

**SPORTS & EXHIBITION AUTHORITY OF PITTSBURGH AND ALLEGHENY COUNTY  
PITTSBURGH, PENNSYLVANIA**

**ADDENDUM NO. 1**

**August 23, 2023**

**FOR**

**CONSTRUCTION MANAGEMENT AT-RISK SERVICES FOR DAVID L. LAWRENCE  
CONVENTION CENTER 2<sup>nd</sup> AND 3<sup>rd</sup> FLOOR NORTH TERRACE REPLACEMENT**

Prospective firms shall attach this addendum to the Request For Proposal documents now in their possession.

**RE: CONSTRUCTION MANAGEMENT AT-RISK SERVICES FOR DAVID L. LAWRENCE  
CONVENTION CENTER 2<sup>nd</sup> AND 3<sup>rd</sup> FLOOR NORTH TERRACE REPLACEMENT**

1. The following revisions are hereby made to the proposal documents for the referenced project. The prospective firms shall, for their own information, note the following additions on the documents in the firm's possession.
2. Please find attached a copy of the Pre-Proposal Meeting Minutes and attendance sheet.
3. Please find attached a copy of the Insurance Requirement Worksheet.
4. Please find attached a copy of the modified versions of AIA Document A133-2009 Standard Form of Agreement Between Owner and Construction Manager as Constructor and AIA Document A201-2007 General Conditions of the Contract for Construction. These documents are in draft form and are subject to further change and revision by the Authority. Although we attempted to maintain the integrity of the original AIA document during the revisions, we cannot guarantee that the redlines track exactly to the original AIA documents, accordingly, due care is recommended in reviewing these documents. The Appendices will be inserted as applicable prior to execution of these documents.
5. Questions/Answers

Question: Could you please provide Alicia Matos, Authority's Procurement and MBE/WBE Specialist, contact information?

Answer: Phone Number (412) 393-7106, E-mail: [amatos@pgh-sea.com](mailto:amatos@pgh-sea.com)

Question: What is the design schedule?

Answer: The architect has started the design and anticipates a construction set of documents ready in September/October 2023. However, this will get refined during the preconstruction phase services with the selected construction manager at-risk.

Question: What is the construction schedule duration?

Answer: We are anticipating a 12 -18 month construction duration. However, this will get refined during the preconstruction phase services with the selected construction manager at-risk.

Question: Are the MBE/WBE participation goals for just the trade contracts or will they also apply to the CM portion.

Answer: The MBE/WBE participation goals are for the project so they will apply for both CM portion and the trade contracts.

Question: Will the CM be involved in reviewing the trade bids?

Answer: The project will be divided up into separate trade contracts not sub-contracts. The CM At-risk will manage the bid process, review the bids, and make a recommendation to award the trade contract.

Question: Who's contract will the trade contractors enter into to perform the work, the SEA's or CM's?

Answer: The trade contract will be the SEA's Agreement Between Owner and Contractor and the agreement will be immediately assigned to the CM At-risk.

**END OF ADDENDUM**

**SPORTS & EXHIBITION AUTHORITY OF PITTSBURGH AND ALLEGHENY COUNTY  
PITTSBURGH, PENNSYLVANIA**

**Pre-Proposal Meeting, August 17, 2023**

**CONSTRUCTION MANAGEMENT AT-RISK SERVICES FOR DAVID L. LAWRENCE  
CONVENTION CENTER 2<sup>nd</sup> AND 3<sup>rd</sup> FLOOR NORTH TERRACE REPLACEMENT**

**Meeting Minutes**

1. An attendance sheet was distributed to all those present.
2. Tom Ryser (TPR) welcomed everyone for their interest in the project and for attending the meeting.
3. TPR provided a general overview of the proposed project.
4. TPR discussed the general purpose of the Pre-Proposal meeting which was to identify the roles of the various organizations, discuss specifics of the project, to review what was expected in the proposals, and answer any questions.
5. Project Role  
Doug Straley is the Authority's Project Executive and will be overseeing the project.  
Tom Ryser is an owner's representative for the Authority and will be the project manager.  
Alicia Matos is the Authority's Procurement and MBE/WBE Specialist.  
Ryan Buries is SMG's Assistant General Manager of the David L. Lawrence Convention Center; SMG will assist in the coordination with the building operations to make sure the project conforms to the operations of the active building.  
AE7 is the Authority's architect for the project.
6. TPR reviewed the Request for Proposal by going through each section highlighting some critical points:
  - The project will be removing and replacing the 2<sup>nd</sup> and 3<sup>rd</sup> floor north terraces. The existing concrete will be removed down to the structural slab, new waterproofing will be installed, and then new surface features will be installed.
  - The basis of payment will be a Guaranteed Maximum Price.
  - Authority's MBE/WBE Participation is 25% minority participation and 10% women's participation. MBE/WBE Participation and Workforce Diversity forms must be completed and submitted w/ the proposals as described in the RFP.
7. Dates  
All questions must be received by Tuesday, August 22, 2023 by 2:00 PM.  
Hard and electronic copies of the proposals are due Thursday, August 31, 2023 by 2:00 PM
8. Pre-proposal meeting minutes will be issued via an addendum. Any question after this meeting will need to be submitted in writing to Tom Ryser. The questions and responses will be provided to all firms via an addendum.
9. Questions/Discussion

*These meeting minutes have been prepared by TPR and are TPR's interpretation of the discussions which took place. All participants are requested to review these minutes and advise of any corrections or additions required.*



ATTENDANCE SHEET CONSTRUCTION MANAGER AT-RISK SERVICES FOR DAVID L. LAWRENCE CONVENTION CENTER 2<sup>nd</sup> and 3<sup>rd</sup> FLOOR NORTH TERRACE REPLACEMENT PRE-PROPOSAL MEETING – August 17, 2023:

Name	Shawn Lang	Company Name	AR Construction	Phone:	
Title	GA	Address		Mobile:	412-983-3807
Name	John Vay	Company Name	PJ DICK	Fax:	
Title		Address		Email:	Shawn e Seed Building South Co
Name	Colin Garrison	Company Name	Am H: 1504	Phone:	412 742 9639
Title	PM	Address		Mobile:	
Name	TOBY HANS	Company Name	WALLER CORPORATION	Fax:	
Title		Address		Email:	RYANVAZ@PJDICK.COM
Name		Company Name		Phone:	
Title		Address		Mobile:	
Name		Company Name		Fax:	
Title		Address		Email:	INFO@WALLER CORPORATION.COM
Name		Company Name		Phone:	
Title		Address		Mobile:	
Name		Company Name		Fax:	
Title		Address		Email:	
Name		Company Name		Phone:	
Title		Address		Mobile:	
Name		Company Name		Fax:	
Title		Address		Email:	

**Sports & Exhibition Authority of Pittsburgh and Allegheny County  
DLLCC 2<sup>nd</sup> and 3<sup>rd</sup> Floor North Terrace Replacement**

**Insurance Requirement Worksheet**

The Construction Manager shall procure and maintain, at its' own expense, during the life of this Agreement, all of the insurances listed below. Except as set forth below, all policies shall be written on an occurrence basis and shall be written with an Insurer that is licensed to do business in Pennsylvania and is acceptable to the Owner and have an A.M. Best Rating of A+ or A. Construction Manager shall assure that its Subcontractors and each Trade Contractor provide adequate insurance for the Project in order to support the obligations and liability of Construction Manager under this Agreement.

The Construction Manager shall take out and maintain during the life of this Agreement such insurance as shall protect the Owner and the Construction Manager performing Work covered by this Agreement from all claims for damages for physical injury, including wrongful death, as well as from claims for property damages, other than the Work itself, which may arise from Construction Manager's, Subcontractors' or Trade Contractors' operations and completed operations under this Agreement and under any Trade Contractor agreements assigned by Owner to the Construction Manager, whether such operations be by the Construction Manager or by a Trade Contractor, a Subcontractor or anyone directly or indirectly employed to perform the Work and to this end the following insurance coverages are required.

A. General Liability

The limits of each insurance shall be as follows:

Commercial General Liability Insurance (CGL) with limits of insurance not less than \$1,000,000 each occurrence, \$1,000,000 Personal Injury and Advertising Injury, \$2,000,000 Products/Completed and \$2,000,000 Annual General Aggregate.

1. If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project.
2. CGL coverage shall be written on ISO occurrence form CG 00 01 (12/04) or a substitute form providing equivalent coverage shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury. Coverage shall include Blanket Contractual, Explosion, Collapse and Underground.
3. Construction Manager shall include the parties identified at Paragraph I below as insured on the CGL, using ISO additional Insured Endorsement CG 20 10 (11 85) or an endorsement providing equivalent coverage to the additional insured identified at Paragraph I below (combination of the CG 20 10 (04 13) and CG 20 37 (04 13). This insurance for the additional insured shall be as broad as the coverage provided for the named insured Construction Manager It shall apply as Primary



**Sports & Exhibition Authority of Pittsburgh and Allegheny County  
DLLCC 2<sup>nd</sup> and 3<sup>rd</sup> Floor North Terrace Replacement**

**Insurance Requirement Worksheet**

Insurance before any other insurance or self-insurance, including any deductible, maintained by, or provided to, the additional insured. Construction Manager shall maintain CGL coverage for itself and all additional insureds identified at Paragraph I below, for the duration of the Project and maintain Completed Operations coverage for itself and each additional insured for at least 6 years after completion of the Work.

**B. Automobile Insurance**

Automobile Insurance in an amount not less than Two Million Dollars (\$2,000,000) for injuries and/or wrongful death or property damage due to any one accident. Policy shall include coverage for all owned, non-owned, leased and hired vehicles. The policy shall bear the full and exact name of the Construction Manager as insured.

**C. Worker's Compensation**

1. The Construction Manager shall accept the provisions of the Worker's Compensation Act of 1915, and any supplements or amendments thereof, including any which may hereafter be passed, and shall insure his full liability thereunder for all parts of this Contract being performed by him, his partners, associates, or file with the Owner a certificate of exemption from insurance from the Bureau of Workmen's Compensation of the Department of Labor and Industry.
2. The Construction Manager shall carry such insurance for all their employees engaged on the Project and the Construction Manager shall not be permitted to perform Work on the project without Worker's Compensation insurance coverage.
3. Workers Compensation (WC/Employers Liability (EL): WC statutory limits and EL: \$1 million/\$1 million/ \$1 million
4. Waiver of subrogation endorsement.
5. Voluntary compensation endorsement

**D. Umbrella Liability**

Construction Manager shall purchase and maintain for the full term of this Project Umbrella Liability with limits in an amount not less than Fifteen Million Dollars (\$15,000,000) each occurrence combined single limit, products/completed operations of Fifteen Million Dollars (\$15,000,000), each occurrence Fifteen Million

**Sports & Exhibition Authority of Pittsburgh and Allegheny County  
DLLCC 2<sup>nd</sup> and 3<sup>rd</sup> Floor North Terrace Replacement**

**Insurance Requirement Worksheet**

Dollars (\$15,000,000) for a period of six (6) years after final payment. The policy shall be excess over the Construction Manager's Commercial General Liability, Automobile Liability and Employers' Liability. The policy shall bear the full and exact name of the Construction Manager as the insured with the parties identified at Paragraph I below as additional insured.

E. Professional Liability

Construction Manager shall purchase and maintain for the full term of this Agreement, Professional Liability with limits in an amount not less than Five Million Dollars (\$5,000,000) each occurrence combined single limit. Such insurance shall be maintained in force by the Construction Manager for three (3) years after the date of substantial completion of the Work.

F. Pollution Liability

Construction Manager shall purchase and maintain for the full term of this Pollution Liability with limits in an amount not less than Five Million Dollars (\$5,000,000) each occurrence combined single limit.

G. Builder's Risk/ Installation Floater

Unless Authority determines that it will provide Builders Risk coverage, Construction Manager during the term of the Contract, shall maintain in force builder's Risk/Installation Floater in the full amount of the Contract covering labor, materials on and off site at temporary location and equipment used or to be used for completion of the Work performed under the Contract, against all risks of direct physical loss including collapse.

H. Certificate Holder

The Sports & Exhibition Authority of Pittsburgh and Allegheny County, as Owner, will be the Certificate Holder.

I. Additional Insureds

For any of the above insurance policies for which the Owner is the Certificate Holder, except for Professional Liability insurance and Workers Compensation insurance, such insurance policies shall also name the following as additional insureds:

1. Sports & Exhibition Authority of Pittsburgh and Allegheny County

**Sports & Exhibition Authority of Pittsburgh and Allegheny County  
DLLCC 2<sup>nd</sup> and 3<sup>rd</sup> Floor North Terrace Replacement**

**Insurance Requirement Worksheet**

2. The City of Pittsburgh
3. Allegheny County, PA
4. Commonwealth of Pennsylvania
5. TPR LLC
6. AE7, LLC
7. SMG

G. Additional Requirements.

All liability insurance except for professional liability, shall be on an occurrence basis rather than claims made policy. All liability insurance shall be primary and non-contributory. Construction Manager waives all rights against Owner for damages caused by any peril covered by insurance provide under these Insurance Requirements. All insurance policies required hereunder shall permit and recognize such waivers of subrogation. An Actual Notice of Cancellation endorsement will be delivered that will provide that coverage cannot be canceled except upon not less than thirty (30) days prior written notice to the Authority.

“Life of the Agreement” as used herein means the term beginning with the execution of the Agreement and ending on the last date for which coverage as provided herein is required. Construction Manager will provide with its Final Application for Payment, insurance certificates evidencing its continued products/completed operations coverage and professional liability coverage.

# DRAFT AIA<sup>®</sup> Document A133<sup>™</sup> - 2009

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

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

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

<><>> Sports & Exhibition Authority of the City of Pittsburgh and Allegheny County  
171 10<sup>th</sup> Street, 2<sup>nd</sup> Floor  
Pittsburgh, PA 15222  
<>

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

<><><><>  
<>

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

<> David L. Lawrence Convention Center>  
<<> 2nd and 3rd Floor North Terrace Replacement

The Architect:  
(Name, legal status and address)

<><><>> AE7, LLC  
2840 Liberty Avenue, Suite 403  
Pittsburgh, PA 15222  
<>

The Owner's Designated Representative:  
(Name, address and other information)

<>  
<>  
<>  
<>  
<>  
<>  
<>

The Construction Manager's Designated Representative:  
(Name, address and other information)

<>  
<>  
<>  
<>

**ADDITIONS AND DELETIONS:** The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

AIA Document A201<sup>™</sup>-2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.



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<>  
<>

The Architect's Designated Representative:  
*(Name, address and other information)*

<>  
<>  
<>  
<>  
<>  
<>

The Owner and Construction Manager agree as follows.



## TABLE OF ARTICLES

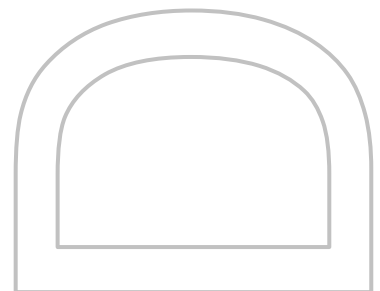
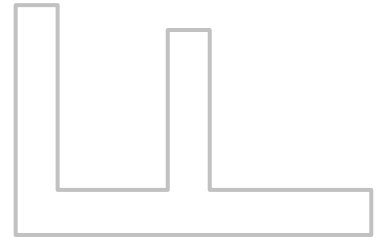
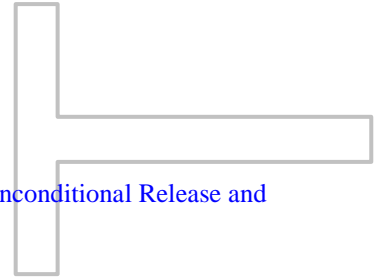
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2	CONSTRUCTION MANAGER'S RESPONSIBILITIES
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## EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

### Appendices

- A- Project Description
- B- Project Schedule
- C- Project Budget
- D- Project Staffing
- E- General Conditions Work
- F- Insurance Requirements
- G- Project Bonding Requirements
- H- Non-Discrimination Clause
- I- Contractor Integrity Provisions
- J- Certifications and Stipulations for Debarment
- K- Tax Liability Provisions
- L- Construction Manager Responsibility Provisions
- M- Steel Products Procurement Act
- N- Trade Practices Act

- O- Prevailing Wage Act Requirements
- P- ADA Provisions
- Q- Minority and Women Owned Business Enterprise Participation Policy
- R- Workforce Utilization Program
- S- Reimbursement Policy
- T- Advance Waiver of Liens
- U- Forms of (i) Conditional Release and Waiver of Liens and Claims and (ii) Unconditional Release and Wavier of Liens and Claims



## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification or the GMP Amendment, is inconsistent with this Agreement, this Agreement shall govern.

### § 1.2 Relationship of the Parties

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Owner (and any Consultant of the Owner) and the Architect and exercise the Construction Manager's best skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

### § 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, as amended, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, as amended, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

## ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the services described in the Contract Documents. Construction Manager acknowledges that the Project is a "fast-track" project that will be designed, bid, constructed in segments or phases. Construction Manager agrees to provide its services as contemplated by this Agreement as necessary to support the fast-track, phased nature of the Project. The services to be provided under Paragraphs 2.1 and 2.2 constitute the Preconstruction Phase services.

~~The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2.~~ The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify in writing to the Owner and Architect a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### § 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other. The Project Description is attached hereto as Appendix A. The initial Project Schedule is attached hereto as Appendix B. The Project Budget is attached hereto as Appendix C.

### § 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.



§ 2.1.3 ~~W~~On the 5<sup>th</sup> day of each month, ~~hen Project requirements in Section 3.1.1 have been sufficiently identified,~~ the Construction Manager shall prepare its update and ~~the and periodically update a~~ Project schedule for the Architect's review and the Owner's acceptance, which shall be a critical path Project Schedule for the entire Project from the beginning of site acquisition until final acceptance of the Project. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, all other professional services, consultants, governmental agencies, Trade Contractors, and subcontractors and suppliers of any of the foregoing and the Owner's responsibilities and identify items that could affect the Project's timely completion and make appropriate recommendations regarding such items. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; ~~and~~ the occupancy requirements of the Owner, and the proposed Substantial Completion Date. The Project Schedule will include pre-construction, construction and equipment check-out activities, and reflect the Pre-Construction and Construction Phases of the Project. The Project Schedule will be updated monthly and will reflect sequence and duration of activities, including manpower loading and cash flow projections.

The Construction Manager shall develop separate specific detailed schedules of construction activities for each Trade Contract. Each specific construction schedule shall be included within the overall Project Schedule and shall be coordinated with each other. The construction schedules shall be incorporated in the construction documents, along with a construction schedule for the specific prime contract.

§ 2.1.3.1 Construction Manager shall update the Project Schedule to reflect new activities and completion of activities and shall adhere to and require adherence to the Project Schedule in effect from time to time. If work is behind schedule, the Construction Manager will take the necessary action to recover the time lost. The Construction Manager will reflect the impact of Change Orders on the Project Schedule. On a minimum of a monthly basis, tabular and graphic reports will be generated that accurately reflect the above information.

Construction Manager shall notify Owner in writing of any failure by Owner or Architect to comply with the Project Schedule. Owner will review Construction Manger's notice and determine whether or not to amend the Project Schedule. If Owner determines that the delay is due to the fault of Owner or Architect, Owner shall either expedite performance so as to cause no delay in the Project Schedule or shall authorize an extension of the Project Schedule. Construction Manager shall notify Owner in writing when and why Construction Manager or any Trade Contractor has failed to meet the Project Schedule and may request that the Owner amend the Project Schedule, if appropriate, and shall recommend a Project Schedule amendment. Owner will review Construction Manger's notice and determine whether or not to amend the Project Schedule. If Owner determines that the delay is due to the fault of Construction Manager, Owner may amend the Project Schedule and direct Construction Manager to expeditiously proceed with the construction of the Project in which case Owner may hold Construction Manager responsible for any costs attributable to delay. Until and unless the Project Schedule is amended, Construction Manager shall require the Trade Contractors to comply with the previously approved Project Schedule. Owner shall own the float contained in any Project Schedule.

#### § 2.1.3.2 FORM OF PROJECT SCHEDULE

The Project Schedule must be a Critical Path Method (CPM) schedule as defined by the Association of General Contractors (AGC). It must be developed using the Precedence Diagramming Method (PDM). As a minimum, the following information will be required:

Activity ID

Activity Predecessors and Successors with associated relationship types and lags

Early dates for each activity

Late dates for each activity

Constraints imposed on the schedule and explanation of why the constraint was imposed

Proposed Workday Calendars

#### § 2.1.4 Phased Construction

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

## § 2.1.5 Preliminary Cost Estimates

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

Construction Manager shall provide as part of Pre-Construction Phase Services all services within the scope of this Agreement required to bring the GMP for the Project within Budget, including value engineering, development of alternates, estimating, constructability reviews, and bid administration.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

## § 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project, and shall furnish to the Owner and Architect for their information a list of possible Subcontractors, including Trade Contractors, and other suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of the proposed Subcontractors or suppliers, nor shall it waive the right of the Owner or Architect to later object or reject any proposed Subcontractor or supplier.

The Construction Manager may elect to self-perform a portion of the Work (including changes in the Work) only with the Owner's written consent, after written notice to the Owner and Architect outlining the desirability for the Construction Manager to self-perform the subject Work, and subject to the limitations as provided in section 2.3.1.5 hereof.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. The parties hereby acknowledge that certain Trade Contracts may be bid and awarded prior to establishment of a GMP in order to meet the Project Schedule. The bidding and award of such long-lead time items shall not constitute the commencement of the Construction Phase. Subject to approval of Owner, Construction Manager shall undertake duties necessary in order to bid, award and administer such early-bid Trade Contracts (as provided for in Section 2.3.2.1 and otherwise in this Agreement) prior to establishment of a GMP, and if applicable, specifically in accordance with Section 2.3.1.1, with respect to Pre-Qualified Bidders. Construction Manager shall recommend to the Owner and Architect a schedule for procurement of other long-lead time items which will constitute part of the Work as required to meet the Project Schedule. Prior to issuance of a Notice to Proceed with the Construction Phase, Owner may authorize the bidding of additional Trade Contracts for early procurement of long-lead time items or performance of site work as reasonably required in order to meet the Project Schedule. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. The Construction Manager shall coordinate and expedite the delivery of long-lead time items. Notwithstanding anything in this Agreement to the contrary, Construction Manager shall not allow any Construction Phase Work to be performed, or contracted for, without Owner's express approval. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items obtained in the Owner's name to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

§ 2.1.7.1 Cost estimates. Construction Manager shall perform construction cost estimates, constructability reviews and value engineering as set forth below:

- a. ~~Schematic Cost Estimate. Within ten (10) days of the receipt of the approved Schematic Design Documents, or any segment thereof, Construction Manager shall submit to Owner and Architect a Schematic Design Cost Estimate and Breakdown (in a format acceptable to Owner) computed at present prices, projected to the estimated bid receipt date, and a justification of the factors used for such projection.~~
- b. Design Development Cost Estimate. Within ten (10) days of the receipt of the approved Design Development Documents, or any segment thereof, Construction Manager shall submit to Owner and Architect a Pre-Final Construction Cost Estimate and Breakdown (in a format acceptable to Owner) computed at present prices, projected to the estimated bid receipt date, and a justification of the factors used for such projection. The Pre-Final Construction Cost Estimate shall be a detailed estimate and shall include all supporting data prepared in connection with the estimate. The Pre-Final Construction Cost Estimate shall be the basis for Construction Manager's initial GMP proposal pursuant to Article 2.2.
- ~~a-c.~~ c. Reconciliation, Constructability Reviews and Value Engineering. Construction Manager shall reconcile each of its cost estimates with Owner's cost estimates. At a minimum, Construction Manager shall conduct constructability reviews with each estimate, considering clarity, completeness, coordination, economic viability schedule impact and usability. Construction Manager shall review proposed major pieces of equipment and material for availability within the provisions of the Pennsylvania Steel Products Procurement Act. Construction Manager shall facilitate and conduct formal value engineering reviews for each estimate to consider construction methods, selection of materials, systems and equipment, and factors related to construction costs, schedule, life cycle cost, environmental impacts, and durable economics; recommending alternative solutions, when applicable, and otherwise assist Owner and Architect on value engineering decisions.

### § 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require. ~~Construction Manager shall be responsible for any nonconformity in the Drawings and/or Specifications which it knows or reasonably should have known of and failed to timely notify Owner and Architect.~~

### § 2.1.9 Notices and Compliance with Laws

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

### § 2.1.10 CONSTRUCTION MANAGER'S OBLIGATION TO ADHERE TO THE PROJECT SCHEDULE

§ 2.1.10.1 Time is of the essence for Project and this Agreement. Construction Manager agrees that the GMP is based upon the Substantial Completion Date of . Construction Manager also understands that all Work must be performed in an orderly and closely coordinated sequence and Construction Manager hereby agrees to perform its Work in conformance with the Project Schedule and to achieve Substantial Completion on or before the Substantial Completion Date.

§ 2.1.10.2 Construction Manager acknowledges that the Project Schedule includes allowances for time lost due to foreseeable adverse weather conditions other than floods, hurricanes, tornadoes and the like, Construction Manager understands and agrees that it shall not be entitled to any extension of the Construction Completion Date, except as provided in and subject to the limitations of this Agreement

§2.1.10.3 The Work shall be performed in accordance with the Project Schedule and Construction Manager shall achieve the Interim Milestones and Substantial Completion on or before the contractual completion dates for such milestones. Construction Manager shall submit proposed schedule revisions and obtain written approval of the Owner before deviating from the Project Schedule. If, during the progress of the Work, Construction Manager determines that it will not be able to perform its work in accordance with the Project Schedule and Substantially Complete its Work by the Substantial Completion Date, or if Construction Manager is, at any time, behind in the Work

based on the Construction Manager's project Schedule, or if, in the opinion of the Owner, Construction Manager is delaying or failing to prevent delay by it or the Trade Contractors in the progress of the Work necessary to perform the Work in accordance with the Project Schedule and Substantially Complete the Work within the Contract Time, Construction Manager shall promptly submit to the Owner a plan, including proposed schedule adjustments, if any, showing how Construction Manager plans to mitigate impact upon other portions of the Work and the Project and how it plans to complete the late Work.

§ 2.1.10.4 In addition to the foregoing:

- a. If Construction Manager shall fail to achieve any Interim Milestone, as it may have been adjusted by Change Order, or not meet the durations for Work activities as outlined in the Project Schedule, Owner shall have the right to order Construction Manager to accelerate completion of the late activities by whatever means necessary without any additional cost to Owner and Construction Manager shall comply with same; and
- b. If Construction Manager shall fail to achieve any Interim Milestones, or if Construction Manager shall fail to complete Work on the critical path of the Project Schedule by more than seven (7) work days after the scheduled date, Construction Manager shall submit to the Owner for approval proposed adjustment, if any, which will allow future critical path dates to be met. In addition, the Owner shall have the right to immediately order Construction Manager to accelerate completion of the late activities and any activities which have been delayed by the late activities by whatever means necessary without any additional cost to Owner, and Construction Manager shall comply with same. Owner shall have the right to withhold future progress payments until Construction Manager's progress is in compliance with the Project Schedule or until Owner has approved, by Change Order, proposed adjustments to the Project Schedule or extension of the Contract Time. Any logic and/or schedule changes to improve overall progress and completion shall be subject to the review and acceptance of Owner before revisions to the Project Schedule can be implemented.

§ 2.1.10.5 **DAMAGE TO OWNER UPON FAILURE TO PERFORM.** In addition to the foregoing responsibilities and liabilities of the Construction Manager, Construction Manager hereby expressly agrees and acknowledges that if it fails to achieve Substantial Completion of the Work by the Substantial Completion Date, Construction Manager shall be liable for Liquidated Damages in the amount (to be negotiated) dollars (\$       ) per each calendar day of delay after the Substantial Completion Date until the Work required for achievement of Substantial Completion has been fully performed. Owner and Construction Manager agree that the liquidated damages are not a penalty and are a reasonable estimate of the damages the Owner will suffer in the event that the Substantial Completion Date is not achieved, and further that such payment shall in no way limit or reduce Owner's rights to pursue other rights or remedies provided by the Contract Documents or otherwise permitted by law. Owner may deduct the liquidated damages from any sums due, or that may become due to the Construction Manager, or if such deductions are insufficient, Construction Manager shall promptly pay such deficiency to Owner.

§ 2.1.10.6 **EXTENSION OF TIME IS EXCLUSIVE REMEDY; NO DAMAGES FOR DELAY.** If Construction Manager's performance of Work on the critical path of the then-current Project Schedule is delayed without fault on the Construction Manager's part, because of any event which is beyond the control of Construction Manager such as extraordinarily severe weather, acts of God or other force majeure, and Construction Manager would have otherwise been able to perform all of its obligations under the Contract but for such delay, Construction Manager may be entitled to a day-for-day extension of time in accordance with, and subject to, the limitations of this Article.

In addition, the Construction Manager may also be entitled to an increase in its fee and/or General Conditions work for any such delays, assuming that this increase in fee and General Conditions are detailed and submitted by the Construction Manager as part of the time extension request and at the time the Construction Manager submits the request for a time extension. The request for an increase to the Construction Manager's fee and General Conditions must be reviewed and approved by the Owner.

This section does not apply to the situation where the Owner delays the Notice to Proceed date included in Appendix B more than ninety (90) days. If the Notice to Proceed date is delayed more than 90 days, the project schedule and GMP agreement will be modified accordingly. Any delay in the Notice to proceed less than 90 days will result in a day for day extension of time for the Substantial Completion date.

§ 2.1.10.7 CAUSES GIVING RISE TO EXTENSION. Construction Manager will be granted an extension of time for the delay in completion of any Work, so long as that Work is on the critical path of the Project Schedule at the time, arising from area-wide labor disputes, acts of God, acts of the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, weather which is extraordinarily severe (determined on a monthly basis), or acts of owners or occupants or property adjoining the Work Site, or other force majeure, provided that the aforesaid causes were not foreseeable and did not result (in whole or in part) from the fault or negligence of Construction Manager, and provided further that Construction Manager has taken reasonable precautions to prevent further delays owing to such causes, and has notified Owner in writing of the cause or causes of delay within ten (10) days from the beginning of any such delay. Within thirty (30) days after such delay, Construction Manager shall furnish Owner with detailed information concerning the circumstances of the delay, the number of days actually delayed, the appropriate Contract Document references, and the measures taken to prevent or minimize the delay. Failure to submit such information will be sufficient cause for denying the contract request for an extension of time. All time extensions must be approved by Owner prior to the Contract Schedule being extended.

## § 2.2 Guaranteed Maximum Price Proposal and Contract Time

§ 2.2.1 Based upon the Design Development Documents and the Pre-Final Construction Cost Estimate, Construction Manager shall provide to Owner within ten (10) days of delivery of the Design Development Documents an Initial GMP proposal for completion of the Work which shall be the amount that the Construction Manager guarantees as the maximum price for the Cost of the Work plus the Construction Manager's total fee. ~~At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.~~

§ 2.2.2 Construction Manager acknowledges that design and engineering documents will be incomplete at the time the GMP is established, but that Construction Manager will have had sufficient involvement with the Project to understand the program requirements and Project scope as expressed in the Design Development Documents. Construction Manager acknowledges that the Design Development Documents will describe the design intent, and that the Construction Drawings and specifications for the Project prepared by the Architect will include additional or more fully developed plans, sections or details not included in the Design Development Documents. Provided these additional or more fully developed plans, sections or details are consistent with or are reasonably inferable from the Design Development Documents, Construction Manager will make no claim against Owner for an increase in the GMP. Construction Manager acknowledges and agrees that it is obligated to deliver a totally complete and fully functional Project consistent with the design intent expressed in the GMP documents for the amount of the GMP. As set forth in Paragraph 5.3.1, Construction Manager shall be entitled to an equitable adjustment to the GMP to the extent the Owner makes a fundamental change to the Project in scope or kind at any time after establishment of a GMP. ~~To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.~~

§ 2.2.3 The GMP shall include a construction contingency in the amount of ~~(to be negotiated)~~ percent (\_\_\_%), for the Construction Manager's exclusive use to cover costs which are properly reimbursable as Costs of the Work, except the construction Manager's General Conditions and reimbursables, but not the basis for a Change Order. Prior to expending any amounts of the construction contingency, the Construction Manager will first obtain Owner's approval therefore, which approval shall not be unreasonably withheld. The GMP will also include a buyout contingency. The buyout contingency will begin at zero dollars and will accrue when the lowest responsible bid for a line item is less than the budgeted amount. In the event any single bid exceeds the budget for that line item, the Construction Manager may use the buyout contingency to complete the cost of that work without further consent of the Owner. At the conclusion of the Project, any remaining construction contingency and buyout contingency shall be part of the cost savings as set forth in Article 5.2.2. These costs may include but are not limited to claim settlements with Trade Contractors, insurance claims including those of the Construction Manager or Trade Contractors, shift work, acceleration, overtime, design conflicts, availability of material and legal costs.

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

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated ~~date of~~ Substantial Completion ~~Date~~ upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

~~§ 2.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.~~

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

§2.2.5.1 If the Initial GMP proposal exceeds the Project Budget or is otherwise unacceptable to Owner, Construction Manager, Owner and Architect shall cooperate with one another in a joint effort to refine and/or revise the program for the Project (including the Project design and Project Schedule) as necessary to develop a program and obtain a GMP proposal from Construction Manager that is within the Project Budget and otherwise acceptable to Owner. Such cooperative efforts shall include, without limitation, constructability reviews, value engineering, and redesign by Architect. Based upon such cooperative efforts, the Construction Manager shall prepare and submit to Owner a revised GMP proposal.

§ 2.2.5.2 If through the efforts contemplated by Paragraph 2.2.5.1, Owner and Construction Manager cannot develop a mutually acceptable program and GMP, Owner, in its sole discretion, has the following options:

- a. Require the Architect to modify the Design Development Documents as necessary to bring the GMP within the Project Budget. In such a case, upon completion of the redesign, the parties will again undertake efforts as contemplated by this Article 2.2.;
- b. Suspend this Agreement, for a period of up to sixty (60) days, pending attempts to obtain additional funding and increase the Project Budget; or-
- a—c. Terminate this Agreement.

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

§ 2.2.7 Prior to the Owner's acceptance of the Construction Manager's GMP proposal and issuance of a Notice to Proceed, ~~the~~ Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work ~~prior to the commencement of the Construction Phase~~, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The GMP and its basis shall be made a part of this Agreement upon execution of the GMP Amendment. The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised ~~and in accordance with the schedule agreed to by Owner, Architect and Construction Manager~~. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications, ~~and in any event within five (5) business days of receipt. Provided Architect~~

clearly identifies the revisions on the revised Drawings and Specifications and no such notification is provided, the Construction Manager shall be deemed to have accepted and agreed to proceed with the revised Drawings and Specifications without any further assumptions or clarifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed. Notwithstanding the foregoing, the GMP shall not include taxes for the purchase of Building Machinery and Equipment, as such purchases are excluded from tax. Construction Manager shall be solely responsible for any overpayments of sales, consumer, use and similar taxes improperly made on the purchase of any Building Machinery and Equipment.

## § 2.3 Construction Phase

### § 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier. In no event shall the Construction Phase Work be commenced prior to the filing of the Notice of Waiver of Liens.

§ 2.3.1.3 Construction Manager shall staff the Project with the home office and on-site construction management staff as set forth in Appendix D and as agreed to by the parties. No changes to the staffing plan are permitted without written consent from the Owner.

§ 2.3.1.4 Construction Manager shall advise on the separation of the Project into Trade Contracts and shall verify that all such separation is done in accordance with all Legal Requirements and the aspirational goals of Owner's MBE/WBE Plan and Workforce Utilization Program. Construction Manager shall review the contract drawings and provide comments to the Architect to ensure that all information necessary for Architect to prepare the Construction Drawings and Specifications in a complete and appropriate fashion such that (a) the Work of the separate Trade Contractors is coordinated, (b) all requirements for the Project have been assigned to the appropriate separate trade, (c) the likelihood of jurisdictional disputes has been minimized, and (d) proper coordination has been provided for phased construction. Construction Manager shall assure that the Work under all Trade Contracts, when aggregated, will be complete and sufficient for the entire construction of the Project.

§ 2.3.1.5 If applicable, the Construction Manager shall have the right to self-perform only those items of work set forth in appendix E. All other items of the Work must be performed by Trade Contractors not affiliated with Construction Manager.

§ 2.3.1.6 If the GMP is accepted, Construction Manager shall cause the Work to be performed in accordance with the requirements of the Contract Documents and all Legal Requirements. The Construction Phase duties of Construction Manager shall include, without limitation, the following:

- a. Construction Manager shall provide and update the Project Schedule and Project Reports as required under the terms of this Agreement. Construction Manager shall provide administrative, management and related services as required to coordinate, supervise and direct the performance of the Work by all Trade Contractors with each other and with the activities and responsibilities of the Owner and Architect to complete the Project in accordance with the Contract Documents. Construction Manager shall coordinate all aspects of the Project with all authorities, governmental agencies and utility companies who may be involved in the Project, but Construction Manager shall not be responsible for delays caused by the failure of any authorities, governmental agencies and utility companies who may be involved in the Project. Construction Manager shall take all steps necessary and appropriate to enforce agreements with Trade Contractors for the benefit of Owner.
- b. Construction Manager shall notify Owner of any default of a Trade Contractor and advise Owner of the remedial action to be taken by the Construction Manager.
- c. Construction Manager shall provide the General Conditions Work listed in Appendix E.
- d. Construction Manager has overall responsibility for Project safety and shall implement the safety and fire prevention program on the Project developed by Construction Manager and shall require all Trade

- Contractors to adhere to such program. Construction Manager shall review the safety programs of each of the Trade Contractors and make appropriate recommendations regarding their implementation.
- e. Construction Manager shall be responsible to Owner for the adequacy of all construction means, methods, techniques and procedures employed by Trade Contractors in the performance of the Work, and for coordinating all portions of the Work.
  - f. Construction Manager shall maintain at the Project Site (or such other place as approved by Owner), on a current basis: A record copy of all contracts (including this Agreement and all Trade Contracts), Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked to record all changes made during construction' Show Drawings; Product Data; Samples; As-Built Drawings; the most recent Project Schedule and Construction Schedule; maintenance and operating manuals and instructions; and other related documents that arise out of the contracts or the Work. Construction Manager shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels and key site elevations. Construction Manager shall make all records available to Owner and Architect. At the completion of the Project, Construction Manager shall deliver to Architect for Owner a blue-line set of record drawings showing the "as-built" condition of the Project.
  - g. Construction Manager shall be responsible for the completion of all of the Work in accordance with the Contract Documents. Construction Manager shall warrant the Work of it and all Trade Contractors as provided for in the General Conditions.
  - a-h. Construction manager will receive, review and approve all Warranties provided by each Trade Contractor for their scope of work. These Warranties will then be assigned and forwarded to the Owner and Owner's Representative for their records and action.

## § 2.3.2 Administration

§ 2.3.2.1 Subject to Section 2.1.6, those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work ~~as hereinafter provided and shall deliver such bids to the Architect~~. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection, ~~and shall not contract with anyone to whom the Owner has a reasonable objection~~.

### § 2.3.2.1.1 PREDETERMINATION OF RESPONSIBILITY

If requested by Owner, Construction Manager shall prepare a "Request for Pre-Determination of Responsibility" based upon Owner's objective pre-determination criteria, to be used to solicit (through advertisements as required by Legal Requirements) bidder responses. The form of the request for Pre-Determination of Responsibility shall be subject to Owner approval. Construction Manager shall assist Owner in evaluating all response to the Request for Pre-Determination of Responsibility and shall make recommendations to Owner regarding the list of responsible bidders to be used for each trade or category of Work. Owner shall approve, in its sole discretion, the list of responsible bidders. Upon approval of Construction Manager and Owner, the list of responsible bidders shall be deemed the "Pre-Qualified Bidders."

### § 2.3.2.1.2 AWARD AND ASSIGNMENT OF TRADE CONTRACTS

All Trade Contracts, as initially awarded, shall be held directly by the Owner. Owner shall assign to Construction Manager each Trade Contract and Construction Manager shall assume all obligations of Owner thereunder. Such assignment and assumption shall be made promptly after the award of such Trade Contracts. Such assignments shall contain a release of claims by the Trade Contractor of all claims against the Owner. Upon the assignments, Construction Manager shall be fully liable to Owner for the performance of all Work under the assigned Trade Contracts. The advertisement for such bid shall specifically state that the Trade Contracts will be assigned to Construction Manager for performance of all obligations of Owner under the Trade Contract. Notwithstanding that such Trade Contracts will initially be held directly by Owner, Construction Manager shall have the responsibility and obligation to manage, administer, coordinate, direct, supervise and control all Work under all of the Trade Contracts. Prior to the issuance of the Trade Contracts, the Owner will provide a copy of the Trade Agreements to the Construction Manager for their review, comments, modification and/or approval. Any Construction Manager modifications to the Trade Contracts require prior Owner Approval.



#### § 2.3.2.1.3 PRODUCTION AND DISTRIBUTION OF BIDDING DOCUMENTS

Architect is to assemble and produce to Construction Manager the bidding documents governed by the following conditions:

- a. One set of bid documents is to be prepared by Architect and made available in electronic form to Accu-Copy for printing and distribution as directed by Construction Manager.
- b. Construction Manager, after coordination with Owner, will furnish to Architect a master copy of the Notice to Bidders, the Prevailing Wage Determination, Instructions to Bidders and General Conditions and any other necessary documents for printing and binding into the specification manual.
- c. Construction Manager will coordinate distribution of Bid Documents to Pre-Qualified Bidders.
- d. Construction Manager will administer the bid process.

#### § 2.3.2.1.4 PRE-BID CONFERENCES

Construction Manager will administer all pre-bid conferences (for each Phase or Segment of work) and shall act as co-chairperson with Architect. Construction Manager will recommend to Owner a bidding schedule. Construction Manager will facilitate Pre-Bid Conferences and coordinate responses to bidders' questions and the issuance of bulletins.

#### § 2.3.2.1.5 BID PROCESS

Construction Manager and Owner shall cause all Work to be publicly bid and opened pursuant to the competitive bidding procedures required under Legal Requirements, including any requirement that bids be accompanied by a bid guaranty or bond. The following bidding procedures shall be implemented:

§ 2.3.2.1.5.1 Owner shall receive sealed bids from the bidders (or Pre-Qualified Bidders if Owner elects to complete the Request for Pre-Determination of Responsibility as provided in Section 2.3.2.1.1). Construction Manager will manage the bid opening process on behalf of Owner. All bids will be opened in the presence of Owner at such public place as the parties may mutually agree. Construction Manager shall prepare a bid analysis, in a form acceptable to Owner, and consult with Owner regarding the award of Trade Contracts or the rejection of bids. Construction Manager shall receive questions and comments from Pre-Qualified Bidders for transmittal to Owner and Architect shall assist with the issuance of Addenda to Trade Contract bid packages. All questions shall be in writing with copies to Owner and Architect, and all responses shall be by written bid addenda.

§ 2.3.2.1.5.2 From time to time during the bidding process, Construction Manager's initial Schedule of Values submitted with this Agreement shall be revised for each bid package to reflect the most current estimate of the Cost of the Work for each bid package. If the lowest responsible bid for a particular bid package is greater than the most recent estimate of cost for such bid package, then such bid package may be rebid, unless Owner and Construction Manager otherwise reasonably agree. Any rebid shall not be the basis for an increase in the GMP or adjustment to the Project Schedule.

§ 2.3.2.1.5.3 Construction Manager, in cooperation with Owner and Architect, shall evaluate the reasonableness of the bids and their compliance with the requirements for the bidding documents. Construction Manager will analyze bids and recommend award or rejection. The Owner shall make the final determination as to compliance of the bids with the bidding documents and determination as to award of Trade Contracts. Construction Manager will prepare Trade Contracts for each bid package, the form of which shall be subject to approval by Owner.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Intentionally omitted. ~~Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.~~

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

§ 2.3.2.5 The Construction Manager shall schedule and conduct regular meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. Construction Manager, or its authorized representative, and Construction Manager’s Consultants when appropriate, shall attend all meetings and conferences as required by Owner, including conferences during the design phase, the bidding phase, the Construction Phase and the warranty period. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect, in any event within 72 hours of the meeting.

§ 2.3.2.6 Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007, which the Construction Manager shall update in accordance with Section 3.10.1 of A201-2007.

§ 2.3.2.7 The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, covering all activities, decisions, scheduling forecast, problems, potential delays and recommendations and showing percentages of completion and other information required by the Owner. The progress report shall contain possible courses of action, with advantages and disadvantages and the course of action recommended by the Construction Manager. Problems requiring more immediate attention shall be reported separately, describing the problem and its impact on Project Budget and Schedule.

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

§2.3.2.7.1 After commitment of construction, the progress report shall include at least four (4) 8’ x 10’ monthly color progress photographs containing description location of the work. The format of the monthly progress report will include, at a minimum, the following:

- I. Executive Summary
- II. Progress Photos
- III. Schedule Information
  - a. Project Schedule Update
  - b. 90-day Look-Ahead Schedule
  - c. Project CPM Schedule (Electronic Format)
- IV. Budget Information
  - a. Bid Package Budget Breakdown
  - b. Issues Log/Claims Status
- V. Cash Flow and Manpower Projections
- VI. MBE/WBE Participation Status & Workforce Utilization Status
- VII. Design and Bidding Information
  - a. Design Package Schedule
  - b. Bid Package Schedule
  - c. PDR Log
- VIII. Insurance and Bonding Information
- IX. Submittal Information
  - a. Submittal Schedule/Log
  - b. RFI Log
- X. Safety and Quality Control Report
- XI. Sustainability Report
- XII. Issues/Actions

§ 2.3.2.7.2 FINAL REPORT/ Safety and Quality Control Report Issues/Actions

At the completion of its services, Construction Manager shall deliver to Owner a final report that includes the following:

- a. Description of the completed Project.
- b. Summary of the Project Schedule and Project Budget.
- c. Supporting documentation organized in a manner relating to the Task Plan and Progress Reports.
- d. Delivery of manufacturer's warranties and operating manuals and instructions.
- ~~a-e.~~ All Project records in the possession of Construction manager.

§ 2.3.2.8 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

§ 2.4 Professional Services

Section 3.12.10 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201-2007 shall apply to both the Preconstruction and Construction Phases.

In addition to the provisions of Paragraph 10.1 of A201-2007, if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance encountered but not created on the site by the Construction Manager, the Construction Manager shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. The Owner, Construction Manager and Architect shall then proceed in the same manner described in Subparagraph 10.3.1 and 10.3.2 of A201-2007. The Owner shall be responsible for obtaining the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Construction Manager and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Construction Manager shall be responsible for any Hazardous Materials brought to the Project by Construction Manager, any of the Trade Contractors, any subcontractors or suppliers to Construction Manager or any Trade Contractor, or any other person or entity for whose acts Construction Manager may be liable. Notwithstanding the terms of the General Conditions, Owner shall not be liable and in no event shall Owner be obligated to indemnify Construction Manager for any loss or damage attributable to Hazardous Materials brought to the site by Construction Manager or others performing Work on the Project.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

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

§ 3.1.2 Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum., or (3) ~~the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.~~

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the

Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

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

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

§ 3.1.4.2 The Owner and/or Architect shall furnish existing surveys in its possession for the site of the Project. Owner shall have no obligation to provide additional surveys. If the existing surveys are insufficient, Construction Manager shall work with the Architect to obtain surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site, to. ~~The surveys and legal information shall~~ include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner and/or Architect, as applicable, when such services are requested, shall furnish services of geotechnical engineers that are the project "Geotechnical Services" as specified in the Owner/Architect Agreement, but, which may include ~~but are not limited to~~ test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

### § 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

### § 3.3 Architect

The Owner ~~has~~ retained ~~an~~ the Architect to provide services, duties and responsibilities as described in the Owner/Architect Agreement ~~AIA Document B133™ 2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition~~. Upon written request, the Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager’s Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager’s Preconstruction Phase services described in Sections 2.1 and 2.2: (Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

« »

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

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager’s personnel providing Preconstruction Phase services on the Project and the Construction Manager’s costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar normal and customary contributions.

§ 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made ~~monthly in proportion to services performed based on Applications for Payment containing all supporting and properly categorized documentation being submitted to Architect, and the issuance of a Certificate for Payment by the Architect.~~

§ 4.2.2 Construction Manager shall submit to the Owner each month a “pencil copy” of the Application for Payment by the 25<sup>th</sup> of each month. This Application for Payment will project costs to the end of that month. The Construction Manager and Owner will then review this Application for Payment and agree on the percentage complete for each activity for that pay period. The Construction Manager will then submit the formal Application for Payment to the Owner by the 1<sup>st</sup> day of the following month.

§ 4.2.3 ~~Payments of the certified amount due are payable within forty five (45) days after Owner receives the Application for Payment and are due and payable upon presentation of the Construction Manager’s invoice. Amounts unpaid « » ( « » ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager. (Insert rate of monthly or annual interest agreed upon.)~~

« Zero percent per annum » 0% « »

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager’s performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager’s Fee.

§ 5.1.1 The Construction Manager’s Fee: (State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager’s Fee.)

« »

§ 5.1.2 The method of adjustment of the Construction Manager’s Fee for changes in the Work:

« »

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

« »

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed « one hundred » percent ( « 100 » %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

(Identify and state the unit price; state the quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
------	-----------------------	-------------------------

## § 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the **Cost of the Work and the Construction Manager's Fee** shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

« »

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

§ 5.2.3 In the event that the final total Cost of the Work plus Construction Manager's Fee is less than the GMP, any such cost savings shall be shared by the Owner and Construction Manager as follows: Owner -75%; Construction Manager -25%. The cost savings to be retained by the Construction Manager hereunder shall in no event exceed (to be negotiated) Dollars (\$\_\_\_\_\_).

§ 5.2.4 As early as possible in the Construction Phase, Construction Manager shall provide Owner with a report of estimated savings, or exceedances, if any, likely to be realized.

§ 5.2.5 The Construction Manager's GMP for the Work, including the estimated Cost of the Work as defined in Article 6 and the Construction Manager's Fee as defined in Article 5, is \$\_\_\_\_\_.

This Price is for the performance of the Work in accordance with the Contract Documents listed and attached to The GMP Amendment and marked Exhibits A through F, as follows:

- Exhibit A Drawings, Specifications, Addenda and General, Supplementary and other Conditions of this Agreement on which the GMP is based.
- Exhibit B Allowance items.
- Exhibit C Assumptions and clarifications made in preparing the GMP.
- Exhibit D Alternate prices.
- Exhibit E Unit prices.

## § 5.3 Changes in the Work

§ 5.3.1 As set forth in Section 2.2.2, Construction Manager's GMP explicitly provides for all costs necessary to fully construct the Project, notwithstanding the fact that the Construction Drawings will necessarily add more details regarding the requirements for the Project. Construction Manager will not be entitled to any adjustments to the GMP, the Project Schedule or the Substantial Completion Date unless and until Owner changes the basic project scope, design criteria, quality or types of building systems, materials or equipment, or other fundamental aspects of the Project as reflected in or reasonably inferable from the Design Development Drawings. Any such fundamental change in the Project shall entitle Construction Manager to a Change Order. ~~The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.~~

§ 5.3.2 Adjustments to the Guaranteed Maximum Price and/or the Project Schedule on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment made pursuant to a Change Order may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner’s prior consent on the basis of cost plus a fee), the terms “cost” and “fee” as used in Section 7.3.3.3 of AIA Document A201–2007 and the term “costs” as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term “fee” shall mean the Construction Manager’s Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior written consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

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

§ 6.1.3 As used herein, “costs” shall mean actual costs paid by the Construction Manager, less all discounts, rebates and salvages that shall be taken by the Construction Manager. All payments made by the Owner pursuant to this Article 6, whether those payments are actually made before or after the execution of the Agreement, are included within the GMP. In no event shall the Owner be required to reimburse the Construction Manager for any portion of the Cost of the Work incurred prior to the Commencement Date unless the Construction Manager has received the Owner’s written consent prior to incurring such costs.

§ 6.1.4 There shall be no duplication of payment in the event any particular item for which payment is requested can be characterized as falling into more than one of the types of compensable or reimbursable categories.

§ 6.1.5 The Construction Manager will only be reimbursed for self-performed Work if such Work is approved in advance in accordance with Section 2.1.6.

### § 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work listed in Appendix E at the site or, with the Owner’s ~~prior approval~~ prior written approval, at off-site workshops.

§ 6.2.2 Wages or salaries of the Construction Manager’s supervisory and administrative personnel when stationed at the site with the Owner’s prior written approval.

*(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager’s principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

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

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior **written** approval.

### § 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors, **including Trade Contractors**, in accordance with the requirements of the subcontracts **entered into in accordance with this Agreement**.

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

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

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

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

§ 6.5.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior **written** approval.

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

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

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work, **subject to Owner's reimbursement policy attached hereto as Appendix S and Owner's written approval**.

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

### § 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior **written** approval.



§ 6.6.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Construction Manager is liable (but excluding taxes on Building Machinery and Equipment).

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

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201–2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

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

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

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

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

## § 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager, or the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Construction Manager, or the failure of the Construction Manager's personnel to supervise adequately the Work of its Subcontractors or other Trade Contractors and/or suppliers and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

## § 6.8 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Appendix D, Section 6.2, or as may be provided in Article 11;

- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase; and
- .9 Except as provided in §6.7.1, any cost not specifically and expressly described in §6.1.

#### § 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained. **The Construction Manager shall not obtain for its own benefit any discounts, rebates or refunds in connection with the Work without providing Owner with seven (7) days prior written notice of the potential discount, rebate or refund and an opportunity to furnish the funds necessary to obtain such discount, rebate or refund on behalf of Owner.**

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

#### § 6.10 Related Party Transactions

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

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

#### § 6.11 Accounting Records

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

## ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 7.1 Progress Payments

§ 7.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents. [Construction Manager's Applications for Payment shall also be subject to review and approval by Architect, in accordance with Section 4.2.](#)

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

« »

~~§ 7.1.3 Payments shall be made monthly following presentation of the Application for Payment in accordance with Section 4.2. Provided that an Application for Payment is received by the Architect not later than the « » day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the « » day of the « » month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than « » ( « » ) days after the Architect receives the Application for Payment.~~

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

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager, less (2) that portion of those payments attributable to the Construction Manager's Fee, plus (3) payrolls for the period covered by the present Application for Payment. [Each Application for Payment shall also include the fully executed Conditional Release and Waiver of Liens and Claims and Unconditional Release and Wavier of Liens and Claims as applicable from all contractors, sub-contractors, sub-subcontractors and material supplierseach Subcontractor.](#)

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

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

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of « ten » percent ( « 10 » %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the

same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

- .4 Subtract retainage of ~~«ten »~~ percent ( ~~« 10 »~~ %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's ~~auditor~~ accountants in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201–2007.

§ 7.1.8 Except with the Owner's prior written approval, payments to ~~S~~subcontractors shall be subject to retention of not less than ten percent (10%). The Owner and Construction Manager shall agree upon ~~(1)~~ a mutually acceptable procedure for review and approval of payments to Subcontractors ~~and (2) the percentage of retainage held on Subcontracts~~, and the Construction Manager shall execute subcontracts in accordance with those agreements.

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

§ 7.1.10 In taking action on the Construction Manager's Applications for Payment, the ~~Owner and~~ Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the ~~Owner or~~ Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the ~~Owner or~~ Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's ~~accountants~~ auditors acting in the sole interest of the Owner.

§7.1.11 Owner may withhold payments for any Work claimed to have been performed by the Construction Manager if the Application for Payment issued pursuant to section 7.1 states, or Owner reasonably determines that:

- (a) Such work is defective or non-conforming and such defects or nonconformance has not been remedied; or
- (b) Construction Manager's progress of the Work falls behind the critical path of the Project Schedule by more than 14 days or Construction Manager fails to achieve a Project Schedule Milestone; or
- (c) Construction Manager has not promptly paid all amounts due to laborers, materialmen and Subcontractors in which case Owner shall have the right but not the obligation to pay such laborers, materialmen and Subcontractors. Such on the part of Owner shall not be interpreted as creating any third party beneficiary rights; or
- (d) Any of Construction Manager's laborers, Subcontractors or materialmen has filed a mechanic's lien against the Project, and Contractor has not caused such lien to be discharged; provided that the amount withheld shall not exceed two times the amount of such liens plus any reasonable expenses including attorney's fees which may be incurred in dealing with such liens; or
- (e) Owner reasonably determines that Construction Manager will be unable to complete the Work for the balance of the Contract Sum and Construction Manager fails to provide reasonable assurances (as determined by Owner) that it has the financial resources to complete the Work; or
- (f) Construction Manager is otherwise in default under its Contract with Owner; or
- (g) Construction Manager has not maintained the conformed As-Built Drawings in an accurate and complete condition as required herein; or
- (h) If necessary approvals as required by the Contract have not been obtained; or
- (i) Construction Manager has not provided Monthly Reports as required; or
- (j) Construction Manager has not provided updates to the Progress Schedule in accordance with the terms and conditions of Article 2.1.3 hereof.

Owner shall have the right to withhold from payment the funds necessary to offset those items enumerated above and to pay such funds directly to those parties for the account of the Construction Manager. Owner shall render to Construction Manager a proper accounting of all such disbursements, and the value of such disbursed funds shall be entered as payment under the Contract as if made to Construction Manager. The provisions of this Section shall not

require Owner to determine or adjust any claims or disputes between those parties furnishing labor, materials or equipment hereunder, or to withhold any money for their protection; nor shall Owner be liable to any party for its failure to do so. No payment made by Owner to Construction Manager, nor any acceptance, use or occupancy of the Work or any portion thereof by Owner or any other person, shall constitute acceptance of any defective Work or Work not in compliance with the Contract Documents.

## § 7.2 Final Payment

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

- 1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct **nonconforming** Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- 2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- 3 a final Certificate for Payment has been issued by the Architect.

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

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§ 7.2.2 The Owner's **auditoraccountants** will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's **auditoraccountants** report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's **auditoraccountants**, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's **auditoraccountants** report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to **proceed in accordance with Article 9 request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007**. Unless otherwise agreed, a request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's **auditoraccountants** becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 (1) to correct defective or nonconforming Work or (2) **arising from the resolution of disputes**, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

## ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in **Article 11 of AIA Document A201-2007 Appendices F and G**.

*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)*

Type of Insurance or Bond

Limit of Liability or Bond Amount (\$0.00)

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim or other dispute arising out of or related to this Agreement or its breach, the parties shall endeavor to settle the dispute first through direct discussions. If the dispute cannot be settled through direct discussions, the parties shall endeavor to settle the dispute by mediation under the Construction Industry Mediation Rules of the American Arbitration Association. The location of the mediation shall be as near as reasonably possible to the location of the Project. Once a party files a request for mediation with the other contracting party and with the American Arbitration Association, the parties agree to conclude such mediation within sixty (60) days from mediation demand.

Unless the Owner shall otherwise agree, any controversy or claim arising out of or relating to this Agreement or its breach not resolved by mediation, except for claims which have been waived by the making or acceptances of final payment, shall be resolved exclusively in the Court of Common Pleas of Allegheny County, Pennsylvania.

Construction Manager agrees that Owner shall have the exclusive right to join Construction Manager to any court action or dispute resolution procedure (including alternate dispute resolution procedures such as binding arbitration) between Owner and any other party concerning the Project. The parties agree that all parties necessary to resolve a claim shall be parties to the same proceeding. Appropriate provisions shall be included in all other contracts relating to the Project to provide for the consolidation of proceedings. subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

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

Arbitration pursuant to Section 15.4 of AIA Document A201-2007

Litigation in a court of competent jurisdiction

Other: (Specify)

§ 9.3 Initial Decision Maker

Intentionally omitted. The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

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

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ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price

§ 10.1.1 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience

and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

## § 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

§ 10.2.1 If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

## § 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

## ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

### § 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

### § 11.3 Governing Law

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

### § 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. Upon request, Construction Manager shall execute a consent to such assignment to a lender, on lender's commercially reasonable form.

### § 11.5 Other provisions:

« § 11.5.1 Time is of the essence with respect to all aspects of the Construction Manager's performance of its obligations under this Agreement. »

§11.5.2 To the extent there are any irreconcilable conflicts between the terms of the documents that make up this Agreement, the order of precedence of such parts shall be as follows:

- a. Fully executed Change Orders.
- b. This Modified AIA Document 133-2009.
- c. The Appendices.
- d. The Modified AIA Document A201-2007.

## ARTICLE 12 OTHER CONDITIONS AND SERVICES

### §12.1 PROVISION OF DOCUMENTS IN ELECTRONIC FORMAT

Construction Manager shall provide all Project correspondence and documents (including without limitation, all Deliverables, Project correspondence, schedules, RFIs, etc.) in hard copy and, when possible, in electronic format to all appropriate recipients. Architect shall coordinate with Owner to provide documents in an electronic format that is acceptable to Owner.

### §12.2 QUALITY CONTROL/QUALITY ASSURANCE

Construction Manager in cooperation with Owner and Architect shall be responsible for the Quality Control/Quality Assurance Program. Construction Manager and Architect shall develop a Quality Control/Quality Assurance Program and shall (a) develop for Owner's approval a scope of work for independent testing and inspection services, (b) administer a procurement process through which those services are to be retained by Owner, and (c) schedule and coordinate those testing and inspection services with its own work and the progress of the activities on the Project as part of the Quality Control/Quality Assurance Program.

### §12.3 ENFORCEMENT OF WARRANTIES

If any defect in the Work performed by a Trade Contractor appears after payment of the Contractor or Supplier but within the warranty period specified in the Contract Documents, Construction Manager will inspect the affected portions of the Work to determine the scope of the defects and which Trade Contractor is responsible therefore. Construction Manager will then promptly notify Owner of the results of such inspection and will take such action as may be required to enforce such Trade Contractor warranty. If any enforcement actions pursuant to this Section do not result in timely performance by any Trade Contractor under its warranty, then Construction Manager will cause any necessary corrective work to be performed.

In the event any defect in the Work performed by a Trade Contractor appears after the above one-year warranty



period but still within any applicable extended warranty, Construction Manager will inspect the affected portions of the Work to determine the scope of the defects and which Trade Contractor is responsible therefore. Construction Manager will then promptly notify Owner of the results of such inspection and will take such action as may be required to enforce such Trade Contractor warranty. If any enforcement actions pursuant to this Paragraph do not result in timely performance by any Trade Contractor under its warranty, then Construction Manager and Owner will review and agree on any necessary corrective Work to be performed.

#### §12.4 PROPRIETARY ITEMS, COPYRIGHTS, PATENTS

§12.4.1 Construction Manager shall not recommend any equipment, material or mode of construction which is proprietary or which contains a copyright or patent right relating to designs, plans, drawings or specifications, unless the equipment, material or mode of construction is different and fairly considered superior in quality and performance. If Construction Manager recommends any equipment, material or mode of construction which is proprietary, it shall have prior approval by Owner and it shall only be because the item is different and fairly considered superior in quality and performance, and not for the purpose of preventing or restricting competitive bidding. Construction Manager may not knowingly recommend as acceptable any item which cannot comply with the Pennsylvania Steel Products Procurement Act.

§12.4.2 Data submitted to and accepted by the Owner under this Agreement shall be the property of the Owner, and the Owner shall have full right to use such data for any official purpose in whatever manner deemed desirable and appropriate, including making it available to the general public. Such use shall be without any additional payment to or approval of the Construction Manager.

§12.4.3 Copyright: The Construction Manager relinquishes any and all copyrights and/or all copyright rights and/or privileges to data developed under this Agreement. The Construction Manager shall not include in the data submitted any copyrighted matter, without the written approval of the Owner, unless the Construction Manager provides the Owner with written permission of the copyright owner to use such copyrighted matter in connection with the Project.

§12.4.4 The term, "data," as used in this Agreement, includes written reports, studies, drawings, or other graphic, electronic, chemical, or mechanical representations, and Work of any similar nature which are required to be delivered under this Agreement.

#### §12.5 NO THIRD PARTY RIGHTS

Nothing in this Agreement or in any other document incorporated herein by reference or issued hereunder, expressed or implied, is intended to or shall be construed to confer upon, or give to, any person, firm or corporation, including any Trade Contractor or any Governmental entity other than Owner and Construction Manager, any right, remedy or claim, legal or equitable, whether as third party beneficiary or otherwise. This Agreement and all provisions applicable hereto or incorporated herein are for the sole and exclusive benefit of Owner and Construction Manager, their successors and assigns.

#### §12.6 INDEMNIFICATIONS

~~§12.6.1 Construction Manager agrees to defend, indemnify, and hold harmless all Indemnitees from and against any and all liabilities, losses, damages, costs, expenses, causes of action, suits, claims, demands, or judgments of any nature arising from any injuries to, or the death of, any person or any damages to property growing out of or connected with the Work on the Project, to the extent that the same is caused in whole or in part by the negligence or willful acts or omissions of Construction Manager, any Trade Contractor, and/or their employees, agents, suppliers, subcontractors, or consultants. Construction Manager's obligation to defend, indemnify and hold harmless the Indemnitees shall apply whether or not the Indemnitees are alleged to have been negligent or to have otherwise contributed to the injuries, death or damages, by virtue of failing to provide a safe workplace. It is understood and agreed that, except for the limited rights of review and approval identified herein, Owner has delegated to Construction Manager any obligation of Owner to provide safe working conditions. It is understood that any and all costs associated with the Owner and above listed parties, including all legal expenses, will be paid for from the Contingency.~~

§12.6.1~~2~~ Construction Manager agrees to defend, indemnify and hold harmless Owner from any and all liabilities, losses, damages, costs, expenses, causes of action, suits, claims or judgments arising from or relating to errors and omissions in the performance of Construction Manager's services under this Agreement. It is understood and agreed that, except for the limited rights of review and approval identified herein, Owner has delegated to Construction

Manager the obligation of Owner to schedule and coordinate the work on the Project.

#### §12.7 WARRANTY

Construction Manager agrees to perform its obligations under this Agreement utilizing the highest degree of care and skill to the end that the Project will be constructed in accordance with the Contract Documents and the Project Schedule and within the GMP. Construction Manager has reviewed the Project requirements and the Project Schedule and Project Budget and based upon that review agrees and warrants that the Project can and will be fully completed within the time identified in the Project Schedule and within the Project Budget. Construction Manager further warrants that the staffing identified to this Agreement in Appendix D is sufficient to perform its obligations hereunder.

#### §12.8 RESPONSIBILITY

Construction Manager shall manage the Project in accordance with all applicable permits, laws, regulations and ordinances of all commissions, agencies and governments, federal, state and local, insofar as they are applicable to, and have jurisdiction over, the Project. Construction Manager shall make all required submittals to, and shall obtain all required approvals from, the applicable agency in a timely manner so as not to cause delays to the Project. Should these requirements substantially increase the cost of the Project, or should any required approvals be withheld by the local bodies, Construction Manager shall immediately notify Owner.

Construction Manager shall manage the compliance with the requirements of all local zoning, planning and supervisory bodies within the Project Budget.

#### §12.9 LABOR STABILIZATION AGREEMENT

Owner, or at Owner's option, Construction Manager shall establish a project labor stabilization agreement to govern labor relations for the Project by establishing binding rules and methods for the efficient employment of workers and assignment of Work, and the prompt settlement of all misunderstandings, disputes, grievances and jurisdictional problems that might arise during construction of the Project in order to ensure uninterrupted operations and maintenance of harmonious and peaceful labor relations. Such agreement shall be in form and substance reasonably satisfactory to the Owner, Trade Contractors and Construction Manager. The Construction Manager shall follow and enforce the terms and conditions of such Project labor agreement (as the same may be modified and amended from time to time) for the benefit of the Project.

#### §12.10 NONDISCRIMINATION

Included in and made part of this Agreement is the Nondiscrimination Clause attached hereto as Appendix H.

#### §12.11 CONTRACTOR INTEGRITY PROVISIONS AND DISCLOSURE OF FINANCIAL INTEREST

Included in and made part of this Agreement are the Contractor Integrity Provisions attached hereto as Appendix I. For purposes of this Agreement, the word "Contractor" in Appendix I means "Construction Manager."

#### §12.12 CONTRACTOR DEBARMENT PROVISIONS

Included in and made a part of this Agreement is Appendix J, Certification and Stipulations related to Debarment. For purposes of this Agreement, the word "contractor" in Appendix J means "Construction Manager."

#### §12.13 TAX LIABILITY PROVISIONS

Included in and made part of this Agreement is Appendix K, Tax Liability Provisions. For purposes of this Agreement, the word "contractor" in Appendix K means "Construction Manager."

#### §12.14 CONSTRUCTION MANAGER RESPONSIBILITY PROVISIONS

Included in and made part of this Agreement is Appendix L, Construction Manager Responsibility Provisions.

#### §12.15 STEEL PRODUCTS PROCUREMENT ACT

Included in and made part of this Agreement is Appendix M, Steel Products Procurement Act.

#### §12.16 TRADE PRACTICES ACT

Included in and made part of this Agreement is Appendix N, Trade Practices Act.

#### §12.17 PREVAILING WAGE

Included in and made part of this Agreement is Appendix O, Prevailing Wage Act Requirements.

#### §12.18 ADA PROVISIONS

Included in and made part of this Agreement is Appendix P, Americans with Disabilities Act Provisions. For purposes of this Agreement, the word "Contractor" in Appendix P means "Construction Manager."

#### §12.19 MBE/WBE

Construction Manager agrees to make a good faith effort to comply with Owner's Minority and Woman-Owned Business Enterprise Participation Policy contained in Appendix Q. Construction Manager shall make a good faith effort to comply with Owner's policy on MBE and WBE participation. Construction Manager shall recommend division of work in separate bid packages or equipment purchases for all phases of the Project in sufficient numbers to provide opportunities for MBE/WBE firms and small firms to participate in the Project.

#### §12.20 WORKFORCE UTILIZATION PROGRAM

Included and made a part of this Agreement is Appendix R, Workforce Utilization Program.

#### §12.21 REIMBURSEMENT POLICY

Included and made a part of this Agreement is Appendix S, Reimbursement Policy.

#### § 12.22 PUBLIC WORKS EMPLOYMENT VERIFICATION.

Construction Manager shall deliver to Owner as part of the Contract an executed Public Works Employment Verification Form (in the form provided by the Pennsylvania Department of Labor and Industry and available on its website), wherein Construction Manager certifies it has used the federal E-Verify system to compare the information on each of its employees I-9 forms with the social security number in the federal system. Construction Manager will verify all new employees' social security numbers in the federal E-Verify system and keep a record of such certification. In addition, Construction Manager shall deliver to Owner as part of the Contract completed Public Works Employment Verification Forms signed by its subcontractors prior to Contractor's execution of such subcontracts. Throughout the term of the Contract, Contractor shall verify each new employee's social security number in the federal E-Verify system within five (5) business days of the employee start date and keep a record of such verification. Contractor shall inform all subcontractors that they must verify all new employees' social security numbers in the federal E-Verify system within five (5) business days of the employee start date and keep a record of such verification. This requirement will be included in the subcontracts between Contractor and its subcontractors.

#### §12.23 INCORPORATION OF TERMS INTO CONTRACTS WITH CONTRACTORS, SUBCONTRACTORS AND SUPPLIERS

Construction Manager shall incorporate into all contracts with Trade Contractors for performance of any of the Work provisions requiring any such party to comply with the requirements set forth in Paragraphs §13.10 (Nondiscrimination) through §13.22 (Public Works Employment Verification), inclusive.

#### §12.23 PAYMENT

Upon receipt of payment from the Owner, Construction Manager shall promptly pay each Trade Contractor out of the amount paid to Construction Manager on account of such Trade Contractor's portion of the Work. The amount to which said Trade Contractor is entitled, reflecting percentages actually retained from payments due the Construction Manager on account of such Trade Contractor's portion of the Work. Each Trade Contract shall require each Trade Contractor to make payments to their subcontractors and suppliers in a similar manner.

#### §12.24 NO-LIENS

No mechanics' liens or claims will be entered and filed against the Project or any part thereof, or against the real property on which the Project will be constructed, by, any Trade Contractor, or anyone else claiming by, through or under the Construction Manager or any Trade Contractor, for any work, labor or materials supplied in connection with the performance of this Agreement. Construction Manager shall defend, indemnify and hold harmless Owner against any claims or liens from any person or entity claiming payments on account of any Work, labor or materials supplied in connection with the performance of this Agreement.

Without limiting the foregoing, the Construction Manager and the Owner will enter into an Advance Waiver of Liens in the form of Appendix T hereto (the "Advance Waiver of Liens") simultaneously with the execution of this Agreement, and the Construction Manager shall cause the Advance Waiver of Liens to be properly filed and indexed in the Department of Court Records of Allegheny County, Pennsylvania, no later than the day preceding the date any Work is commenced at the site. The Advance Waiver of Liens shall constitute a Contract Document for all

purposes of this Agreement. Construction Manager shall further include, as part of all contracts between Owner and Trade Contractors, an Advance Waiver of Liens in the form of Appendix T. All such Advance Waivers of Liens shall be executed simultaneously with the execution of the contracts with Trade Contractors and shall be properly filed by the Construction Manager and indexed in the Department of Court Records of Allegheny County, Pennsylvania.

With each Application for Payment, Construction Manager shall provide such Conditional Release and Waiver of Liens and Claims and Unconditional Release and Waiver of Liens and Claims as are applicable from each Subcontractor in the form of Appendix U hereto.

**ARTICLE 1312 SCOPE OF THE AGREEMENT**

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

§ 132.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:

« »

- .4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:

« »

- .5 Other documents:  
(List other documents, if any, forming part of the Agreement.)

« »

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

\_\_\_\_\_  
OWNER (Signature)

« »« »

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
CONSTRUCTION MANAGER (Signature)

« »« »

\_\_\_\_\_  
(Printed name and title)

# DRAFT AIA® Document A201™ - 2007

## General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

« » David L. Lawrence Convention Center  
« » 2nd and 3rd Floor North Terrace Replacement

THE OWNER:

(Name, legal status and address)

« Sports & Exhibition Authority of Pittsburgh and Allegheny County »« »

« 171 10<sup>th</sup> Street, 2<sup>nd</sup> Floor  
Pittsburgh, PA 15222

»

THE ARCHITECT:

(Name, legal status and address)

« AE7, LLC »« »  
« 2840 Liberty Avenue, Suite 403  
Pittsburgh, PA 15222 »

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**ADDITIONS AND DELETIONS:** The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 BASIC DEFINITIONS

#### § 1.1.1 THE CONTRACT DOCUMENTS

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

#### § 1.1.2 THE CONTRACT

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

#### § 1.1.3 THE WORK

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

#### § 1.1.4 THE PROJECT

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

#### § 1.1.5 THE DRAWINGS

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

#### § 1.1.6 THE SPECIFICATIONS

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

#### § 1.1.7 INSTRUMENTS OF SERVICE

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

#### § 1.1.8 INITIAL DECISION MAKER

~~Intentionally omitted. The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.~~

§1.1.9 In addition to other terms defined herein, the following capitalized terms shall have the meanings indicated below:

"Building Machinery and Equipment" shall have the same meaning as defined in section 7201(pp) of the PA Tax Code, which purchases are excluded from tax pursuant to section 7204(57) of the PA Tax Code.

“Change Order” shall mean a written instrument signed by Owner and Construction Manager, and approved by such entities as Owner may request from time to time relating to a change in the GMP, the date of Substantial Completion and/or the Project Schedule.

“Claims” shall mean any controversy, claim, dispute, or other matter in question relating to this Agreement or breach thereof, whether arising in contract, equity, tort, strict liability, warranty, statutory or other theory of liability between the Owner and Construction Manager, as further described in section 15.1.1.

“Conditional Release and Waiver of Liens and Claims” shall be in form as attached hereto in Appendix T to the Agreement.

“Cost of Work” shall have the meaning as set forth in Section 6.1.1.

“GMP” shall mean the guaranteed maximum price provided by the Construction Manager, as accepted and approved by Owner and as reflected in this Agreement.

“GMP Amendment” shall mean the AIA Document A133-2009 Exhibit A Guaranteed Maximum Price Amendment as executed by Construction Manager and Owner which, upon execution, shall be made a part of the Agreement.

“Governmental Requirements” shall mean all applicable federal, state and local laws, statutes, ordinances, rules, regulations, orders or other legal requirements, including, but not limited to, all zoning, building, and occupancy requirements, regulations and ordinances related to the construction, use and occupancy of the Project existing on the date such Work was performed.

“Indemnitees” shall mean collectively, the Owner, The Sports & Exhibition Authority of Pittsburgh and Allegheny County, TPR LLC, the City of Pittsburgh, the County of Allegheny, and the Commonwealth of Pennsylvania, and their respective employees and agents.

“Initial GMP” shall mean the guaranteed maximum price provided by Construction Manager at the end of the Schematic Design Phase pursuant to Subparagraph 2.2.1.

“Legal Requirements” shall mean all federal, state or local laws, statutes, ordinances, building codes, orders, rules and regulations applicable to the Project or the Work, in force as of the date of execution of this Agreement.

“Owner” shall mean the Sports & Exhibition Authority of Pittsburgh and Allegheny County.

“Owner/Architect Agreement” shall mean the Contract between Owner and Architect.

“PA Tax Code” Tax Reform Code of 1971, as amended (72 P.S. §7101 et seq.)

“Pre-Qualified Bidders” shall have the meaning set forth in Section 2.3.2.1.1 (in the singular, a “Pre-Qualified Bidder”).

“Project” shall mean the design, construction, completion of functional testing of the electrical and mechanical systems, and submission of all closeout documentation (such as O&M Manuals) of the 2nd and 3rd Floor North Terrace Replacement described in the design documents prepared by the Architect.

“Project Budget” shall mean the total budget available for the completion of the Project, as amended from time to time by the Owner. The initial Project Budget is set forth in Appendix C to the Agreement.

“Project Schedule” or “Schedule” shall have the meaning as set forth in Section 2.1.3 of the Agreement.

“Substantial Completion” or “Substantially Complete” shall mean the Work (or separable units or phases as provided in the Contract Documents) is essentially and satisfactorily complete in accordance with the Contract Documents such that the Project is ready for opening to the general public and can be utilized, without limitation. A minor amount of incomplete work, such as installation of minor accessories or items, a minor amount of painting, minor replacement of defective work, or completion or correction of minor exterior work will not prevent achievement of Substantial Completion. Substantial Completion of the Project will be defined as completion of all work, and completion of all

other work required to obtain a Certificate of Occupancy. The Construction Manager will obtain the Certificate of Occupancy. For purposes of Substantial Completion, specified areas of the entire Work or Project may be individually judged as substantially complete. In no event shall Substantial Completion be deemed to have occurred unless such certificates required by all Legal Requirements for opening of the Project to the general public have been issued to Owner.

“Substantial Completion Date” shall mean \_\_\_\_\_, or such other date as amended by Change Order.

“Trade Contractors” shall mean the contractors and material suppliers awarded Trade Contracts pursuant to the competitive bidding process required under this Agreement. The term “Subcontractors” as used in the ~~General Conditions~~ Contract Documents shall include “Trade Contractors” as defined in this Section, as applicable.

“Trade Contracts” shall mean the competitively bid contracts for various categories of Work between the Owner and Trade Contractors. Each such contract shall be assigned to Construction Manager pursuant to the terms of this Agreement.

“Unconditional Release and Waiver of Liens and Claims” shall be in the form attached hereto in Appendix T to the Agreement.

“Work” shall mean the construction, design and other services required by this Agreement and the Contract Documents, and includes all labor, materials, equipment and services provided or to be provided by Construction Manager and the various Subcontractors, including, without limitation, Trade Contractors as necessary to complete the Project.

#### **§1.1.10 ADDITIONAL TERMINOLOGY**

- .1 The term “product” includes materials, systems, and equipment.
- .2 The term “furnish” is used to mean “supply and deliver to the Project site, ready for unloading, unpacking, assembly, installation, and similar operations.
- .3 The term “install” is used to describe operations at the Project site including actual “unloading, unpacking, erection, placing, anchoring, applying, working to dimension, finishing, curing, protecting, cleaning and similar operations.
- .4 The term “provide” means “to furnish and install, complete and ready for the intended use.”

#### **§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

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

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

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

**§1.2.4** In the case of a discrepancy between the Drawings and/or Specifications, the larger quantity or better quantity, as determined by the Architect, shall govern. Where there is no larger quantity or better quality, as determined by the Architect, the Specifications shall govern over the Drawings.

#### **§ 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 will retain all common law, statutory and other reserved rights, including copyrights, **except as otherwise set forth in the Owner/Architect Agreement**. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

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

## § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement, **the Owner/Architect Agreement** or the **other** Contract Documents.

## 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 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; **or (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.**

§ 2.2.2 Except for permits and fees that are the responsibility of the **OwnerContractor** under the Contract Documents, **including those required under Section 3.7.1,** the **ContractorOwner** 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, **and the cost of such permits and approvals shall be considered a Cost of the Work.**

**§ 2.2.2.1 The Contractor shall exercise usual, reasonable and customary professional care in its efforts to conform the Work to all Governmental Requirements. If, after issuance of the building permit, modifications of the Work are required because of changes in Governmental Requirements, Contractor shall make the required modifications in the Work and the costs of such modifications shall be included in an equitable adjustment to the GMP amount. Nothing herein shall release the Contractor of its obligations to modify, at its own expense, Work where the Contractor has failed to prepare or perform the same in compliance with applicable Governmental Requirements.**



§ 2.2.3 The Owner shall furnish existing surveys in its possession for the site of the Project. Owner shall have no obligation to provide the Contractor with additional surveys. If additional surveys are required, describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site, Architect shall furnish such surveys to Contractor, in accordance with §5.4 of the Owner/Architect Agreement. The Contractor shall be entitled to rely on the accuracy of information furnished by the Architect~~Owner~~ but shall exercise proper precautions relating to the safe performance of the Work.

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

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor ~~one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.one~~ (1) copy of the Contract Documents. Additional sets of Contract Documents will be furnished at the cost of reproduction, postage, and handling.

### § 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or ~~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 OWNER'S RIGHT TO CARRY OUT THE WORK

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

## ARTICLE 3 CONTRACTOR

### § 3.1 GENERAL

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

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

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the ~~Owner or 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. ~~The Contractor shall not be relieved of any obligations relating to the Contract Documents without the prior written approval of the Owner.~~

### § 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become ~~as generally~~ familiar ~~as necessary~~ with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents ~~and has thoroughly examined the topography, site conditions, information obtained pursuant to §2.2.3, site history, local information, seasonal weather conditions and all other available information which could impact the Work and/or Contractor's cost relative thereto. It is the~~

Contractor's responsibility to notify the Owner in writing of any condition which could impact the Contractor on the Project. Failure to provide ~~without~~ such written notification will constitute acceptance of the site by Contractor including, without limitation, all conditions thereon and thereunder, as well as all information Contractor has represented it has reviewed by virtue of this Section 3.2.1. Claims for additional costs or extensions of time because of Contractor's failure to familiarize itself with conditions at the site will not be allowed.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner ~~or Architect~~ pursuant to Sections 2.2.3 and 3.2.1, 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 also~~ for the purpose of discovering errors, omissions, or inconsistencies in the Contract ~~Documents; however,~~ ~~the Documents recognized by the Contractor.~~ The Contractor shall promptly report to the Owner and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Owner and Architect may require. ~~Any such errors, omissions, or inconsistencies in the Contract Documents that could have reasonably been recognized by the Contractor that are not reported to the Architect in the form outlined above shall not be permitted as the basis for a claim for increases in the contract Sum or the Contract Time.~~ It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor ~~is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor~~ shall promptly report to the Owner and Architect in writing any nonconformity ~~between the contract Documents and Governmental Requirements which the Contractor, knows, or reasonably should have known or discovered by or made known to the Contractor~~ as a request for information in such form as the Owner and 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 make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor ~~fully and timely~~ performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### § 3.3 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, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. ~~In the event that Contractor fails to timely provide written notification to Architect and Owner of any unsafe means, methods, techniques, sequences or procedures or proceeds with the Work despite knowledge of the unsafe means, methods, techniques, sequences or procedures, then the Contractor shall be solely responsible for any and all resulting loss or damage.~~ If, following timely written notification to the Architect and Owner, the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage ~~to the extent~~ arising solely from those Owner-required means, methods, techniques, sequences or procedures.

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

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

§3.3.4 The Contractor shall lay out the work in accordance with the Drawings and project conditions under the direction of a competent registered civil engineer or surveyor. The Contractor shall be responsible for any damage that may be sustained by the Owner or others from incorrect location of the Work.

### § 3.4 LABOR AND MATERIALS

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

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect ~~and in accordance with a Change Order or Construction Change Directive~~. The Contractor shall follow the specific guidelines for identification of products to be used, proposed substitutions, and names of installing subcontractors, where applicable, in accordance with Division 01 – General Requirements of the Specifications (see Section 016000 – Product Requirements). Specific attention is directed to the requirements, contained therein, to reimburse the Architect for the cost of his services in evaluating proposed substitutions and subsequent related re-design, after this Contract has been executed.

§3.4.2.1 After the Contract has been executed, the Owner and the Architect will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in the General Requirements (Division 01 of the Specifications).

§3.4.2.2 By making requests for substitutions based on Subparagraph 3.4.2.1 above, the Contractor:

- .1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- .2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for the specified;
- .3 certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
- .4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

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

### § 3.5 WARRANTY

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 otherwise, and further warrants that no substitutions not otherwise properly approved have been installed in the Project~~. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by Owner's 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 Owner or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. ~~This warranty is not the sole and/or exclusive remedy available to the Owner under the Contract documents or otherwise, and in no way relieves the Contractor of liability for any latent defect or for defective Work.~~

### § 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. The Owner is a tax exempt entity, and in accordance with the PA Tax Code, purchases of Building Machinery and Equipment by the Contractor are exempt from sales tax. Contractor shall make the determination as to which purchases are applicable for this exemption, and in no event shall taxes on Building Machinery and Equipment to be included in the GMP.

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

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

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

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable ~~laws, statutes, ordinances, codes,~~ Governmental Requirements, 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 ~~were reasonably unable to be ascertained by the Contractor prior to commencement of the Work and that~~ are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide ~~written~~ notice to the Owner and the Architect before conditions are disturbed and in no event later than ~~524~~ days after first observance of the conditions. The Architect will promptly ~~investigate address~~ 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 an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15. ~~Failure to provide timely notice pursuant to this provision shall result in the waiver of all subsequent Claims of any nature, based in whole or in part, upon the theory of Concealed or Unknown Conditions.~~

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

### § 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

### § 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Owner or Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 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 written consent, which shall not unreasonably be withheld or delayed.

### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, and prior to commencement of the Work, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The form of the construction schedule shall be a Critical Path Method (CPM) schedule prepared using a commercially available computer based system that is broadly accepted as appropriate for use in the construction industry. Additional requirements for the construction schedule that are included in Division 1 of the Specifications shall also apply. The construction schedule shall be updated at least monthly and copies of the schedule in both paper and electronic format shall be provided to the Owner and Architect when updated.

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

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

### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### § 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the 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 that are not marked as reviewed or approved, or show evidence of not having been properly reviewed for compliance with the Contract Documents, but stating that they have been reviewed or 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 requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, **who shall be reasonably acceptable to Owner** and whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

### § 3.13 USE OF SITE

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

encumber the site with materials or equipment. Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. Equipment no longer required for the Work shall be promptly removed from the Project site by the Contractor. Equipment no longer required for the Work shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site is solely the contractor's responsibility. The Contractor shall ensure that, at all times, the Work is performed in a manner which affords reasonable and safe access, both vehicular and pedestrian to the site of the Work and all adjacent areas, including, without limitation, the remainder of the 2nd and 3rd Floor North Terrace. The Work shall be performed to the fullest extent possible in such a manner that the remainder of the 2nd and 3rd Floor North Terrace and other areas adjacent to the Project site shall not be impacted or disturbed, and shall be free from all debris, building materials and equipment.

### § 3.14 CUTTING AND PATCHING

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

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

§ 3.14.3 Permission to patch any areas or items of work does not imply a waiver of the architect's right to require complete removal and replacement in said areas and of said items, if in the Architect's opinion, said patching does not satisfactorily restore the quality and appearance of the Work.

§ 3.14.4 The Contractor through its various subcontractors and the various trades under its jurisdiction shall provide all necessary openings in walls, floors, ceilings, roofs, partitions, etc., for the installation of work of any particular trade and all such cutting, patching, and repairing shall be done by the particular trade affected. Every Subcontractor or trade requiring such work shall be responsible for correct sizes and locations. The Contractor shall coordinate the work of the trades affected by their requirements, and give them all the information and supervision they may require. The Contractor shall see that trades affected carry out the above requirements at no additional cost above the Contract Sum.

### § 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor, which costs may be deducted from any sums due or to become due to Contractor under the Agreement.

### § 3.16 ACCESS TO WORK

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

### § 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

## § 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify, defend, and hold harmless the Owner, Owner's consultants and representatives, Architect, Architect's consultants, all other Indemnitees, and agents and employees of any of them from and against any and all liabilities, claims, damages, losses, costs, and expenses, causes of action, suits, demands, and judgments of any nature, including but not limited to attorneys' fees, loss of use and all other direct damages arising out of or resulting from performance of growing out of or connected with 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 in whole or in part by the negligent or willful acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, their suppliers and Sub-subcontractors, or anyone for whose acts they may be liable, regardless of whether or not any Indemnitee is alleged to have been negligent or to have contributed to the liabilities, claims, damages, losses, costs, expenses, causes of action, suits, demands, or judgments 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. It is understood and agreed that, except for the limited rights of review and approval identified herein, Owner has delegated to Construction Manager any obligation of Owner to provide safe working conditions.

§ 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. The indemnification obligations contained in the Contract shall survive termination of the Contract.

## ARTICLE 4 ARCHITECT

### § 4.1 GENERAL

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

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

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

### § 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect-Owner 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, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) 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 FACILITATING CONTRACT ADMINISTRATION

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

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

§ 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, ~~after approval from the Owner~~, will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 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 ~~in writing~~ 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. **Supplemental drawings and specifications that clarify and indicate the Work in greater detail to aid in understanding and constructability of a portion of the Work, but remain within the design intent of the contract Documents shall not be construed as the basis for a claim for additions to the Contract Sum of the Contract Time.**

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

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

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the ~~14 day~~14 day period shall constitute notice of no reasonable objection.

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

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

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

### § 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these 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 in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights 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 such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

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

#### § 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 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 of Owner with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 ~~The Contractor shall coordinate its Work under this Agreement with any and all activities or work of architect, Owner or any agent or independent contractor of Owner. Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.~~

#### § 6.2 MUTUAL RESPONSIBILITY

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such

proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for ~~direct 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 ~~direct costs the Contractor incurs only to the extent attributable to because of a separate contractor's contractor's (not assigned to Contractor)~~ delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy, ~~at no cost to Owner~~, damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

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

### § 6.3 OWNER'S RIGHT TO CLEAN UP

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

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

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

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

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

~~§ 7.1.4 The amount allowed for overhead and profit for any changes in the Work shall be in accordance with §7.5.~~

### § 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the ~~Owner 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.

~~Agreement on any Change Order shall constitute a final settlement on all items covered therein, including, but not limited to, all direct, indirect and cumulative impacts, acceleration, delay, disruption, interference, loss of efficiency or productivity, inconvenience, increased supervision, overhead, profit, general conditions, or other costs, expenses, or damages subject to performance thereof and payment therefor pursuant to the terms of the Contract Documents.~~

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, adjustments to the Contract Sum shall be made in accordance with the provisions of the Division 1 Section of the Specification relating to Unit Prices, or, if not addressed in Division 1 and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

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

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner/Architect shall determine the method and 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 Section 7.5 of this Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner/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 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

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

§ 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 **upon written approval of the Owner** has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor. **The Contractor shall carry out all such written orders promptly.**

#### § 7.5 ALLOWANCE FOR OVERHEAD AND PROFIT

**§7.5.1** The combined allowance for overhead and profit for any changes in the Work, included in the total cost to the Owner, shall be based on the following schedule:

- .1 For the Contractor, for Work done by the Contractor's own forces: 15% of the cost.
- .2 For the Contractor, for Work done by the Contractor's subcontractors: 10% of the amount due the subcontractor.
- .3 For each subcontractor involved, for Work performed by that subcontractor's own forces: 15% of the cost.
- .4 For each subcontractor involved, for Work performed by that subcontractor's sub-subcontractors: 10% of the amount due the sub-subcontractor.
- .5 For the sub-subcontractors, for Work performed by that subcontractor's own forces: 10% of the cost.

**§ 7.5.2** The cost to which overhead and profit is to be applied shall be determined in accordance with Section 7.3.7.

**§7.5.3** In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials and Subcontractors. Labor and materials shall be itemized in the manner prescribed above. Where major cost items are subcontracts, they shall be itemized also. In no case will a change involving over \$2,500.00 be approved without such itemization.

### 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 **Date** is the date certified by the Architect in accordance with Section 9.8.

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

#### § 8.2 PROGRESS AND COMPLETION

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

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

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

#### § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes

ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect 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.

#### § 8.4 OVERTIME

§ 8.4.1 Where the use of overtime labor may be necessary to meet the requirements of sound construction and to secure the workmanship required by the Contract Documents or to meet the scheduled completion dates, such overtime labor shall be the Contractor's responsibility and included in the Contract Sum.

§ 8.4.2 Except as provided in §8.4.1 above, overtime labor shall be used only if it is necessary due to circumstances beyond the control of the Contractor, and it is authorized by written instruction of the Architect. All such overtime labor shall be paid by the Owner only on the basis of the amount by which overtime rates exceed the regular rates of pay, to which additional tax and insurance expense shall be added. No overhead and profit shall be charged against the Owner on account of any overtime labor.

### ARTICLE 9 PAYMENTS AND COMPLETION

#### § 9.1 CONTRACT SUM

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

#### § 9.2 SCHEDULE OF VALUES

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

#### § 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material 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.

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

§ 9.3.2 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, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. Specifically, prior to Contractor performing any Work on the Project, Contractor shall obtain and execute a written "Advance Waiver of Liens" duly executed by Contractor and any and all contractors, sub-contractors, sub-subcontractors and material suppliers who are to perform such Work which shall provide that no lien shall be filed by anyone on account of labor or material furnished in connection with such Work to the extent such waiver is permitted under Pennsylvania law. Such written Advance Waiver of Liens shall be filed and recorded in accordance with the Mechanics' Lien Law of Pennsylvania prior to the commencement of such work, and shall be updated with each Application for Payment by Contractor, and any and all contractors, sub-contractors, sub-subcontractors and material suppliers. The interest of Owner in the Project shall not be subject to liens for improvements made by contractors, sub-contractors, sub-subcontractors and material suppliers. Notwithstanding the foregoing, if any mechanics or other lien shall be filed against the Work or Project, then Contractor shall at its expense cause such lien to be discharged of record by payment, bond or otherwise, within ten (10) days after the filing thereof. If contractor shall fail to cause such lien to be discharged of record within such ten day period, Owner may cause such lien to be discharged by payment, bond or otherwise, without investigation as to the validity thereof or as to any offsets or defenses thereto, and Contractor shall, upon demand, reimburse Owner for all amounts paid and costs incurred, including attorneys' fees, in having such lien discharged of record.

§ 9.3.4 Until Substantial Completion, the Owner will pay ninety percent (90%) of the amount due the Contractor on account of progress payments.

#### § 9.4 CERTIFICATES FOR PAYMENT

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

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment 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 material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### § 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;



- .3 failure of the Contractor to make **timely** payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 ~~repeated~~ failure to carry out the Work in accordance with the Contract Documents.

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

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers 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 Architect will reflect such payment on the next Certificate for Payment.

## § 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

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

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

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

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

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

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

**§ 9.6.8 No progress payment shall be due and payable from Owner unless and to the extent Contractor and each Subcontractor have provided Owner with a duly executed and notarized Conditional Release and Wavier of Liens and Claims for the invoiced sums.**

## § 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 ~~fifteen~~**seven** days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding

dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately to address such work stoppage and the Contract Sum shall be increased by the amount of the Contractor's reasonable direct and actual costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

## § 9.8 SUBSTANTIAL COMPLETION

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

§ 9.8.2 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 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 Specific attention is directed to requirements in Division 01 – General Requirements of the Specifications regarding Substantial Completion and reimbursement of the Architect for the cost of its additional services.**

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

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment ~~of to reduce~~ retainage applying to such Work or designated portion ~~thereof~~ thereof **five percent (5%) of the value of such Work**. Such payment shall be adjusted for Work that ~~is incomplete or the Architect determines is: incomplete~~, not in accordance with the requirements of the Contract ~~Documents~~ Documents, **or needed for unsettled claims, unless otherwise required by applicable law.**

## § 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. 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 written 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 and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of 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.

**§ 9.10.1.1** Specific attention is directed to requirements in Division 01 – General Requirements of the Specifications regarding Final Completion and reimbursement of the Architect for the cost of its additional services.

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

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

§ 9.10.4 The making of final payment shall **NOT** constitute a waiver of Claims by the Owner, **including, without limitation, except** those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of ~~all-special~~ warranties required **and/or assigned** by the Contract Documents.

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

**§ 9.10.6** No final payment shall be due and payable from Owner unless and to the extent Contractor and each Subcontractor have provided Owner with a duly executed and notarized Unconditional Release and Wavier of Liens and Claims for the invoiced sums, or alternatively, if Contractor provides security in a form satisfactory to the Owner protecting, indemnifying and holding harmless Owner, Owner's Designated Representative, the Architect and the Project from and against any and all disputes between the Contractor and any Subcontractor and/or supplier who cannot be included in the Unconditional Release and Waiver of Liens and Claims.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

### § 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

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

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

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

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

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

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

### § 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

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

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

§ 10.3.2 Upon receipt of the Contractor's written 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 such material or substance or who are to perform the task of removal or safe containment of such 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 in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 Intentionally omitted. ~~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 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 materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

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

§ 10.3.6 If, without negligence or other fault 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 reasonable and necessary 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 LIABILITY INSURANCE

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

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

- 4 Claims for damages insured by usual personal injury liability ~~coverage~~; coverage with the Employment Exclusion deleted;
- 5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting ~~therefrom~~;therefrom. Coverage shall be written on a Broad Form basis and include Completed Operations;
- 6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a ~~motor vehicle~~;motor vehicle, including owned, non-owned and hired motor vehicles;
- 7 Claims for bodily injury or property damage arising out of products and completed operations; and
- 8 Claims ~~involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18~~ arising out of contractual liability including specified provision for Contractor's obligations under Paragraph 3.18;
- 9 Claims related to Premises Operations (including X,C, and U coverage as applicable);

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

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 and Appendix F shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. If the insurance required by Paragraph 11.1.1 and/or Appendix F is written on the Comprehensive General Liability policy form, the Certificate shall be AIA Document G705, Certificate of Insurance. If the insurance required by Paragraph 11.1.1 is written on a Commercial General Liability policy form, ACORD form 255 will be acceptable.

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

§ 11.1.5 The insurance required by Subparagraph 11.1.1 shall be written for not less than the limits as set forth in Appendix F.

#### § 11.2 OWNER'S LIABILITY INSURANCE

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

#### § 11.3 PROPERTY INSURANCE

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

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

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

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

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

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

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

### § 11.3.2 BOILER AND MACHINERY INSURANCE

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

### § 11.3.3 LOSS OF USE INSURANCE

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

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

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

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that

the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

#### § 11.3.7 WAIVERS OF SUBROGATION

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

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

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

#### § 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

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

### ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

#### § 12.1 UNCOVERING OF WORK

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

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs



and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

## § 12.2 CORRECTION OF WORK

### § 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

### § 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable ~~special~~ warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 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, **without adjustment to the Contract Sum or the GMP**, bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

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

## § 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum **and GMP** 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 except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

## § 13.2 SUCCESSORS AND ASSIGNS

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

## § 13.3 WRITTEN NOTICE

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

## § 13.4 RIGHTS AND REMEDIES

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

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

## § 13.5 TESTS AND INSPECTIONS

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

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including, [without limitation](#), those of repeated procedures and compensation for the [Owner's and Architect's services and expenses](#) shall be at the Contractor's expense [and not as a Cost of the Work or increase to the Contract Sum or GMP. The performance of any inspection or test or the results thereof shall not relieve Contractor from its obligation to timely, properly and fully perform the Work.](#)

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

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

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

### § 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as specified in Section 4.2.3 of the Agreement ~~as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~

### § 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, ~~but in any case not more than 10 years after the date of Substantial Completion of the Work.~~ ~~For purposes of calculating any applicable statute of limitations in any cause of action against the Architect, such period of time will commence upon the later of either Substantial Completion of the Project or the date upon which the Owner takes possession of the Project.~~ The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

### § 13.8 EQUAL OPPORTUNITY

§ 13.8.1 The contractor shall maintain policies of employment as follows:

§ 13.8.1.1 The Contractor and the Contractor's subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The Contractor shall take affirmative action to insure that applicants are employed, and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the policies on non-discrimination.

§ 13.8.1.2 The Contractor and the Contractor's subcontractors shall, in all solicitations of advertisement for employees places by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

## 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 ~~30-60~~ consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;  
or
- .3 Because the 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 ~~due to circumstances unrelated to Contractor.~~ ~~or~~
- ~~.4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.~~

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

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

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

## § 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 ~~timely~~ payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 ~~repeatedly~~ disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of ~~material~~~~substantial~~ breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner, ~~upon certification by the Initial Decision Maker that sufficient cause exists to justify such action,~~ may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

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

## § 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in 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 written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

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

- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, 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 Contractor shall be entitled to receive payment for Work executed, and **direct** costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed. **Compensation provided herein shall be the full and final payment of all sums due to Contractor for termination pursuant to §14.4.**

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 CLAIMS

#### § 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

#### § 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party **and to the Initial Decision Maker** with a copy sent to the Architect, **if the Architect is not serving as the Initial Decision Maker**. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. **Failure to provide timely notice pursuant to this provision** the Contract Documents shall result in the waiver of all subsequent claims of any nature, including, but not limited to, those for delays, inefficiency, design errors and/or omissions, trade stacking, additional work, and adverse weather conditions. Contractor expressly understands and agrees that all written notice requirements of the Contract Documents shall be strictly construed and that such requirements are a non-waivable condition precedent to pursuing any rights or remedies by Contractor under the Contract Documents. Contractor agrees not to claim any waiver by Owner of such notice requirements based upon Owner's conduct or Owner having actual, verbal, implied, or constructive notice. Contractor understands and agrees that Owner will suffer prejudice as a result of any non-compliance by Contractor with the notice requirements of the Contract Documents and further agrees not to assert lack of prejudice or any other grounds as the basis for its failure to comply with the notice provisions. Contractor expressly and unconditionally waives and otherwise releases any claims which do not strictly comply with the notice requirements of the Contract Documents.

#### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

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. The **Owner Architect** will prepare Change Orders and issue Certificates of Payment in accordance with the decisions **as provided in Article 9 of the Agreement of the Initial Decision Maker**.

#### § 15.1.4 CLAIMS FOR ADDITIONAL COST

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

#### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by **ten (10) years worth of data from the NCDC** 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.

## § 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

Notwithstanding anything herein to the contrary, Owner's direct damages include any loss of use, revenue, profit and/or rental income resulting from defective Work of the Contractor and such direct damages are not subject to this mutual waiver.

## § 15.2 INITIAL DECISION

~~§ 15.2.1 Intentionally omitted. Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.~~

~~§ 15.2.2 Intentionally omitted. 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 Intentionally omitted. 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 Intentionally omitted. If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.~~

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

~~§ 15.2.6 Either party may file for mediation of a Claimn initial decision at any time, subject to the terms of Section 15.2.6. Intentionally omitted.~~

~~§ 15.2.6.1 Intentionally omitted. Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the~~

~~party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

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

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

### § 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections ~~9.10.4, 9.10.5, and 15.1.6~~ shall be subject to mediation as a condition precedent to 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 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 DELETED~~

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

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

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

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

### § 15.4.4 ~~CONSOLIDATION OR JOINDER DELETED~~

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

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

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

