabilities resulting from the use of electronic files or the failure of the Prime Contractor to detect errors and omissions concerning matters within its contractual responsibility through the use of said electronic files. The Contractor shall indemnify and hold harmless, to the fullest extent permitted by law, the Owner, Architect, and Architect's Consultants, its directors, officers, agents, and employees from and against any and all claims, damages, losses and expenses, including attorney's fees arising out of the modification, misinterpretation, or misuse of the electronic files, and for any and all errors or omissions alleged to have arisen out of the use of any electronic files.

.6 Nothing herein contained shall be construed as constituting a guarantee, warranty or assurance, either expressed or implied, by any party, that the electronic files will yield or accomplish the Contractor's desired outcome.

### **§ 3.13 Use of Site**

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

§ 3.13.1 If requested by Owner, Contractor shall move materials from one location on Owner's property to another, at the sole expense of Contractor, except that expense shall be borne by Owner when Owner requires that materials be moved from a location on Owner's property previously assigned to Contractor by Owner. No advertising signs of any nature shall be placed at or near the site, without the written consent of Owner. Owner may make use of any portion of the Work for which a Certificate of Substantial Completion has been accepted in writing by Owner and Contractor.

§ 3.13.2 The work shall be conducted so as not to impede traffic nor obstruct any thoroughfare or access to property, and so as not to interfere with the work of other Contractors except as authorized by the Architect or Owner in writing. Construction traffic shall be as directed by the Owner to minimize interference with its operations. All deliveries shall be scheduled and coordinated around hours directed by the Owner.

§ 3.13.3 Parking: Employees of the contractor shall park their automobiles on Owner's property at locations directed by the Owner.

### **§ 3.14 Cutting and Patching**

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

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

### **§ 3.15 Cleaning Up**

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. The Contractor shall clean Work areas daily and should the occasion arise that the Owner or Architect must direct the Contractor to clean an area, the Contractor shall do so within twenty-four (24) hours. If Contractor fails to clean up specific area within the allotted time, the Owner may do so immediately and the cost thereof shall be charged to the Contractor. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

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

### § 3.16 Access to Work

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

### § 3.17 Royalties, Patents and Copyrights

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

### § 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, legal fees and other costs, 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 but only to the extent caused, in whole, or in part, by the acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. The Contractor agrees to and does hereby assume on behalf of the Owner and Architect the defense of any action at law or in equity which may be brought against such indemnities, upon their demand, the amount of any judgment that may be entered against such indemnities in any such action. In the event that any such claim, loss, cost, expense, liability, damage or injury arises or is made, asserted, threatened against the Owner for which the Contractor or its insurer does not admit coverage, or if the Owner reasonably determines such coverage to be inadequate, the Owner shall have the right to withhold from Contractor any payments due or to become due to the Contractor an amount sufficient to protect the Owner from such claim, loss, cost, expense, liability, damage or injury, including, without limitation, legal and expenses reasonably necessary for the defense thereof.

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

§ 3.18.3 The obligations of the Contractor under this Section 3.18 shall not extend to the liability of the Architect, its consultants, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications, or (2) the giving of or failure to give directions or instructions by the Architect, their consultants or agents and employees of any of them provided such giving of or failure to give is the primary cause of the injury or damage.

§ 3.18.4 Any part of the work which may cause contamination or pollution to the environment shall be performed by subcontractors who are properly certified to do such work and who normally carry contractually assumed indemnification insurance and public liability insurance to cover such work in the amount required to be carried by Contractor for liability and contractually assumed liability coverage under this Contract.

§ 3.18.5 No provision of Section 3.18 shall give rise to any duties on the part of the Architect or the Owner.

§ 3.18.6 In the event that any Contractor is requested but refuses to honor the indemnity obligations hereunder, then such Contractor shall, in addition to all other obligations, pay the cost of bringing any action by the party requesting

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indemnity, including, but not limited to, any legal fees and costs incurred in enforcing the indemnity obligations hereunder. Furthermore, the Contractor shall be solely responsible for all legal fees incurred by the Owner in defending, removing, marking satisfied mechanics' liens or any other expenses incurred by Owner in connection with mechanics' lien claims and/or judgments.

§ 3.19 The Contractor agrees (in addition to the representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Agreement, that the Contractor shall be restricted to the rights and remedies set forth in Article 15 for all disputes between the Contractor and the Owner. However, the Owner's right to recover under the Contract Documents, at law or in equity shall not be restricted to the rights and remedies set forth in Article 15. This Section shall survive the execution and delivery of this Agreement and the Final Completion of the Work.

### § 3.20 Representations and Warranties

§ 3.20.1 The Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute the Owner-Contractor Agreement, which representations and warranties shall survive the execution and delivery of the Owner-Contractor Agreement and the Final Completion of the Work:

- (a) that it is financially solvent, able to pay its debts as they mature and possess sufficient working capital to complete the Work and perform its obligations under the Contract Documents;
- (b) that it is able to furnish the personnel, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- (c) that it is authorized to do business in the Commonwealth of Pennsylvania and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the site of the Project;
- (d) that its execution of the Owner-Contractor Agreement and its performance thereof is within its duly authorized powers;
- (e) that it is familiar with all Federal, State, Municipal and Department laws, ordinances and regulations, which may in any way affect the Work of those employed herein, including, but not limited to, any special acts relating to the Work or to the Project of which it is a part;
- (f) that such temporary and permanent Work required by the Contract Documents as is to be done by it, can be satisfactorily constructed and used for the purposes for which it is intended, and that such construction will not injure any person or damage any property;
- (g) that it is familiar with local trade jurisdictional practices at the site of the Project;
- (h) that it has carefully examined the Contract Documents and the site of the Work, and that, from its own investigation, it has satisfied itself as to the nature and location of the Work, the character, quality and quantity of the surface and subsurface materials likely to be encountered, the character of equipment and other facilities needed for the performance of the Work, and the general local conditions, and all other materials which may in any way affect the Work or its performance; and
- (i) that it has determined what local ordinances, if any, will affect its Work. The Contractor has checked for any County, City, Borough, or Township rules or regulations applicable to the area in which the Project is being constructed and in addition, the Contractor has checked for any rules or regulations of other organizations having jurisdiction, including, but not limited to, chambers-of-commerce, planning commission, industries, or utility companies who have jurisdiction over lands which the Contractor occupies. Any costs of compliance with local controls is included in the bid, even though documents of such local controlling agencies are not listed herein.

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## ARTICLE 4 ARCHITECT

### § 4.1 General

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

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

### § 4.2 Administration of the Contract

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

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

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

### § 4.2.4 Communications

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

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

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

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

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Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion for Owner approval 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 for Owner approval pursuant to Section 9.10.

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

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

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

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

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, ~~as soon as practicable after award of the Contract, within thirty (30) days after issuance of the Notice to Proceed,~~ shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. ~~If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase~~ There shall be no adjustment 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 because of such substitution.

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

### § 5.3 Subcontractual Relations

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

### § 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the ~~Contract.~~Contract; and
- .3 the Contractor agrees, upon Owner's request, to execute whatever instruments the Owner may require to confirm any such assignment.

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

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

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

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

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

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised. See Section 3.10 of these General Conditions concerning scheduling of Work on multi-prime construction projects.

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

#### § 6.2 Mutual Responsibility

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

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

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

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

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

#### § 6.2.6 Disputes or Actions between Contractors

§ 6.2.6.1 Should the Contractor, itself or by its Subcontractor or Sub-Subcontractor or their respective agents, servants, or employees, cause damage or injury to the property or Work of other Contractors or Subcontractors, or by failing to perform its Work (including, without limitation, the Work of its Subcontractor or Sub-Subcontractors) with due diligence, delay any Contractor or Subcontractors, which suffer additional expense or damage as a result, the parties involved in such dispute and their respective Sureties shall settle by agreement or arbitrate said claim, dispute or action by referring same to the American Arbitration Association. Said claim, dispute or action shall be determined pursuant to the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. The Owner will not be a party to disputes or actions between Contractors, the Sureties or Subcontractors concerning such additional expense or damage. It is agreed by all parties that claims, disputes or actions between Contractors, Sureties and Subcontractors concerning the additional expense or damage will not delay completion of the Work, which shall be

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continued by the parties, subject to the rights hereinbefore provided. It is agreed by the parties to this Agreement (the Owner as promisee and the Contractor as promisor) that the intent of this clause is to benefit the Contractors and their Sureties on the Project and to serve as an indication of the mutual intent of the Owner and the Contractor that this clause raise such other Contractors to the status of third party beneficiaries only as to the terms and conditions of Section 6.2.6. The Contractor agrees that Section 6.2.6 provides third party beneficiary rights as a benefit to the Contractor, and that they specifically exclude claims, disputes or actions against the Owner for delay or other damages.

§ 6.2.6.2 The Contractor further agrees that all claims, disputes and other matters in question between Prime Contractors, their Sureties or Subcontractors, which arise out of, or are related to this Agreement, or the breach thereof, shall be settled by agreement or resolved by arbitration, in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect. This agreement to arbitrate is in consideration of the fact that all other Prime Contractors agree to this same arbitration provision, as provided in each separate Prime Contract required for the construction of this Project, and is specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accord with applicable law in any court having jurisdiction thereof. The Owner shall not be a party to this arbitration. This clause raises all Prime Contractors to the status of third party beneficiaries for purposes of Section 6.2.6 only.

§ 6.2.6.3 Notice of the demand for arbitration shall be filed in writing with the other Prime Contractor(s) and with the Regional Office of the American Arbitration Association. A copy of the demand shall be filed with the Architect and the Owner. The demand for arbitration shall be made within thirty (30) days after the claim, dispute or other matter in question has arisen. The Owner shall not be a party to the claim, dispute or other matter in question, but shall be a witness in any arbitration at the request of any party to the arbitration. The Owner will be provided with copies of all documents submitted to the arbitrator at no cost to the Owner.

§ 6.2.6.4 The Contractor hereby agrees that the Contractor's sole remedy for including, without limitation, injuries, costs, damages or expenses resulting from disputes between Contractors, Sureties or Subcontractors will be to seek recovery from the other Contractors, Sureties or Subcontractors for the transgressions of such other Contractors, Sureties or Subcontractors. The Contractor hereby further agrees that it shall have no recourse against the Owner for the transgressions of other Contractors, Sureties or Subcontractors that result in including, without limitation, delay, acceleration, out-of-sequence Work, overtime, stacking of trades, failure to adequately clean the work areas, disputes over the scope of the Contractor's work, or disputes between Contractors, Sureties or Subcontractors regarding any other matter concerning the Project.

§ 6.2.6.5 The Contractor acknowledges that the restrictions contained in the Contract are reasonable and necessary in order to protect the legitimate interests of the Owner and that any violation of the Contract would result in irreparable injuries to the Owner and monetary damages would be inadequate to compensate the Owner for such violation. Therefore, the Contractor hereby agrees that if the Contractor disregards any Section of these the Contract, including, without limitation, any portion of this Article 6, and institutes or attempts to institute any proceeding (e.g., arbitration, litigation, mediation, etc.) against the Owner for including, without limitation, injuries, damages or expenses resulting from disputes between Contractors, Sureties or Subcontractors, the Owner is entitled to obtain from any court of competent jurisdiction preliminary and permanent injunctive relief to prevent the Contractor from pursuing any proceeding against the Owner and the Owner is entitled to stay any such proceeding. In the event that the Owner pursues preliminary or permanent injunctive relief to prevent the Contractor from pursuing any proceeding against the Owner or that the Owner attempts to stay any such proceeding, the Contractor and the Contractor's Surety shall be jointly and severally liable for and shall reimburse the Owner immediately upon demand for including, without limitation, all legal fees, professional fees and all other costs associated therewith incurred by the Owner. The Owner's rights set forth in this Section 6.2.6.5 shall be in addition to all other rights of the Owner granted in the Contract Documents, at law, or in equity.

### **§ 6.3 Owner's Right to Clean Up**

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

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## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

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

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

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

### § 7.2 Change Orders

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

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

### § 7.3 Construction Change Directives

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit ~~evaluation; evaluation with overhead and profit calculated and applied in accordance with Section 7.3.7.3;~~
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 ~~Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or~~
- .4 ~~As provided in Section 7.3.4.~~

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. ~~Section 7.3.4.3.~~ In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be ~~limited to the following:~~ as follows:

§ 7.3.4.1 In Section 7.3.4, the phrase "reasonable expenditures and savings" is defined as the cost of the Work of all items listed below:

- .1 The above phrase "cost of the Work" shall mean costs incurred in the proper performance of the work and paid by the Contractor. Such costs shall be at rates not higher than the standard paid in the locality of the Project except with prior consent of the Owner, and shall include the items set forth below.

- ~~4~~ Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;<sup>2</sup> Wages paid for labor in the direct employ of the Contractor in the performance of the Work under applicable collective bargaining agreements, or under a salary or wage schedule and including such benefits, if any, as may be payable with respect thereto.
- .3 Salaries of Contractor's employees engaged, at shops or on the road, in transportation of materials or equipment and salaries paid for that portion of time spent on the Work.
- .4 Cost of contributions, assessments or taxes for such items as unemployment compensation and social security, insofar as such cost is based on wages, salaries, or other remuneration paid to employees of the Contractor and included in the Cost of the Work under Sections 7.3.4.1.2 and 7.3.4.1.3.
- .5 Cost of all materials, supplies and equipment incorporated or consumed in the Work, including costs of transportation.
- .6 Payments made by the Contractor to Subcontractors for work performed. All subcontractors shall be subject to the same cost determination as herein described for the Contractor, except, the Owner may, if deemed in its best interest, accept lump sum costs of selected subcontractors.
- ~~2~~ Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;<sup>7</sup> Cost, including transportation and maintenance of materials, supplies, equipment, temporary facilities and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less salvage value on such items used but not consumed which remain the property of the Contractor.
- ~~3~~ .8 Rental costs of machinery and equipment, exclusive of hand tools, used at the Project, whether rented from the Contractor or others;
- ~~4~~ Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery costs, at rental charges consistent with those prevailing in the area.
- .9 Sales, use or similar taxes related to the Work and for which the Contractor is liable as imposed by any governmental authority.
- .10 Permit fees.
- ~~5~~ Costs of supervision and field office personnel directly attributable to the change.<sup>11</sup> Cost of removal of all debris.
- .12 Costs incurred due to an emergency affecting the safety of persons and property.
- .13 Other costs incurred in the performance of the Work if and of the extent approved in advance in writing by the Owner.

§ 7.3.4.2 In Subparagraph 7.3.4, the term "overhead" is defined to include, but not necessarily limited to, costs of items listed below:

- .1 Salaries or other compensation of the Contractor's officers, executives, general managers, field superintendents, field timekeepers, estimators, auditors, accountants, purchasing and contracting agents and other employees at the Contractor's principal and branch offices, except employees of the Contractor when engaged at shops or on the road in transportation of materials or equipment for the Work.
- .2 Expenses of the Contractor's principal and branch offices other than the field office.
- .3 Any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the work.
- .4 General expenses of any kind, except as may be expressly included as reasonable expenditures and savings as hereto before defined.
- .5 The cost of any item not specifically and expressly included in the items defined as reasonable expenditures and savings.
- .6 Minor expenses such as cellular phone charges, long distance telephone calls, facsimiles, telephone and/or internet service at the Project, expressage, or similar petty cash items in connection with the Work.
- .7 Cost of bonds and insurances.

§ 7.3.4.3 As referred to in Section 7.3.4, the Reasonable Allowance for Overhead and Profit shall be calculated as follows:

Overhead and Profit

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For cost of work performed by the Contractor's or Subcontractor's own forces 15%

For cost of work performed as a sub-contract or sub-contract to the contractor or subcontractor 5%

Overhead and profit shall be calculated against the cost of the Work.

§ 7.3.4.4 Costs due to the negligence of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to the correction of defective work, disposal of materials and equipment wrongly supplied, or making good any damage to property shall not be included as "reasonable expenditures and savings" nor "overhead" for the purposes of this Section 7.3.4.

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

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

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

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

#### § 7.4 Minor Changes in the Work

~~The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.~~ § 7.4.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing and the Contractor shall immediately carry out such written order(s).

§ 7.4.1.1 If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Architect within three (3) days of receipt of the same, and shall not

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proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

§ 7.4.2 The Owner shall have the right to change the location of any piece of apparatus or equipment within five (5) feet of location shown, up to the time of rough-in, without any additional expense to the Owner.

§ 7.4.3 The Architect from time to time, as deemed necessary, will furnish supplementary instructions to clarify or amplify the Drawings and Specifications (Contract Documents). The supplementary instructions may be by means of drawings, or otherwise as is most appropriate, and shall be consistent with the Contract Documents and true developments thereof, or amplifications reasonably inferable therefrom.

## **ARTICLE 8 TIME**

### **§ 8.1 Definitions**

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

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

**§ 8.1.3** The date of Substantial Completion is the date certified by the Architect and approved by the Owner 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 bidding and executing the Agreement, the Contractor confirms that the Contract Time requirements of Division 01 Section "Summary", including all events, activities, milestones, phases, and modification procedures stipulated in Division 01 Section "Multiple Contract Summary" when applicable, is a reasonable period for performing the Work. Each Contractor shall schedule, coordinate and staff the Work accordingly to maintain the progress of the Work.

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

**§ 8.2.3** The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. The Contractor agrees to increase manpower, work hours, and/or furnish all equipment necessary to maintain and achieve timely completion of the work according to the Project schedule.

**§ 8.2.4** The work shall be substantially completed within the time frame established in the Contract Documents, subject to conditions stated therein, from the date of Commencement of Work including authorized extensions of time. The Notice to Proceed will be given to Contractors and all Contractors shall be prepared to undertake their work at such times as the progress of the Work requires them to do so. All Contractors shall cooperate with each other and shall coordinate their activities and work so that the entire program of construction can be substantially completed on or before the substantial completion date.

**§ 8.2.5** The Contractor shall complete the whole of the work (and any phases as applicable) at or before the time or times stated. Contractor shall submit required Shop Drawings and samples of material to be used, and make delivery of material in accordance with the Project schedule. Contractor shall furnish, at all times, sufficient skilled workers, materials and equipment to perform the Work to the entire satisfaction of the Architect and the Owner and so as not to delay the completion of the whole or any part of the Project.

**§ 8.2.6** It is mutually agreed by and between the parties hereto that time shall be an essential part of this Contract and that in case of the failure on the part of the Contractor to complete the Contract within the time specified and agreed upon, the Owner will be damaged thereby. Further, it is mutually agreed that the reasonable amount of liquidated damages for Contractor delay shall be in accordance with Section 9.11.

### § 8.2.7 Adherence to Schedule

- .1 Owner reserves the right to withhold monthly progress payments and retainage if the Contractor is behind schedule, unless the Contractor establishes to the satisfaction of the Owner that the delays are not the fault of the Contractor.
- .2 Monthly progress payments will only be released after the Contractor reaches the status of completion for that month comprehended by the Project construction schedule and related Division 01 Section "Construction Progress Documentation".
- .3 In the event the Owner, after consultation with the Architect, determines that the performance of the Work has not progressed or reached the level of completion required by the Contract Documents, and the Project construction schedule, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, working additional shifts or overtime; supplying additional manpower, equipment, and facilities, and other similar measures (referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the Project construction schedule and failure to comply shall be considered a breach of the Contract Documents.
  - .1 The Contractor shall not, under any circumstances, be entitled to an increase in the Contract Sum in connection with Extraordinary Measures required by Owner under or pursuant to this Section 8.2.
4. Owner may exercise its rights pursuant to Section 8.2 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any completion dates or milestones set forth in the Contract Documents.

### § 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by ~~labor disputes, fire, unusual delay in deliveries, unavoidable casualties, or adverse weather conditions~~ documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; 15.1.6.2; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; Owner, or litigation; or (5) by other causes that the Contractor asserts, and the Architect-Owner, in its sole discretion, determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect-Owner may determine.

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

§ 8.3.3 ~~This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. No payment or compensation or claim for damages shall be made to the Contractor as compensation for damages for any delays or hindrances from any cause whatsoever in the progress of the Work, notwithstanding whether such delays be avoidable or unavoidable. The Contractor's sole remedy for delays shall be an extension of Contract Time, pursuant to and only in accordance with this Section 8.3, such extension to be a period equivalent to the time lost, day for day, by reason of any and all of the aforesaid causes. In consideration for this grant of a time extension, the Owner, and/or Architect shall not be held responsible for any loss or damage or increased costs sustained by the Contractor through any delays caused by the Owner, or Architect or any other Contractor or on account of the aforesaid causes or any other cause of delay. In the event the Contractor shall choose to assert such a claim for delay, acceleration, or litigate this clause or issue and loses said litigation, the Contractor shall reimburse the Owner and the Architect for their attorney's and expert witness fees and all other costs and expenses incurred by them in opposing such claim or litigation.~~

§ 8.3.4 The Owner shall not be liable to the Contractor for any expenses, damages, loss of profits (anticipated or otherwise) or charges of any nature whatsoever (including but not limited to legal and professional fees) which shall result because of any extension of the time of completion which shall be granted by the Owner to the Contractor or to any other Contractor employed by the Owner to perform any other branch of work, or which shall result because of

any delay or hindrance of any nature whatsoever in the progress of the work (e.g., winter protection costs), whether such delay or hindrance shall be avoidable or unavoidable.

§ 8.3.5 No extension of time will be granted by the Owner if the act or occurrence constituting the basis of the request or claim shall be for non-delivery of materials due to any act or neglect of the Contractor, or the failure of the Contractor to employ, furnish or obtain, as necessary for the timely prosecution of the Work, sufficient labor, materials or equipment, or other matters which shall be within the control of the Contractor. The Owner shall consider any delay which shall result because of any of the foregoing causes to be the sole responsibility of the Contractor.

§ 8.3.6 No extension of the time which shall be granted by the Owner shall be deemed to be a waiver by the Owner of any rights accruing to it under the Contract, and no extension of time granted by the Owner shall relieve or shall be deemed to relieve the Contractor from full responsibility for performance of the Work.

§ 8.3.7 The Contractor shall recognize and reasonably anticipate that as the job progresses, the General Contractor will be making changes in and updating the Construction schedule pursuant to Section 3.10. Therefore, no claim for an increase in the Contract Sum for either acceleration, delay or out-of-sequence work will be allowed for decisions as to extensions of time pursuant to this Section or for other changes in the construction schedules which may be experienced.

§ 8.3.8 Should the Owner be prevented or enjoined from proceeding with the Project either before or after the start of construction by reason of any litigation or any other reason, the Contractor shall not be entitled to make or assert claim for damage by reason of said delay, or for acceleration or out-of-sequence work, but time for completion of the work will be extended to such reasonable time as the Owner and Architect may determine will compensate for the time lost for such delay. Said extension shall be processed by Change Order.

§ 8.3.9 Any delay attributable to lack of coordination or cooperation by and/or between each Contractor among themselves or their Subcontractors, will not be recognized by the Owner as a basis for any claim for increasing any Contract Sum, but shall be settled as provided in Section 6.2.6 and its Subparagraphs.

§ 8.3.10 The Contractor's sole remedy for Change Orders relating to Project delay not caused by the Contractor shall be an extension of the Contract Time pursuant to this Section 8.3. Such extension of Contract Time shall be for a period equivalent to a reasonable amount of time to perform the Change Order as the Owner and the Architect determine with such determination to be set forth in writing.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 Contract Sum**

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

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

- .1 Approved Unit Prices shall be used where they apply to determine an equitable adjustment of the Contract Sum in connection with extra work or changes ordered under the Contract. Approved Unit Prices shall apply to both additions to and deductions from the Contract Sum.
- .2 Approved Unit Prices include all profit, overhead, bonds, insurance, taxes, labor, materials, plant equipment and tools necessary and required to fully complete the work item, as specified in detail for the work item in the Contract Documents.

### **§ 9.2 Schedule of Values**

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect ~~before the first Application for Payment, within fourteen (14) days of the issuance of the Notice to Proceed,~~ allocating the entire Contract Sum to the various portions of the Work. The schedule of

values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The Architect shall be under no obligation to review such changes and shall be duly compensated by the Contractor, through the Contract with the Owner, to compensate the Architect and Owner for time to review any such change.

### § 9.3 Applications for Payment

§ 9.3.1 At least ~~ten~~ fifteen (15) days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, ~~if required,~~ and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

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

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

§ 9.3.1.3 The Owner shall retain ten percent (10%) of all amounts due the Contractor until the Work is fifty percent (50%) complete. When the Work is fifty percent (50%) complete, one-half of the amount retained by the Owner may be returned to the Contractor, provided the Contractor provides written consent of surety to such reduction in retainage to the Architect along with their Application for Payment, and further provided that the Contractor is making satisfactory progress and there is no specific cause for greater withholding. A specific cause for greater withholding may include, without limitation, the following:

- .1 The Contractor's inability to produce evidence satisfactory to the Architect and/or the Owner evidencing payments for materials, labor and/or payments to Subcontractors, manufacturers or suppliers;
- .2 The existence of a dispute between the Owner and the Contractor regarding increased costs claimed by such Contractor; or
- .3 A Contractor's failure to complete the Work in accordance with the Contract Documents, including, without limitation, the Drawings and Specifications, Construction Schedule, etc.

§ 9.3.1.4 The Owner shall retain five percent (5%) of all amounts due the Contractor after the Work is fifty percent (50%) complete, provided, however, that in the event a dispute arises between the Owner and any Prime Contractor, which dispute is based upon increased costs claimed by one Prime Contractor occasioned by delays or other actions of another Prime Contractor, additional retainage in the sum of one and one-half times the amount of any possible liability may be withheld until such time as a final resolution is agreed to by all parties directly or indirectly involved, unless the Contractor causing the additional claim furnishes a bond satisfactory to the Owner to indemnify the Owner against the full claim.

§ 9.3.1.4.1 In the event a dispute arises between the Owner and a Contractor which is based upon any of the items set forth in Section 9.3.6, the Owner shall have the option, as it deems necessary in its sole and absolute discretion, to either continue to retain ten percent (10%) of the amount due the Contractor or to withhold additional retainage over and above the amount already retained by the Owner in the sum of one and one-half (1.5) times the amount of any possible liability until such time as a final resolution is agreed to by all parties directly or indirectly involved, unless the Contractor causing the additional claim furnishes an additional bond satisfactory to the Owner to indemnify the

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Owner against the full claim.

§ 9.3.1.5 The full Contract retainage may be reinstated if the manner of completion of the Work and its progress do not remain satisfactory to the Owner and Architect, or if the Surety withholds its consent, or for other good and sufficient reasons.

§ 9.3.1.7 All monies retained by the Owner may be withheld from the Contractor until the conditions for final Completion and Final Payment of the Project are met.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

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

§ 9.3.4 All material and work incorporated in the Project covered by partial payments made shall thereupon become the sole property of the Owner, but this provision shall not be construed as relieving the Contractor from the sole responsibility for the care and protection of materials and work upon which payments have been made or the restoration of any damaged work, or as a waiver of the right of the Owner to require the fulfillment of all the terms of the Contract.

§ 9.3.5 Materials delivered and stored are the responsibility of the Contractor. The Contractor shall be solely responsible for their safekeeping and usability at the time they are to be incorporated in the Work, and shall, at its own expense, care for and protect the same, employ security as needed, and take out insurance against theft, loss from other cause, damage, destruction and/or such other risks as may be involved which would render the aforesaid materials unfit or unsuitable for use in the Project. Materials shall not be delivered earlier than reasonably necessary for proper progress of the work unless prior approval is granted by the Owner.

§ 9.3.6 In addition to the Owner's right to determine if a specific cause for greater withholding exists under Section 9.3.1, the Architect shall also be entitled to determine if a specific cause for greater withholding exists under this Section 9.3.6. The Architect shall reject the reduction in retainage if the Contractor is not making satisfactory progress in its Work or if the Architect determines that there is a specific cause for greater withholding. The Architect will consider the following items when reviewing a request for reduction in retainage and failure to meet any of the following requirements may be considered by the Architect as sufficient grounds for rejecting a reduction of retainage:

- .1 Satisfactory performance of the Work.
- .2 Satisfactory maintenance of the Project schedule.
- .3 Proper staffing of labor and management of the Project.
- .4 Satisfactory completion of the Work.
- .5 Satisfactory organization of the Project.
- .6 Proper organization and coordination of subcontractors.
- .7 Proper coordination with other Prime Contractors.
- .8 All defective Work has been remedied or is in the process of being remedied.
- .9 Work completed is not in contention.
- .10 Satisfactory follow through of paperwork, certified payrolls, Change Order proposals, or Construction Change Directives.
- .11 Satisfactory response to correcting deficiencies identified by Commissioning and other services that determine acceptance of completed Work.

The Architect's decision to reject a reduction of retainage shall be final and binding on the Contractor.

#### § 9.4 Certificates for Payment

§ 9.4.1 ~~The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.~~ will issue to the Owner for approval a Certificate for Payment and issue along with the Contract, a schedule for submission of applications for payment which provides the following deadlines indicated by month, day and year: End of Billing Period; Pencil Copies to Architect; Billings Submission by Contractors to Architect; Approvals to Architect by Contractors; Architect's Certification to the Owner; and Approval and Payment by the Owner.

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

#### § 9.5 Decisions to Withhold Certification

§ 9.5.1 ~~The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. Owner. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of~~

- ~~.1 defective Work not remedied;~~
- ~~.2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless additional security acceptable to the Owner is provided by the Contractor;~~
- ~~.3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;~~
- ~~.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;~~
- ~~.5 damage to the Owner or a Separate Contractor;~~
- ~~.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or~~
- ~~.7 repeated failure to carry out the Work in accordance with the Contract Documents. Documents; or~~
- ~~.8 failure to comply with government Statutes, Regulations or Laws; or~~
- ~~.9 failure to submit current Wage Certifications as required by the PA Department of Labor & Industry.~~

§ 9.5.2 ~~When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15. The Contractor shall however, continue to execute the Work without exception.~~

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

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

#### § 9.6 Progress Payments

§ 9.6.1 After the Architect has issued and the Owner has approved 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. Such payment by the Owner shall not constitute approval or acceptance of any item of cost in the Application for Payment. No partial payment made hereunder shall be construed to be final acceptance or approval of that portion of the Work to which such partial payment relates or shall relieve the Contractor of any of its obligations.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than ~~seven~~ twenty (20) days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.2.1 The Contractor shall, at the request of the Owner or the Architect, prior to the submission of an Application for Payment, submit an affidavit signed by some or all of the Contractors, Subcontractors, manufacturers and/or suppliers that they have been paid for its portion of the Work from previous Applications for Payment.

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

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

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

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

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

If the Owner fails to approve an Application for Payment for a cause which the Owner and Architect determine is the fault of the Contractor, and not the fault of a particular Subcontractor, or if the Contractor fails to make payment which is properly due to a particular Subcontractor, the Owner may pay such Subcontractor directly, less the amount to be retained under its Subcontract. Any amount so paid by the Owner shall be repaid to the Owner by the Contractor. Nothing contained in Section 9.6.7 shall be deemed to create any contractual relationship between the Owner and any Subcontractor or to create any rights for any Subcontractor against the Owner.

§ 9.6.8 ~~Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted. The Contractor shall promptly advise the Owner and the Architect of any claim or demand by any Subcontractor claiming that any amount is due to such Subcontractor or claiming any default by the Contractor in any of its obligations to such Subcontractor.~~

#### **§ 9.7 Failure of Payment**

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

§ 9.6.9 The Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor.

#### **§ 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 including the Contractor's notification of Substantial Completion, requesting inspection for the list of items to be completed, and the receipt of the Architect's list of items to be completed or corrected in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. All required occupancy permits, certificates, etc. from authorities having jurisdiction shall be furnished as a condition of Substantial Completion.

§ 9.8.1.1 The Date of Substantial Completion will be established after receipt of the Contractor's Notification for Substantial Completion inspection, the Architect's inspection of the Project and the Owner's approval of Substantial Completion.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

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

§ 9.8.3.1 Inspections for Substantial Completion will be conducted only at the completion of the Project or a scheduled phase of the Project. Such inspection will take place only when all Prime Contractors are complete with the Project or that scheduled phase of the Project. Any items to be completed or corrected that remain on the punch list shall have a value of 150% of the cost affixed to them. Such amount shall be retained from payments and held until the items are completed or corrected to the satisfaction of the Architect.

§ 9.8.3.2 After receipt of Contractor's Notification of Substantial Completion and the Contractor's list of work to be completed or corrected, the Architect will verify and issue a list of items to be completed or corrected. Should the

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Contractor fail to include their listing of the work to be completed or corrected or if the Architect deems said list to be incomplete, the Architect will not be obligated to inspect the Project until such list is provided.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that upon Owner approval, shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

#### § 9.9 Partial Occupancy or Use

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

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

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

#### § 9.10 Final Completion and Final Payment

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until approval by the Owner and the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the

Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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

§ 9.10.3.1 Each Contractor shall be responsible for preparing and completing its own comprehensive lists (punch-lists) in order to submit for Substantial Completion. If after the punch-lists are submitted and upon inspection, it is found that a Contractor's punch-list is incomplete, lengthy or ill prepared, the Substantial Completion request shall be denied. If it is required because of a Contractor's incomplete, lengthy or ill prepared punch-list or the Contractor's inability to complete its punch-list and, therefore, complete the Contract, that the Architect or any of its consultants or representatives or the Owner, is required to prepare a punch-list, the Contractor shall be solely responsible for such costs.

In the event the Contractor or its Subcontractor fails to complete these punch-lists, the Owner may: (1) exercise any available remedies under this Contract, at law, and/or at equity to correct or complete deficient Work or retain a third party to correct or complete such Work at the cost of the defaulting Contractor; and (2) retain and deduct from any payments or retention otherwise due to the defaulting Contractor any fees and expenses for services required to be provided to correct or complete such deficient Work. The Architect and/or any of its consultants or representatives, and/or the Owner shall be compensated for such additional work at standard prevailing rates by the Contractor.

§ 9.10.3.2 If more than one (1) inspection for Final Completion is required, the Contractor will be billed and responsible for the professional fees and services of the Architect and its Consultants. Following Substantial Completion, in the event the Contractor or its Subcontractor fails to complete the list of items of the Work instructed by the Architect to be corrected or completed within thirty (30) days after the date of Substantial Completion, the Owner may (1) exercise any available remedies to correct or complete deficient Work or retain a third party to correct or complete such Work at the cost of the defaulting Contractor, (2) retain and deduct from any payments or retention otherwise due to the defaulting Contractor any fees and expenses for services required to be provided by the Owner and the Architect, and (3) recover against the Contractor all costs and expenses incurred by the Owner, including, but not limited to, any and all legal fees, professional fees and all other costs and expenses related thereto. The Owner shall have the right to recover said amounts against any remaining amount due and owing to the Contractor.

§ 9.10.4 The making of final payment shall not constitute a waiver of any Claims by the Owner except those arising from Owner.

- .1 — liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 — failure of the Work to comply with the requirements of the Contract Documents;
- .3 — terms of special warranties required by the Contract Documents; or
- .4 — audits performed by the Owner, if permitted by the Contract Documents, after final payment.

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

## § 9.11 Liquidated Damages

§ 9.11.1 Each Contractor and Contractor's Surety shall be jointly and severally liable for and shall pay the Owner as liquidated damages, and not as a penalty, for Contractor's delay in completing the Work of the Contract within the Contract Time, in the amount indicated in Division 01 Section "Summary", per contract per calendar day, for each calendar day (Sunday and holidays included) of delay until the Work is substantially complete (as defined in Articles

8 and 9.8) at the phase, milestone or completion date of construction, subject to adjustments of the Contract Time as provided in the Contract Documents.

In the event the Contractor or Surety litigates the validity of this provision, the daily amount of liquidated damages, or the assertion of liquidated damages, the Contractor and Surety, jointly and severally, shall also be liable for legal fees, professional fees, costs, other expenses and/or damages incurred by the Owner. This liquidated damages provision applies to each phase or milestone of construction. Owner's right to receive liquidated damages shall be in addition to all other rights and remedies available to the Owner at law or in equity.

§ 9.11.2 If any Contractor shall be responsible, in the opinion of the Architect, for delay in the actual time of completion of any other Contractor employed by the Owner in performance of any other portion of the Project, then the Contractor so determined to be responsible shall be liable for and shall pay to the Owner all liquidated damages otherwise attributable to such other Contractor, as well as any legal fees, professional fees, or other costs or expenses incurred by the Owner.

§ 9.11.3 The Owner shall have the right to deduct the total amount of liquidated damages for which the Contractor may be liable under this Article from any payments then or thereafter due the Contractor.

§ 9.11.4 The Surety upon the Performance Bond furnished by the Contractor shall be liable for any liquidated damages for which the Contractor may be liable to the extent that the Contractor shall not make settlement therefor with the Owner.

§ 9.11.5 In addition to the Liquidated Damages established in this Article, the Contractor agrees to pay all associated costs for the Architect and its Consultants, to extend its Contract due to the failure of the Contractor to complete the work within the time frame stipulated in the Contract. Damages to other Prime Contractors due to the extension of the project duration shall be pursued in accordance with Article 6.

#### **§ 9.12 ORDER OF COMPLETION AND USE OF COMPLETED PARTS**

§ 9.12.1 The Contractor shall complete any portion or portions of the Work in such order of time as may be stated in the Specifications or as the Owner may require. The Owner shall have the right to take possession of and use any completed or partially completed portion of the Work, notwithstanding the entire Work or such portions which may not have been completed, but such taking possession or payment made to the Contractor shall not be deemed an acceptance of the Work so taken or used or any part thereof.

§ 9.12.2 The Owner shall also have the right to occupy and erect or place any apparatus or equipment in any part of the project without such installation being construed as acceptance of any of the Contractor's workmanship or materials, or as affecting any terms in the Contract. Prior to the Owner taking possession, an inspection shall be made by the Architect and Owner of the completed work to determine if it is in conformity with the Contract, and any subsequent damage due to occupancy by the Owner shall not be the responsibility of the Contractor.

### **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

#### **§ 10.1 Safety Precautions and Programs**

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

#### **§ 10.2 Safety of Persons and Property**

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

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

- .5 all exposed floors, walls, ceilings, fittings, fixtures, pipe, glass, equipment, and all other finished and/or unfinished parts of the Work that may be subject to damage or theft or injury of any kind during the progress of the Work;
- .6 protect against all kinds of weather so as to maintain all work, apparatus and fixtures free from injury or damage. At the end of each day's work, all work subject to damage shall be completely covered;
- .7 maintain and enforce regulations covering all fire hazards, including smoking, and shall provide approved fire extinguishers at proper locations. (In the case of separate contracts, this requirement shall be fulfilled by the specific Contractor specified in Division 01 Section "Temporary Facilities and Controls");
- .8 maintain all passage-ways, guard fences, lights, firewatch and other facilities for protection required by public authority or local conditions. (In the case of separate contracts, this requirement shall be fulfilled by the specific Contractor specified in Division 01 Section "Temporary Facilities and Controls"), and;
  - a. To the extent that the Contractor fails or refuses to meet the requirements of this Section 10.2.1 and such failure and/or refusal results in the Owner incurring additional legal fees, professional fees, other cost or expenses, the Contractor shall be liable for the same.
  - b. If the Contractor fails to restore such property or make good such damage, the Owner may, by contract or otherwise, proceed to repair, rebuild, or otherwise restore such property as may be necessary, and the cost thereof will be deducted from any money due, or to become due, the Contractor under this Contract; or the Owner may deduct from any money due the Contractor a sum sufficient to reimburse the Owner of property so damaged. If the amount owed is not sufficient to reimburse the Owner, the Contractor shall pay the Owner said amount immediately upon demand.
- .9 lock the building to prevent access or unauthorized persons. (In the case of separate contracts, this requirement shall be fulfilled by the General Contractor.);
- .10 provide all temporary shoring and bracing, sheet piling, etc., necessary for underpinning and for the installation of new work shall be included in the Bid in accordance with good practice. The Contractor shall assume all responsibility for this work and make good any damage caused by improper supports or failure of shoring in any respect. Contractor shall remove same at completion and shall be responsible for all damage.

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

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

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

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

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

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

**§ 10.2.8 Injury or Damage to Person or Property**

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

**§ 10.3 Hazardous Materials and Substances**

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, as evidenced by written reports from an independent licensed laboratory selected, employed, and paid for by the Owner as described in Section 10.3.2. The Contractor's sole remedy if Work is delayed due to presence of hazardous materials shall be to request an extension of Contract Time as permitted under Article 7 and Section 8.3.1.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. ~~By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.~~

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

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

§ 10.3.5 The Contractor shall ~~reimburse~~ indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2)

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where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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

#### § 10.4 Emergencies

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

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located. Bonds shall be obtained from a company acceptable to the Owner and authorized to transact business in the Commonwealth of Pennsylvania, and the cost thereof shall be included in the Contract Sum. The amount of each Payment Bond and Performance Bond shall be equal to one-hundred percent (100%) of the Contract Sum. The insurance carriers from whom the Contractor has purchased bonds must be listed in the most recent U.S. Treasury Department Circular and the amount of said bonds in question must not exceed the acceptable limit therein recommended for bonds.

§ 11.1.2.1 If a Contractor fails to deliver bonds in the amounts and types required, in accordance with the Contract, the Owner may declare the Contractor in default and may award the Contract to the next lowest responsive, responsible bidder and require, among other things, surrender of the Bid Bond by said Contractor. All bonds required by the Contract Documents must involve insurance providers that are licensed and authorized to conduct business in the Commonwealth of Pennsylvania. Insurance carriers of which the Contractor has purchased insurance coverage must be listed in the most recent U.S. Treasury Department Circular and the amount of the bond in question must not exceed the acceptable limit of insurance therein recommended.

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

§ 11.1.4 ~~Notice of Cancellation or Expiration of Contractor's Required Insurance.~~ Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage. The Contractor shall be solely liable for paying the deductible on the Owner's builder's risk "all-risks" completed value or equivalent, insurance for the Project for any claims relating to such Contractor's Work.

§ 11.1.5 All companies providing insurance or bonds for the Contractor must have an A.M. Best financial strength rating of A- or higher.

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## § 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain "builder's risk" insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. ~~liability as identified in Exhibit A to A101-2017.~~ The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

~~§ 11.2.2 Failure to Purchase Required Property Insurance.~~ If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

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

## § 11.3 Waivers of Subrogation

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

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

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

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

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

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

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

#### § 11.6 Insurance Carriers

§ 11.6.1 If any party is damaged by the failure of the other to purchase or maintain insurance required under Article 11 and so notifies the other party, then the party who failed to purchase or maintain the insurance shall bear all reasonable costs properly attributable thereto.

§ 11.6.2 Whenever the Contractor is required under these Contract Documents to furnish insurance coverage, all policies of insurance so furnished shall be issued by an insurance company or by insurance companies licensed to do business in the Commonwealth of Pennsylvania.

### ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

#### § 12.1 Uncovering of Work

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

§ 12.1.1.1 Work that is rejected or fails to conform to the requirements of the Contract Documents that requires any review, research, recommendation, meetings or direction by the Architect or any other consultants, in order to substantiate the same or to approve remedies or alternate solutions will be subject to Section 12.2. The Architect or any consultant, shall be compensated for such additional Work at the prevailing rates by the Owner, who will be entitled to back charge the responsible Contractor for such fees, as well as any legal fees, professional fees, other expenses or costs incurred. The Owner may deduct the same from any Application for Payment or any amount of retainage.

§ 12.1.1.2 If the Contractor, a Subcontractor or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the

Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

## § 12.2 Correction of Work

### § 12.2.1 Before Substantial Completion

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

### § 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, at any time within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under ~~Section 9.9.1, Section 9.9.1,~~ or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. ~~The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. Notwithstanding the right of the Owner is retained to have any work found not in accordance with the requirements of the Contract Documents corrected under the Statute of Repose in place at the time of the execution of the Agreement.~~ If the Contractor fails to correct nonconforming Work within a reasonable time ~~during that period~~ after receipt of notice from the Owner or Architect, during or after the one-year warranty period, the Owner may correct it in accordance with Section 2.5. Nothing contained in this Section 12.2.2 shall decrease the responsibilities set forth in the Performance Bond.

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

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

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

~~§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents. If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 2.5. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by notice from the Architect, the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within seven days after notice, the Owner may sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby and legal fees, professional fees and other expenses or costs incurred. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner upon demand.~~

~~§ 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~~

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~~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.~~  
The Contractor shall bear the cost of correcting destroyed or damaged construction of completed or partially completed Work, of the Owner or separate contractors caused by the Contractor's correction or removal of Work which is not in accordance with the requirements of 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 in writing, instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

~~The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4. laws of the Commonwealth of Pennsylvania and all actions shall be resolved in a non-jury trial and shall be brought in the Court of Common Pleas of Lancaster County, Pennsylvania, unless the Owner in its sole discretion opts for binding arbitration under the rules of the American Arbitration Association.~~

### § 13.2 Successors and Assigns

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

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

§ 13.2.3 The Contractors shall not assign the Contract or any monies due under the Contract without the prior written consent of the Owner. If a Contractor attempts to assign the Contract without such prior written consent, such attempt to assign shall be void and of no effect and the Contractor shall nevertheless remain legally responsible for all obligations under the Contract. Furthermore, the prior written consent of the Owner to any assignment shall not relieve the Contractor of any of its agreements, duties, responsibilities or obligations under the Contract Documents, and the Contractor shall be and remain as fully responsible and liable for its defaults, negligence, acts and omissions and those of its own officers, employees, agents and servants. With respect to any authorized assigned work, the Contractors shall bind each of its assigned parties to all of the terms, provisions and covenants of the Contract Documents.

### § 13.3 Rights and Remedies

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

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

§ 13.3.3 In the event the Contractor should breach any obligation under these Contract Documents, in addition to all other damages, losses, costs and/or relief, whether in law or equity, which the Owner may recover, the Owner shall also be entitled to an award for any reasonable legal fees incurred in the attempts to enforce or recover upon the Contract Documents due to Contractor's breach.

### § 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public

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authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals including, without limitation, the cost of retesting for verification of compliance if necessary, until the Architect agrees that the work in question does comply with the requirements of the Contract Documents, with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. ~~The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.~~

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

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense. Such amounts will be deducted, to the extent available, from any amount due such Contractor. If the amount due the Contractor is not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner within seven (7) days of receipt of the Owner's invoice for such legal fees, professional fees or other cost or expenses.

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

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

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

#### ~~§ 13.5 Interest~~

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

#### § 13.6 Estimate of Quantities

§ 13.6.1 The estimated quantities of work to be done and materials to be furnished under the Agreement shown in any of the Contract Documents, including the proposal, are given only for use in comparing bids and to indicate approximately the total amount of the Contract; and the right is especially reserved, except as herein otherwise specifically limited, to increase or diminish them as may be deemed reasonable or desirable by the Owner to complete the work contemplated by the Agreement and such increase or diminution shall in no way vitiate the Agreement, nor shall any such increase or diminution give cause for claims or liability for damages.

#### § 13.7 Promotional Materials

§ 13.7.1 The Contractor shall have the right to include photographic or artistic representations of the Project among the Contractor's promotional materials. The Contractor shall be given reasonable access to the completed Project to make such representations. However, the Contractor's materials shall not include either the Owner's or the Architect's confidential or proprietary information and therefore, written permission shall be received from both the Owner and the Architect for any information that will be used. The Contractor shall provide professional credit to the Architect and due credit to the Owner for the Contractor's promotional materials used for the Project.

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**§ 13.8 Interpretations**

**§ 13.8.1** The captions and headings of various Articles and Sections in the Contract Documents are for convenience only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

**§ 13.8.2** The parties hereto expressly waive the defense of *contra proferentum*, i.e., that the Contract Documents or any portion of the Contract Documents may be construed against any party as the drafter thereof.

**ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**

**§ 14.1 Termination by the Contractor**

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

- ~~.1~~ Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- ~~.2~~ An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- ~~.3~~ Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- ~~.4~~ The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

**§ 14.1.2** The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

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

**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

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

**§ 14.2.1** The Owner may terminate the Contract if the Contractor

- ~~.1~~ repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- ~~.2~~ fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- ~~.3~~ repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- ~~.4~~ otherwise is guilty of substantial breach of a provision of the Contract Documents.

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

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

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract. The costs of finishing the Work include, without limitation, all reasonable attorney's fees, additional title costs and any required insurance and interest due to any delays in completing the Work and all other costs incurred by the Owner and their agents due to the termination of the Contractor.

### § 14.3 Suspension by the Owner for Convenience

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

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

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

### § 14.4 Termination by the Owner for Convenience

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

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

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

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

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

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

#### § 15.1.2 Time Limits on Claims

The ~~Owner and~~ Contractor shall commence all Claims and causes of action ~~against the other and~~ arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements

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of the ~~binding~~ dispute resolution method selected in the Agreement and within the period specified by applicable law, ~~but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive law. The Contractor waives all Claims and causes of action not commenced in accordance with this Section 15.1.2.~~

### § 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by ~~either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, Contractor~~ shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not Owner and to the Architect, serving as the Initial Decision Maker. Claims ~~by either party~~ under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant ~~Contractor~~ first recognizes the condition giving rise to the Claim, whichever is later.

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

### § 15.1.4 Continuing Contract Performance

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

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

### § 15.1.5 Claims for Additional Cost

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

### § 15.1.6 Claims for Additional Time

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

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

### § 15.1.7 Waiver of Claims for Consequential Damages

~~The Contractor and Owner waive Claims against each other for waives Claims against the Owner, the Architect and their respective agents and consultants for any and all 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—Contract or its termination. This waiver includes any 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, (including the compensation of personnel stationed there), for losses of financing, business or reputation, and for any loss of profit.~~

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

### § 15.1.8 Construction Acceleration Claims

No claim for an increase in the Contract Sum or change in the Contract Time shall be based on construction acceleration. Accordingly, no course of conduct or dealings between the parties, or any express or implied statements made by the parties, nor any express or implied acceptance of alterations to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is in fact any such unjust enrichment, shall be the basis for any claim to an increase in the Contract Sum or change in the Contract Time.

### § 15.1.9 Claims for Economic Loss

The Contractor shall have no claim or right of recovery of damages against the Owner and/or the Architect for economic loss sustained, in whole or in part, by any act or omission of the Owner and/or the Architect to the extent that such act or omission constitutes a breach of Contract. Specifically, and without limiting the generality of the foregoing, the Contractor shall have no claim against the Owner and/or the Architect for economic loss based upon any tort, including, without limitation, negligence, negligent misrepresentation or any other tort-based theory of liability.

### § 15.2 Initial Decision

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

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

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

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

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

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

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

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

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

### ~~§ 15.3~~ Mediation

~~§ 15.3.1~~ Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

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

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

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

### ~~§ 15.4~~ Arbitration/Dispute Resolution

~~§ 15.4.1~~ If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded. Any claim or dispute arising out of or relating to this Agreement not resolved by agreement, shall be subject to litigation between the Contractor and Owner, by bench trial, with the parties waiving the right to a jury trial, unless the Owner in its sole discretion opts for arbitration pursuant to the rules of the American Arbitration Association. Litigation shall occur in the Lancaster County Court of Common Pleas.

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

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

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

~~§ 15.4.4 Consolidation or Joinder~~

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

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

**ARTICLE 16 MISCELLANEOUS**

§ 16.1.1 The Contractor certifies, for itself and all its Subcontractors, that as of the date of execution of the Bid/Contract, that neither the Contractor, nor any Subcontractors, nor any Suppliers are under suspension or debarment by the Commonwealth of Pennsylvania or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid, a written explanation of why such certification cannot be made.

§ 16.1.2 The Contractor also certifies, that as of the date of execution of its Bid and the Contract, it has no tax liabilities or Commonwealth of Pennsylvania obligations.

§ 16.1.3 The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Owner if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth of Pennsylvania obligations, or if it or any of its Subcontractors are suspended or debarred by the Commonwealth of Pennsylvania, the federal government, or any other state or governmental entity. Such notification shall be made within fifteen (15) days of the date of suspension or debarment.

§ 16.1.4 The failure of the Contractor to notify the Owner or its Subcontractors suspension or debarment by the Commonwealth of Pennsylvania, any other state, or the federal government shall constitute an event of default of the Contract with the Owner.

§ 16.1.5 The Contractor may obtain a current list of suspended and debarred Commonwealth of Pennsylvania Contractors by either searching the internet at <http://www.dgs.state.pa.us> or contacting the:

Department of General Services  
Office of Chief Counsel  
603 North Office Building  
Harrisburg, PA 17125  
Telephone No.: 717-787-6472  
Fax No.: 717-787-9138

~~§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an~~

~~arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.~~

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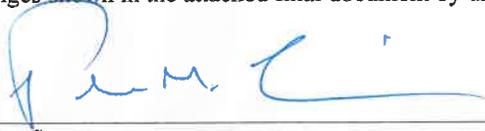
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I, Philip M. Leinbach, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with this certification at 10:23:06 ET on 03/25/2024 under Order No. 2114460833 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, other than changes shown in the attached final document by underscoring added text and striking over deleted text.



*(Signed)*

Registered Architect

*(Title)*

April 16, 2024

*(Dated)*