# AIA® Document A232™ – 2009

## *General Conditions of the Contract for Construction,* *Construction Manager as Adviser Edition*

**for the following PROJECT:**
*(Name, and location or address)*

Community College of Philadelphia – West Building
4th Floor Renovations
1700 Spring Garden Street
Philadelphia, PA 19130

**THE CONSTRUCTION MANAGER:**
*(Name, legal status and address)*

**Reynolds Construction Management, Inc.**
1265 Drummers Lane, Suite 104
Wayne, PA 19087

**THE OWNER:**
*(Name, legal status and address)*

Community College of Philadelphia
1700 Spring Garden Street
Philadelphia, PA 19130

**THE ARCHITECT:**
*(Name, legal status and address)*

UCI Architects, Inc.
1630 Pine Street
Philadelphia, PA 19103

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

This document is intended to be used in conjunction with AIA Documents A132™–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132™–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser.


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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).

**§ 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 the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Architect or the Architect's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Architect, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their 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 other Multiple Prime Contractors and by the Owner's own forces, including persons or entities under separate contracts not administered by the Construction Manager.

**§ 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.** 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 MISCELLANEOUS DEFINITIONS**

**§ 1.1.9.1 The term "Product" as used throughout the Contract Documents include materials, Owner purchased materials, systems, and equipment.**

**§ 1.1.9.2 The term "Project Manual" as used throughout the Contract Documents are the volumes which includes the bidding requirements, sample forms, and certain of the Contract Documents such as the Conditions of the Contract and Specifications.**


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**§ 1.1.9.3 The term "indicated" refers to graphic representations, notes, or schedules on the Drawings, or other paragraphs or schedules in the Specifications and similar requirements in Contract Documents. Where terms such as "shown", "noted", "specified" are used, it is to help locate the reference; no limitation on location is intended except as specifically noted.**

**§ 1.1.9.4 The terms such as "directed", "requested", "authorized", "selected", "approved", "required", and "permitted" mean "directed by the Architect/Construction Manager" and similar phrases. However, no implied meaning shall be interpreted to extend the Architect's responsibility into the Contractor's area of construction supervision.**

**§ 1.1.9.5 The term "approved" where used in conjunction with the Architect's action on the Contractor's submittals, applications, and requests is limited to the responsibilities and duties of the Architect stated in General and Supplementary Conditions. Such approval shall not release the Contractor from responsibility to fulfill Contract Document requirements, unless otherwise provided in the Contract Documents.**

**§ 1.1.9.6 The term "furnish" is used to mean "supply and deliver to the Project site, ready for unloading, unpacking, assembly, installation and similar operations". It is acknowledged that Owner will supply certain materials, but Contractor shall be responsible for its delivery.**

**§ 1.1.9.7** The term "install" is used to describe operations at the Project site including the actual unloading, unpacking, assembly, erection, placing, anchoring, applying, working to dimensions, finishing, curing, protecting, cleaning, and similar operations".

**§ 1.1.9.8 The term "provide" means to furnish and install complete and ready for the intended use.**

**§ 1.1.9.9 The term "an installer" is an entity engaged by the Contractor, either as an employee, subcontractor or sub-subcontractor, for performance of a particular construction activity, including installation, erection, application, and similar operations. Installers are required to be experienced in the operations they are engaged to perform.**

**The term "experienced" when used with the term "installer" means having a minimum of five (5) previous projects similar in size and scope to this Project and familiar with the precautions required, and has complied with requirements of the authority having jurisdiction.**

**§ 1.1.9.10 The term PADOT means "The Pennsylvania Department of Transportation".**

**§ 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. In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities with the highest being #1 descending to #8:

1. AIA Document A132-2009, as amended Standard Form of Agreement between Owner and Contractor
2. Addenda, with those of later date having precedence over those of earlier date
3. Multiple Contract Summary (Section 01120)
4. The Supplementary Conditions contained herein
5. The General Conditions of the Contract for Construction
6. Specifications – Division 0-1
7. Technical Specifications – Divisions 2-50
8. Drawings



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In the case of an inconsistency between Drawings and Specifications or within either document not clarified by Addendum, the better quality or greater quality of Work shall be provided in accordance with the Architect's interpretation.

**§ 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 case of discrepancy between Drawings and Specifications, such conflict shall be promptly referred to the Construction Manager. The Construction Manager shall review and get direction from the Architect for interpretation and final decision.**

**§ 1.2.5 Where the Work is shown in complete detail on only half or portion of a Drawing or there is an indication of continuation, the remainder being shown in outline, the work drawn out in detail shall be understood to apply to other like portions of the structure. On all Work of a remodeling nature or installation within the present buildings, it will be the responsibility of the Contractor, by personal inspection, to satisfy himself as to the correctness of any information given which may affect the quantity, size, and quality of materials required for a satisfactorily completed Contract, whether or not such information is indicated on the Drawings or within the Specifications.**

**§ 1.2.6 No measurement of a drawing by scale shall be used as a working dimension. Working measurements shall be taken from figured dimensions.**

**§ 1.2.7 Contractor shall carefully examine all Contract Drawings and Specifications. If any discrepancies occur between the drawings or between the drawings and specifications, the Contractor shall report such discrepancies to the Construction Manager in writing and obtain written instructions as to the manner in which to proceed. No departures from the Contract Documents shall be made without prior written approval of the Construction Manager.**

### § 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. 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, 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, Architect and the Architect's consultants.


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### § 1.6 Transmission of Data in Digital Form

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

**§ 1.6.1 The Architect will make available to the Contractor, upon request, CADD files of the contract drawings for the Contractor's purposes in producing Shop drawings. The Contractor shall request CADD files of specific drawings using the Electronic Medial Release Form attached to these General Conditions. Upon receipt of the Release Form, CADD files of the requested drawings will be forwarded to the Contractor via a zip disk. The Contractor should include a check, made payable to the ARCHITECT'S NAME, in the amount of $100.00 with the Electronic Media Release Form to cover the cost of the zip disk, CADD time for transferring files, shipping, etc.**

**§ 1.6.2 Should the Contractor request and receive project information in an electronic format for his use in the execution of his Work, it is understood the electronic files provided are for informational purposes only and do not necessarily represent a final and/or complete design of the Project and its systems. Contractor shall not be entitled to rely on the accuracy of the information provided and instead, shall verify all information and actual Project conditions. Neither the Owner, Construction Manager nor Architect shall be responsible for the information contained on the electronic files or subsequent use thereof. Owner, Construction Manager, and Architect caution any user of the electronic files that subsequent changes may have been made to the Project and/or Contract Documents which are not reflected on the electronic files. Only final stamped drawings represent an accurate record of the Architect's design.**

**The Contractor agrees to indemnify and hold harmless the Owner, Construction Manager, Architect, and their respective officers, directors, representatives, insurers, agents, employees and assigns from any and all claims, actions, damages, losses, and costs arising out of or related to the Contractor's request for and use of the electronic files, including, but not limited to any errors, omissions, anomalies, or variances contained therein.**

## 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 Article 4, the Construction Manager and the Architect do 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; (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 Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent


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changes in existing facilities. Unless otherwise provided under the Contract Documents, the Owner, through the Construction Manager, shall secure and pay for the building permit.

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

**§ 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.~~all Prime Contractors are to be furnished the following amount of drawings and specifications along with one compact disc:

| Contract Number | Number of Drawings | Number of Specifications |
|---|---|---|
| General Trades | 1 | 1 |
| MEP Trades | 1 | 1 |
| All Other | 1 | 1 |

**§ 2.2.6** The Owner shall endeavor to forward all communications to the Contractor through the Construction Manager and shall contemporaneously provide the same communications to the Architect about matters arising out of or relating to the Contract Documents.

### § 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~~ five (5) business 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,~~ may after such five (5) day period, without prejudice to other remedies the Owner may have, immediately correct such deficiencies. In such case an appropriate Change Order or Construction Change Directive 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 Construction Manager's and Architect's and their respective consultants' 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, after consultation with the Construction Manager.~~ failure, including without limitation the Owner's reasonable attorneys' fees. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. Nothing in this paragraph shall obligate the Owner to carry out the Work for the benefit of the Contractor.

## ARTICLE 3 CONTRACTOR

### § 3.1 General

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


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**§ 3.1.2** The plural term "Multiple Prime Contractors" refers to persons or entities who perform construction under contracts with the Owner that are administered by the Construction Manager. The term does not include the Owner's own forces, including persons or entities under separate contracts not administered by the Construction Manager.

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

**§ 3.1.4** 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 Construction Manager or Architect in their administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

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

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

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Construction Manager and Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information submitted to the Construction Manager in such form as the Construction Manager and Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Construction Manager and Architect any nonconformity discovered by or made known to the Contractor as a request for information submitted to Construction Manager in such form as the Construction Manager 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 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. The Contractor shall give the Architect timely notice of any additional design drawings, specifications, or instructions required to define the Work in greater detail, or to permit the proper progress of the Work. The Contractor shall not proceed with any work not clearly and consistently defined in detail in the Contract Documents, special requests, additional drawings or instructions from the Architect. If the Contractor proceeds with such work without obtaining further drawings or instruction, he shall correct work incorrectly done at his own expense.

**§ 3.2.5** Explorations and Reports: Reference is made to the Bidding Documents for identification of those reports of explorations and tests of subsurface conditions at the site that have been utilized by Architect in preparation of the Contract Documents. Contractor may rely upon the accuracy of the technical data contained in such reports, but not upon non-technical data, interpretations or opinions contained therein or for the completeness thereof for contractor's purposes. Except as indicated in the immediately preceding sentence and in section 3.7.4, Contractor shall have full responsibility with respect to subsurface conditions at the site.



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### § 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 instruction 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, the Construction Manager, and the Architect and shall not proceed with that portion of the Work without further written instructions from the Architect, through the Construction Manager. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons 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 the Project already performed to determine that such portions are in proper condition to receive subsequent Work.

### § 3.4 Labor and Materials

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

**§ 3.4.2** 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, in consultation with the Construction Manager, and in accordance with a Change Order or Construction Change Directive.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Owner specifically reserves the right to reject any person Owner deems unfit to be permitted on school grounds and in proximity to students. Upon written notice from Owner, Contractor shall have all such persons removed from the Project. Owner's right to declare such person unfit shall not be limited to the required exclusion of persons from school property as set forth in Section 1-111 of the Pennsylvania Public School Code and/or Subchapter C.2 of the Child Protective Services Law.

### § 3.5 Warranty

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

### § 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof 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.


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**§ 3.6.1** Select materials may qualify for tax exempt status under the laws of the Commonwealth of Pennsylvania. Tax exempt certificates prepared by the Contractors and subcontractors will be executed by the Owner for those items that are tax exempt.

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

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

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

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

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, Construction Manager, and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the ~~conditions.~~ conditions with contemporaneous notification to the Construction Manager and to the Architect. The Architect and Construction Manager will promptly investigate such conditions and, if the Architect, in consultation with the Construction Manager, 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, in consultation with the Construction Manager, 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, Construction Manager, and Contractor in writing, stating the reasons. If the Owner or Contractor disputes the Architect's determination or recommendation, either party may proceed as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner, Construction Manager, 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.~~

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~~§ 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 and Architect through the Construction Manager, the name and qualifications of a proposed superintendent. The Construction Manager may reply within 14 days to the Contractor in writing stating (1) whether the Owner, the Construction Manager, or the Architect has reasonable objection to the proposed superintendent or (2) that any of them require additional time to review. Failure of the Construction Manager to reply within the 14 day period shall constitute notice of no reasonable objection. The Project Superintendent must be approved by the Owner and Architect prior to the start of Work. Within five (5) days following receipt of notice to proceed, the Contractor shall submit a resume of the proposed Superintendent who will be on site full time. The resume shall include at least three (3) recent projects of similar contract scope with the names and telephone numbers of Owner and Architect representatives for each project. The Superintendent shall be on site full time and shall not be changed except with the consent of the Owner and Architect, unless the Superintendent proves to be unsatisfactory to the Contractor and ceases to be in his employ. In any event, a replacement Superintendent shall be subject to the approval of the Owner and Architect.

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

**§ 3.9.4 If during the course of the project it is evident that the superintendent is not competent or is not managing the progress of the project or is not coordinating the various trades under his supervision, then the Construction Manager will document such findings to the Contractor. If within ten (10) days of receiving such notice, no substantial effort or correction of the finding is made, then the Architect, as requested by the Owner, based upon the Construction Manager's recommendation, may require the replacement of the superintendent with an acceptable one.**

**§ 3.9.5 The Contractor shall not change the superintendent without the prior written consent of the Owner, which consent shall not be unreasonably withheld. The superintendent shall be present at the job until substantial completion of the Contractor's Work. At the Owner's request and after consultation with the Contractor, the Contractor shall assign a different superintendent to the Project should the Owner in accordance with paragraph 3.9.2 deem such necessary.**

**§ 3.10 Contractor's Construction Schedules**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information and the Construction Manager's approval 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 schedule to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Multiple Prime Contractors or the construction or operations of the Owner's own forces.

**§ 3.10.2** The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter update it as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Construction Manager's and Architect's approval. The Architect and Construction Manager'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 Construction Manager and 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.


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**§ 3.10.3** The Contractor shall participate with other Contractors, the Construction Manager and Owner in reviewing and coordinating all schedules for incorporation into the Project schedule that is prepared by the Construction Manager. The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Construction Manager to conform to the Project schedule.

**§ 3.10.4** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner, Construction Manager and Architect and incorporated into the approved Project schedule.

**§ 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 documents shall be available to the Architect and delivered to the Construction Manager 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~~ schedules, design mixes, calculations 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 and Construction Manager is subject to the limitations of Sections 4.2.9 through 4.2.11. Informational submittals upon which the Construction Manager and Architect are 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 Construction Manager or Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve and submit to the Construction Manager Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the Project submittal schedule approved by the Construction Manager and Architect, or in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Multiple Prime Contractors or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples and similar submittals with related documents submitted by other Multiple Prime Contractors.

**§ 3.12.5.1** Except where otherwise specified or agreed by Architect, the Contractor shall submit all shop drawings, product data, samples and similar submittals within ninety (90) days of the Notice to Proceed. When such initial submittals are rejected or otherwise required to be corrected and resubmitted, Contractor shall transmit complying submittals promptly so as to avoid delay in the Work, and in any case within thirty (30) days after return of the initial submittal, unless otherwise agreed by the Architect. Notwithstanding these time requirements for submittals, submittals that are required for work on the critical path of the construction schedule shall be submitted earlier and in a timely manner so as not to delay the work.

**§ 3.12.5.2** The Contractor agrees that the Owner will be damaged in an undeterminable amount if submission of shop drawings, product data, samples and similar submittals are not made in compliance with the preceeding Section 3.12.5.1. Failure to provide shop drawings, product data, samples and similar submittals may constitute a breach of contract.

**§ 3.12.5.3** Substitutions: When allowed, request clarifications and verifications of acceptability of substitutions or alternatives by correspondence, with supporting data, in accordance with the requirements of the Instruction to


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Bidders, Article 12, and Division 01 Section "Summary of the Work", Paragraph 2.01-D. Do not make requests for substitution by the submittal process specified in this Section 3.12; such submittal of items that require substitution documentation will be returned un-reviewed.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner, Construction Manager, 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 reviewed and 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 Construction Manager and 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 Construction Manager and Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

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

**§ 3.13 Use of Site**

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

**§ 3.13.2** The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the site.

**§ 3.13.3** Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. Materials or equipment no longer required for the Work shall be promptly removed


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

**§ 3.14 Cutting and Patching**

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

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner's own forces or of other Multiple Prime 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's own forces or by other Multiple Prime Contractors except with written consent of the Construction Manager, Owner and such other Multiple Prime Contractors; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the other Multiple Prime Contractors or the Owner the Contractor's consent to cutting or otherwise altering the Work.

**§ 3.15 Cleaning Up**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials 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, or Construction Manager with the Owner's approval, may do so and the Owner shall be entitled to reimbursement from the Contractor.

**§ 3.16 Access to Work**

The Contractor shall provide the Owner, Construction Manager 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, Construction Manager 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, Architect, or Construction Manager. 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 through the Construction Manager.

**§ 3.18 Indemnification**

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

**§ 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 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.



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**§ 3.18.3 The Contractor's indemnity obligations under this Paragraph 3.18 shall, but not by way of limitations, specifically include, without limitations, all fines, penalties and punitive damage arising out of, or in conjunction with, any (i) violation of or failure to comply with any Governmental Requirement by the Contractor responsible, (ii) method of execution of the Work, or (iii) failure to obtain, or violation of, any permit or other approval of a public authority applicable to the Work by the Contractor or any entity for whom the Contractor is responsible.**

**§ 3.18.4 In the event that any party is requested but refuses to honor the indemnity obligations hereunder, then the party indemnifying shall, in addition to all other obligations, and upon adjudication of the party's liability for indemnification, pay the cost of bringing any such action, including, but not limited to, attorneys' fees, costs and expert fees, to the party requesting indemnity.**

## ARTICLE 4 ARCHITECT AND CONSTRUCTION MANAGER

### § 4.1 General

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

**§ 4.1.2** The Owner shall retain a construction manager lawfully licensed to practice construction management or an entity lawfully practicing construction management in the jurisdiction where the Project is located. That person or entity is identified as the Construction Manager in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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

**§ 4.1.4** If the employment of the Construction Manager or Architect is terminated, the Owner shall employ a successor construction manager or ~~architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Construction Manager or Architect, respectively.~~architect.

### § 4.2 Administration of the Contract

**§ 4.2.1** The Construction Manager and Architect will provide administration of the Contract as described in the Contract Documents and will be the Owner's representatives during construction until the date the Architect issues the final Certificate for Payment. The Construction Manager and 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. 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 and Construction Manager (1) known deviations from the Contract Documents and from the most recent Project schedule prepared by the Construction Manager, and (2) defects and deficiencies observed in the Work.

**§ 4.2.3** The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. The Construction Manager will determine in general if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner reasonably informed of the progress of the Work, and will report to the Owner and Architect (1) known deviations from the Contract Documents and the most recent Project schedule, and (2) defects and deficiencies observed in the Work.

**§ 4.2.4** The Construction Manager will schedule and coordinate the activities of the Contractor and other Multiple Prime Contractors in accordance with the latest approved Project schedule.


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**§ 4.2.5** The Construction Manager, except to the extent required by Section 4.2.4, and Architect will not have control over, or charge of, 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, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Architect will have control over or charge of or be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

**§ 4.2.6 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 Construction Manager, and shall contemporaneously provide the same communications to the Architect about matters arising out of or relating to the Contract Documents. 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 other Multiple Prime Contractors shall be through the Construction Manager and shall be contemporaneously provided to the Architect if those communications are about matters arising out of or related to the Contract Documents. Communications by and with the Owner's own forces shall be through the Owner.

**§ 4.2.7** The Construction Manager and Architect will review and certify all Applications for Payment by the Contractor, in accordance with the provisions of Article 9.

**§ 4.2.8** The Architect ~~and Construction Manager~~ will have authority to reject Work ~~that~~ which does not conform to the Contract ~~Documents and will notify each other about the rejection. The Construction Manager shall determine in general whether the Work of the Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner, Contractor and Architect of defects and deficiencies in the Work.~~ Documents, and to require additional inspection or testing, in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed, but will take such action only after notifying the Construction Manager. Subject to review by the Architect, the Construction Manager will have the authority to reject Work which does not conform to the Contract Documents. Whenever the Construction Manager considers it necessary or ~~advisable,~~ advisable for implementation of the intent of the Contract Documents, the Construction Manager will have authority to require additional inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, ~~upon written authorization of the Owner,~~ whether or not such Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections ~~4.2.18 through 4.2.20~~ 4.6.18 through 4.6.20 inclusive, with respect to interpretations and decisions of the Architect. However, neither the Architect's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect or the Construction Manager to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing any of the Work. A decision by the Architect and/or Construction Manager shall be final and binding on all parties in all such matters arising prior to the date final payment is due regardless of (1) whether such matters relate to execution and progress of the Work or (2) the extent to which the Work has been completed.

**§ 4.2.9 The** ~~Construction Manager will receive and promptly review for conformance with the submittal requirements of the Contract Documents, all submittals from the Contractor such as Shop Drawings, Product Data and Samples. Where there are Multiple Prime Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from Contractor and other Multiple Prime Contractors, and transmit to the Architect those recommended for approval. By submitting Shop Drawings, Product Data, Samples and similar submittals, the Construction Manager represents to the Owner and Architect that the Construction Manager has reviewed and recommended them for approval. The Construction Manager's actions will be taken in accordance with the Project submittal schedule approved by the Architect or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Architect.~~ **Contractor shall provide all Shop Drawings, Product Data, and Samples to the Construction Manager in the quantity and format as is required by the Contract Documents. The Construction Manager shall perform an administrative review of the submittals only. The Architect shall be responsible for review and approval of submittals.**


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**§ 4.2.10** 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. Upon the Architect's completed review, the Architect shall transmit its submittal review to the Construction Manager.

**§ 4.2.11** Review of the Contractor's submittals by the Construction Manager and Architect 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 Construction Manager and 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 Construction Manager and Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Construction Manager and 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.

**§ 4.2.12** The Construction Manager will prepare Change Orders and Construction Change Directives.

**§ 4.2.13** The Construction Manager and the Architect will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7. and the Architect will have authority to order minor changes in the Work as provided in Section 7.4. The Architect, in consultation with the Construction Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

**§ 4.2.14** Utilizing the documents provided by the Contractor, the Construction Manager will maintain at the site for the Owner one copy of all Contract Documents, approved Shop Drawings, Product Data, Samples and similar required submittals, in good order and marked currently to record all changes and selections made during construction. These will be available to the Architect and the Contractor, and will be delivered to the Owner upon completion of the Project.

**§ 4.2.15** The Construction Manager will assist the Architect in conducting inspections to determine the dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with the Architect pursuant to Section 9.8; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10. The Construction Manager will forward to the Architect a final Application and Certificate for Payment or final Project Application and Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

**§ 4.2.16** 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.

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

**§ 4.2.18** 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 so rendered in good faith.

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


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**§ 4.2.20** The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the ~~Architect, with the Construction Manager's recommendation.~~ Architect. The Architect will review and respond in writing to the Construction Manager to requests for information about the Contract Documents. The Construction Manager's recommendation and the Architect's response to each request will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

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

**§ 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 Construction Manager for review by the Owner, Construction Manager and 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 Construction Manager may reply within 14 days to the Contractor in writing stating (1) whether the Owner, the Construction Manager or the Architect has reasonable objection to any such proposed person or entity or, (2) that the Construction Manager, Architect or Owner requires additional time for review. Failure of the Construction Manager, Owner, or Architect to reply within the 14-day period shall constitute notice of no reasonable objection. Nothing in this paragraph shall obligate the Owner, Construction Manager or Architect to conduct an investigation of any Contractor or Subcontrator.

**§ 5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner, Construction Manager 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, Construction Manager or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager 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, Construction Manager 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 responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner, Construction Manager and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager 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


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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 OTHER CONTRACTORS

**§ 6.1 Owner's Right to Perform Construction with Own Forces and to Award Other Contracts**

**§ 6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, which include persons or entities under separate contracts not administered by the Construction Manager, and to award other 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.~~This project will be performed with multiple Prime Contractors as indicated in Section 01120 – "Multiple Contract Summary". The Contractor shall be aware that schedule adjustments will be required to coordinate with the Work of other Contractors.

**§ 6.1.2** When the Owner performs construction or operations with the Owner's own forces including persons or entities under separate contracts not administered by the Construction Manager, the Owner shall provide for coordination of such forces with the Work of the Contractor, who shall cooperate with them.

**§ 6.1.3** 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's own forces, Construction Manager and other Multiple Prime 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's own forces or other Multiple Prime Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Construction Manager and 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 own forces or other Multiple Prime Contractors' completed or


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partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

**§ 6.2.3** The Contractor shall reimburse the Owner for costs the Owner incurs, including costs that are payable to a separate contractor or to other Multiple Prime Contractors because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of delays, improperly timed activities, damage to the Work or defective construction by the Owner's own forces or other Multiple Prime Contractors.

**§ 6.2.4** The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner, separate contractors, or other Multiple Prime Contractors as provided in Section 10.2.5.

**§ 6.2.5** The Owner and other Multiple Prime Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

**§ 6.2.7 Should the Contractor cause damage to the work or property of any separate Contractor or other Contractor, the Contractor shall, upon due notice, promptly attempt to settle with the separate Contractor or other Contractor by agreement, or otherwise resolve the dispute. If such separate trade Contractor or other Contractor sues the Owner, the Construction Manager or the Architect on account of any damage alleged to have been caused by the Contractor, the Owner, Construction Manager or Architect shall notify the Contractor who shall defend such proceedings at the Contractor's expense, and if any judgment or award against the Owner, Construction Manager or Architect shall notify the Contractor who shall defend such proceedings at the Contractor's expense, and shall reimburse the Owner, Construction Manager or Architect for all attorneys' fees and court costs which the Owner, Construction Manager or Architect has incurred. There shall be no cause for action between Contractors for delay.**

### § 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, other Multiple Prime 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 Construction Manager, with notice to 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, Construction Manager, Architect and Contractor; a Construction Change Directive requires agreement by the Owner, Construction Manager and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents, 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.

**§ 7.1.3.1 Notwithstanding anything contained in the Contract Documents to the contrary, a change in the Contract Sum, the Contract Time and any Milestone Date shall be accomplished only by Change Order or by a Construction Change Directive. No course of conduct or dealing between the parties, no express or implied acceptance of alterations or additions of the Work and no claim that the owner has been unjustly enriched by any alteration or addition to the Work, whether there is any unjust enrichment, shall be the basis of any claim or adjustment in compensation due under the Contract and/or time period provided for under the Contract.**


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**§ 7.1.3.2 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the Construction Schedule. In the event a Change Order increases the Contract Sum, the Contractor shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Contract Documents.**

**§ 7.2 Change Orders**

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

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

**§ 7.3 Construction Change Directives**

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Construction Manager and signed by the Owner, Construction Manager 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, 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 Construction Manager and Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

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

**§ 7.3.7** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Construction Manager 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 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 Construction Manager 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:


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.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.

**.6 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 subcontracts. Labor and materials shall be itemized in the manner prescribed above. When major cost items are subcontracts, they shall be itemized also.**

**.7 An allowance for overhead and profit, included in the total cost to the Owner, shall be based on the following schedule;**

**.1 For the Contractor, for any Work performed by the Contractor's own forces, fifteen percent (15%) of the cost;**

**.2 for the Contractor, for any Work performed by his Subcontractor, five percent (5%) of the amount due the Subcontractor;**

**.3 For each subcontractor or sub-subcontractor involved, for any Work performed by that subcontractor's own forces, fifteen percent (15%) of the cost;**

**.4 For each subcontractor, for any Work performed by his sub-subcontractor, five percent (5%) of the amount due the sub-subcontractor;**

.8 When both additions and credits are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any.

.9 The charges for overhead and profit referred to herein shall include all claims and requests for payment by the Contractor of indirect and/or consequential costs and expenses of any kind arising out of the subject addition, deletion or change to the work or the effect of the addition, deletion, or change upon other work or upon the scheduling, progress or completion of other Work, including, without limitation, home office overhead, field office overhead, and return on staff. Overhead: Includes telephone, telephone charges, facsimile, telegrams, postage, photos, photocopying, hand tools, simple scaffolds (one level high), tool breakage, tool repairs, tool replacement, tool blades, tool bits, home office estimating and expediting, home office clerical and accounting support, home office labor, legal services, travel and parking expenses, non-working foreman/superintendent, and project management.

**§ 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 Construction Manager and 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 Construction Manager and Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Architect determine to be reasonably justified. The 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 Construction Manager and 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 Construction Manager shall prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.



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**§ 7.4 Minor Changes in the Work**

The Architect 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 issued through the Construction Manager and shall be binding on the Owner and Contractor.

## ARTICLE 8 TIME

**§ 8.1 Definitions**

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

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

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

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

**§ 8.2 Progress and Completion**

**§ 8.2.1** Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work. **By bidding and by executing the Agreement, the Contractor confirms that the contract duration is a reasonable period for performing the work. Any preliminary phasing schedule, if provided, is for information purposes only and constitutes a proposed sequence of events based on standard practices. Contractor shall independently analyze all required activities and durations necessary to perform their own work, and shall not rely on dates or durations suggested by the preliminary phasing schedule. The Contractors are responsible to provide the Construction Manager a detailed Construction Schedule of their work within fifteen (15) business days after the date of the Notice to Proceed and a Construction Progress Schedule will be updated periodically to reflect progress.**

**§ 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 each Milestone Date and shall achieve Substantial Completion within the Contract Time. Each Contractor agrees to increase manpower, increase work hours and to increase equipment necessary to maintain projected progress schedule.

**§ 8.3 Delays and Extensions of Time**

**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner, Owner's own forces, Construction Manager, Architect, any of the other Multiple Prime Contractors or an employee of any of them, 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, based on the recommendation of the Construction Manager, 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.~~**No payment or compensation or claim for damages shall be made to the Contractor as compensation for damages for any delays or hindrances from any cause whatsoever in the progress of the Work, notwithstanding whether such delays be avoidable or unavoidable. The Contractor's sole remedy for delays shall be an EXTENSION OF TIME ONLY, pursuant to and only in accordance with this Paragraph 8.3, such extension to be a period equivalent to the time lost by reason of any and all of the aforesaid causes, as determined by the Construction Manager. In no event shall Contractor be entitled to any other remedy or compensation or recovery of any damages in connection with any delay, including, without limitation,**


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**consequential damages, lost opportunity costs, impact damages or other similar claims for remuneration. In the event the Contractor shall choose to litigate or arbitrate this clause or issue and loses said arbitration/litigation, the Contractor shall reimburse the owner, Construction Manager, and the Architect for their reasonable attorneys' and expert witness fees and all other costs and expenses incurred by them in the litigation or arbitration.**

**§8.3.4 It shall be recognized by the Contractor that he may reasonably anticipate that as the job progresses, the Construction Manager will be making changes in and updating Construction Schedules pursuant to paragraph 3.10.1. Therefore, there shall be no claim for an increase in the Contract Sum for either acceleration or delay in the Construction Schedules which may be experienced in projects of similar size and complexity.**

**§8.4.1 The Contractor shall substantially complete all of the Work included in the Contract Documents ready for the Owner occupancy as defined by the milestones in the pre-bid schedule, subject to extensions of contract time as provided in Paragraph 8.3 of the General Conditions.**

**§8.4.2 It is hereby understood and mutually agreed by and between the Contractor and the Owner that the date of commencement, rate of progress and the time of completion of the work are essential conditions of this Contract, and it is further understood and agreed that the work covered under this Contract shall be started on the date specified in the Owner's notice to proceed.**

**§8.4.3 The Contractor agrees that said work shall be prosecuted regularly, diligently, and uninterrupted at such rate of progress as will ensure full completion thereof within the time specified. It is expressly understood and agreed, by and between the Contractor and the Owner, that the time for the completion of work described herein is a reasonable time for the completion of the same, taking into consideration the average climatic range and usual industrial conditions prevailing in its locality.**

**§8.4.4 It is further agreed that time is of the essence of each and every portion of this Contract and of the Specifications wherein a definite and certain length of time is fixed for the performance of any act whatsoever; and where under this Contract an additional time is allowed for the completion of any work, the new time limit fixed by such extension shall be of the essence of this Contract.**

**§8.4.5 Should the Owner be prevented or enjoined from proceeding with work either before or after the start of construction by reason of any litigation or other reason beyond the control of the Owner, the Contractor shall not be entitled to make or assert claim for damage by reason of said delay; but time for completion of the work will be extended to such reasonable time as the Owner and Architect may determine will compensate for time lost by such delay with such determination to be set forth in writing.**

**§8.4.6 Any delay attributable to lack of coordination and cooperation by and between the separate Contractors among themselves or their Subcontractors will not be recognized by the Owner as the basis for any claim for increase in any contract sum but shall be settled as provided in Paragraph 6.2 of the General Conditions.**

## 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 Construction Manager, 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 Construction Manager and Architect may require. This schedule, unless objected to by the Construction Manager or Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. In the event there is one Contractor, the Construction Manager shall forward to the Architect the Contractor's schedule of values. If there are Multiple Prime Contractors responsible for performing different portions of the Project, the


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Construction Manager shall forward the Multiple Prime Contractors' schedules of values only if requested by the Architect.

**§9.2.2** The schedule of values shall be prepared in such a manner that each major item of Work and each subcontracted item of Work is shown as a line item on AIA Document G703, Application and Certificate for Payment, Continuation Sheet.

**§ 9.3 Applications for Payment**

**§ 9.3.1** At least fifteen days before the date established for each progress payment, the Contractor shall submit to the Construction Manager 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, Construction Manager 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. The form of Application for Payment shall be AIA Document G702/CMa, Application and Certificate for Payment, supported by AIA Document G703, Continuation Sheet.

**§ 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 Construction Manager and 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~~ Payment 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~~ shall be made subject to the following:

**§ 9.3.2.1 Materials Stored On Site**

Materials properly stored at the construction site may be included in the Contractor's application for payment, subject to the following conditions: (1) All materials shall be stored in strict compliance with the manufacturer's recommendations in secure, dry enclosures; (2) Contractor shall provide property insurance covering materials stored at the construction site to the extent that Owner's property insurance does not provide coverage; (3) Contractor shall provide an accurate inventory of all materials included for payment with each application for payment. Contractor shall maintain the inventory until the materials are installed or otherwise incorporated into the work; and (4) Payment for materials stored on the construction site shall be limited to the actual, invoiced cost to the Contractor, F.O.B. the construction site. Contractor shall warrant that all suppliers are promptly paid in full for all materials included for payment and that materials are not encumbered by any lien, claim or mortgage that would prevent the Owner from taking full possession of the materials. Contractor shall produce satisfactory evidence of same to Owner.

**§ 9.3.2.2 Materials Stored Off Site**

Materials stored off the construction site shall not be included for payment in the Contractor's application for payment unless prior approval of the Owner has been obtained. Payment for materials stored off the construction site shall be subject to the conditions in subparagraph 9.3.2.1. and the following additional conditions: (1) Contractor shall provide property insurance for the full cost of the materials stored off the construction site; (2) Contractor shall provide a bill of sale for the materials granting clear title to the materials to the Owner; (3) Contractor shall pay all storage costs, shall be responsible for any damage or deterioration of the materials while in storage or in transit to the construction site and shall pay the cost of inspection of the materials in storage by the Owner. Contractor shall be responsible for and shall pay all costs of transportation of the materials to the construction 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


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Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

**§ 9.3.4** This is a public works project. Contractor and Subcontractors may not file a lien against the Project. Contractor shall contractually require all subcontractors and suppliers to waive any and all rights to file a lien against the Property or any property of the Owner.

**§ 9.4 Certificates for Payment**

**§ 9.4.1** Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Architect. Within seven days after the Architect receives the Contractor's Application for Payment from the Construction Manager, the Architect will either issue to the Owner a Certificate for Payment, with a copy to the Construction Manager, for such amount as the Architect determines is properly due, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. The Construction Manager will promptly forward to the Contractor the Architect's notice of withholding certification.

**§ 9.4.2** Where there are Multiple Prime Contractors performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives the Multiple Prime Contractors' Applications for Payment: (1) ~~review~~ Review the Applications and certify the amount the Construction Manager determines is due each of the Multiple Prime Contractors; (2) ~~prepare~~ Prepare a Summary of Contractors' Applications for Payment by combining information from each Multiple Prime Contractors' application with information from similar applications for progress payments from other Multiple Prime Contractors; (3) ~~prepare~~ Prepare a Project Application and Certificate for Payment; (4) ~~certify~~ Certify the amount the Construction Manager determines is due all Multiple Prime Contractors; and (5) ~~forward~~ Forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Architect.

**§ 9.4.3** Within seven days after the Architect receives the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Architect will either issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager, for such amount as the Architect determines is properly due, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. The Construction Manager will promptly forward the Architect's notice of withholding certification to the Contractors.

**§ 9.4.4** The Construction Manager's certification of an Application for Payment or, in the case of Multiple Prime Contractors, a Project Application and Certificate for Payment shall be based upon the Construction Manager's evaluation of the Work and the information provided as part of the Application for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The certification will also constitute a recommendation to the Architect and Owner that the Contractor be paid the amount certified.

**§ 9.4.5** The Architect's issuance of a Certificate for Payment or in the case of Multiple Prime Contractors, Project Application and Certificate for Payment, shall be based upon the Architect's evaluation of the Work, the recommendation of the Construction Manager, and information provided as part of the Application for Payment or Project Application for Payment. The Architect's certification will constitute a representation that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, that the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified.

**§ 9.4.6** The representations made pursuant to Sections 9.4.4 and 9.4.5 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 Construction Manager or Architect.


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**§ 9.4.7** The issuance of a separate Certificate for Payment or a Project Certificate for Payment will not be a representation that the Construction Manager or Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed the Contractor's 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 Construction Manager or Architect may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Architect's opinion the representations to the Owner required by Section 9.4.4 and 9.4.5 cannot be made. If the Construction Manager or Architect is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.3. If the Contractor, Construction Manager and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Construction Manager or Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the acts and omissions described in Section 3.3.2 because of

**.1** defective Work not remedied;

**.2** third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

**.3** failure of the Contractor to make payments properly to Subcontractors or for 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~~ Unsatisfactory Prosecution of the Work in accordance with the Contract Documents.

**.8** Failure to comply with governmental statutes, regulations and laws.

**§ 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 or Construction Manager withholds certification for payment under Section 9.5.1, 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 Construction Manager and both will reflect such payment on the next Certificate for Payment.

**§ 9.5.4** If the Contractor disputes any determination by the Construction Manager and the Architect with regard to any Certificate of Payment, the Contractor nevertheless expeditiously shall continue to prosecute the Work.

**§ 9.6 Progress Payments**

**§ 9.6.1** After the Architect has issued a Certificate for Payment or Project 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 Construction Manager and 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. In accordance with 62 Pa. C.S.A. Section 3922: In the absence of good and sufficient reasons, within 20 days of the receipt of payment by the Contractor, the Contractor shall pay all subcontractors with whom he has contracted their


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earned share of the payment the Contractor received. The Owner, Architect or Construction Manager may as a pre-condition to payment require proof of payment to subcontractors, sub-subcontractors and suppliers at any time and from time to time.

**§ 9.6.3** The Construction Manager will, on written 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 Owner, Construction Manager and Architect 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, Construction Manager 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 for items purchased by Contractor shall be treated in a manner similar to that provided ~~in Sections 9.6.2, 9.6.3 and 9.6.4.~~in Section 9.6 in its entirety.

**§ 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 The Owner shall retain ten percent (10%) of all amounts due the Contractor until the Work is fifty percent (50%) completed. When the Work is fifty percent (50%) completed, one-half of the amount retained by the Owner will be returned to the Contractor, provided the Contractor provides written consent of surety to such reduction in retainage to the Construction Manager along with its Application for Payment, provided that the Contractor is making satisfactory progress and there is no specific cause for greater withholding. Payments are subject to the provisions of Paragraph 9.6.**

**The Owner shall retain five percent (5%) of all amounts due the Contractor after the Work is fifty percent (50%) completed, provided however, that in the event a dispute arises between the Owner and any Prime Contractor, which dispute is based upon increased costs claimed by one Prime Contractor occasioned by damages or other actions of another Prime Contractor, additional retainage in the sum of one and one-half times the amount of any possible liability may be withheld until such time as a final resolution is agreed to by all parties directly or indirectly involved, unless the Contractor causing the additional claim furnishes a bond satisfactory to the Owner to indemnify the Owner against the claim. Notwithstanding anything to the contrary contained herein, in the event the Owner determines that the Contractor is not responsibly performing the Work, either by failure to reasonably follow the schedule, or by failure to adequately perform the Work, the Owner shall have the right to continue to make progress payments at the rate of only ninety percent (90%) of the amount due to the Contractor for each payment and the amount due the Contractor shall not include the value of work dispute. At Substantial Completion, Owner shall develop a list of uncompleted and disputed items (i.e. punch list). This list of uncompleted items shall be given a value. The Contractor, at Substantial Completion, shall be paid one hundred percent (100%) of the Contract Sum less one and one-half (1-1/2) times the value of the uncompleted items and disputed items. As these items are completed or corrected, the Owner will pay the value of the completed items to the Contractor in a timely fashion.**

**§ 9.7 Failure of Payment**

If the Construction Manager and Architect do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in


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

**§ 9.8 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 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 notify the Construction Manager, and the Contractor and Construction Manager shall jointly 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 list, the Architect, assisted by the Construction Manager, 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 list, which is not sufficiently complete in accordance with the requirements of 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, assisted by the Construction Manager, to determine Substantial Completion.

**§ 9.8.4** When the Architect, assisted by the Construction Manager, determines that the Work or designated portion thereof is substantially complete, the Construction Manager will prepare, and the Construction Manager and Architect shall execute 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. The items on the list attached to the Certificate of Substantial Completion will have a value of 150% of the work affixed to them. These amounts will be deducted from the payment and held until the items are completed or corrected.

**§ 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 retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

**§ 9.9 Partial Occupancy or Use**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer 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 and Construction Manager shall jointly 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 after consultation with the Construction Manager.


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**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Construction Manager, 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 completion of the Work, the Contractor shall forward to the Construction Manager a written notice that the Work is ready for final inspection and acceptance and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager will evaluate the completion of Work of the Contractor and then forward the notice and Application, with the Construction Manager's recommendations, to the Architect who will promptly make such inspection. When the Architect, finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Architect will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their 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 Construction Manager's and Architect's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect through the Construction Manager (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 Construction Manager and Architect so confirm, the Owner shall, upon application by the Contractor and certification by the Construction Manager and 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 through the Construction Manager prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

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

- **.1** liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents; or
- **.3** terms of special warranties required 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 The final payment including the retainage shall become due in thirty (30) days following the date of**


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**the Construction Manager's issuance of a final Certificate for Payment provided that the Contractor has submitted all documents as required by subparagraph 9.10.2 and elsewhere in the Project Manual. The final payment may be reduced by an amount, as certified by the Construction Manager, to equal one and one-half time the cost required to complete any remaining uncompleted items. Final payment of any amount so withheld shall be paid forthwith upon completion of these items.**

**§9.10.7 If more than one inspection of Substantial Completion or Final Completion is required, the Contractor will be billed for the professional fees and services of the Architect and Construction Manager. Following Substantial Completion, in the event Contractor or its subcontractor fails to complete the list of items of the work instructed by the Architect and/or Construction Manager to be corrected within 90 days after the date of Substantial Completion, the Owner may: 1) Exercise any available remedies to correct or complete deficient work or retain a third party to correct or complete such work at the cost of the defaulting Contractor; and 2) Retain and deduct from any payment or retention otherwise due to the defaulting Contractor any fees or expenses for services required to be provided by the Architect and/or Construction Manager more than 90 days after the date of Substantial Completion.**

## 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. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors.

The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

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

**§10.1.1 The Contractor shall furnish one (1) set of Material Safety Data Sheets (MSDS) to the Construction Manager for all materials used on the Project in accordance with government requirements. In addition, the Contractor shall maintain one (1) set of MSDS on the site for periodical inspection by the Owner, Architect, and Construction Manager. The Contractor shall be responsible for compliance with OSHA and the Hazard Communications Standard.§ 10.2 Safety of Persons and Property**

**§ 10.2.1** The ~~Contractor shall take reasonable precautions for safety of, and shall provide reasonable~~ Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located in the Project site. The Contractor shall be solely responsible for providing a safe place for the performance of the work. The Contractor shall use best efforts to provide for the safety and protection of the Project, all persons who may come in contact with the Work and all real and personal property located on the Project or within or adjacent to the Project site. Without limitation to the foregoing, the Contractor shall, at the Contractor's sole cost and expense, take precautions for the safety of , and shall provide protection to prevent damage, injury or loss ~~to~~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;

**.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; and

**.4** construction or operations by the Owner or other Contractors.

**§ 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.

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

**§ 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, 10.2.1.3 and 10.2.1.4 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, 10.2.1.3 and 10.2.1.4, except damage or loss attributable to acts or omissions of the Owner, Construction Manager or Architect or anyone directly or indirectly employed by any of them, or by anyone for whose acts any 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, Construction Manager 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, Construction Manager and Architect in writing.~~

**In the event the Contractor encounters on the site materials reasonably believed to be asbestos or polychlorinated byphenyl (PCB) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report condition to the Owner and Construction Manager in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB) or when it has been rendered harmless by written agreement of the Owner and Contractor.**

**§ 10.3.2** Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify a 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, Construction Manager 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, the Construction Manager and the Architect will promptly reply to the Owner in writing stating whether or not any of them has reasonable objection to the persons or entities proposed by the Owner. If the Contractor, Construction Manager or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor, the Construction Manager and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resumed 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.


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**§ 10.3.3 To the fullest extent permitted by law, the ~~Owner~~ owner shall indemnify and hold harmless the Contractor, ~~Subcontractors,~~ Construction Manager, Architect, ~~their consultants,~~ Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, ~~including~~ including, but not limited ~~to attorneys' fees,~~ 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~~ is asbestos or polychlorinated biphenyl (PCB) 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.~~ including loss of use resulting therefrom, but only to the extent caused in whole or in part negligent acts or omissions of the Owner, anyone directly or indirectly employed by the Owner, or anyone for whose acts the Owner may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by entities indemnified hereunder. Such obligation shall not be construed to negate, abridge or reduce other rights or obligations of indemnity, which would otherwise exist as to a part or person described in this subparagraph.**

**§ 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 on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

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

**.1** Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be ~~performed;~~performed, including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project;

**.2** Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's ~~employees;~~employees or persons or entities excluded by statute from the requirements of Clause 11.1.1.2 but required by the Contract Documents to provide the insurance by that Clause;

**.3** Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

**.4** Claims for damages insured by usual personal injury liability coverage;

**.5** Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;


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.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; and

.7 Claims for bodily injury or property damage arising out of completed operations; and

.8 Claims involving blanket, oral and written contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

.9 Liability insurance shall include all major divisions of coverage and be on a comprehensive basis including:

**.1 Premises-Operations (includes X, C and U as applicable)**
**.2 Independent Contractors**
**.3 Products and Completed Operations**
**.4 Personal Injury Liability with Contractual Liability Exclusion deleted**
**.5 Contractual, including specified Provision of Contractor's Obligations under Paragraph 3.18**
**.6 Owned, Non-owned, and Hired Motor Vehicles**
**.7 Broad Form Property Damage including** Completed Operations
.8 Umbrella Excess Liability

If the General Liability coverages are provided by a Commercial General Liability Policy on a claims made basis, the policy date or retroactive date shall predate the Contract; the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after final payment, certified in accordance with subparagraph 9.10.2.

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

**§ 11.1.2.1 The insurance required by Subparagraph 11.1.1shall be written for not less than the following, or greater if required by law:**

**For the duration of the Contract, the Contractor and each subcontractor shall, at their own expense, purchase and maintain in a company or companies licensed to do business in the Commonwealth of Pennsylvania, Statutory Workmen's Compensation including Occupation Disease as required by the laws of the Commonwealth of Pennsylvania and also Employer's Liability Insurance with limits not less than the following:**

**Statutory - Amounts and coverage as required by the laws of the Commonwealth of Pennsylvania.**

| | |
|---|---|
| **Employer's Liability:** | **$100,000.00 each accident** |
| | **$500,000.00 disease [Policy Limit]** |
| | **$100,000.00 disease [Each Employee]** |

**For the duration of these Contracts, the Contractor and each subcontractor shall, at their own expense, purchase and maintain in a company or companies licensed to do business in the Commonwealth of Pennsylvania, Comprehensive or Commercial General Liability, with limits not less than the following:**

| | |
|---|---|
| **Per Occurrence Limit:** | **$1,000,000.00** |
| **Products and Completed Operations -** | **$1,000,000.00** |
| **General Aggregate Limit:** | **$1,000,000.00** |
| **Personal and Advertising Limit:** | **$1,000,000.00** |
| **Fire Damage (Any One Fire):** | **$50,000.00** |


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**Medical Payments (Each Person): $5,000.00**

**Products and completed operations shall be maintained for two (2) years after final payment. Provide a "Project Aggregate" CG 25 03 endorsement for all insurance policies.**

The insurance of the Contractor shall be primary and non-contributory.

The Owner and Construction Manager shall be named as additional insureds.

**Umbrella Liability: $5,000,000.00 each occurrence/aggregate for all Contracts; $10,000 retention for self-insureds hazards, each occurrence.**

**For the duration of this Contract, the Contractor and each subcontractor shall, at their own expense, purchase and maintain in a company or companies licensed to do business in the Commonwealth of Pennsylvania, Comprehensive automobile Liability.**

**Single Combined Limit: $1,000,000.00**

**Coverage to include "non-owned" and "hired" car.**

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

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

**§11.1.5 If this insurance is written on the Comprehensive General Liability policy form, the Certificate shall be AIA Document G705, Certificate of Insurance. If this insurance is written on a Commercial General Liability policy form, ACORD Form 25S will be acceptable. Furnish two (2) copies of any endorsements that are subsequently issued amending coverages or limits; and furnish two (2) copies of Certificates at time of policy renewal indicating such renewal. The Certificates shall set forth evidence of all coverages required by the Contract Documents, and shall specifically certify the following:**

**§11.1.6 The coverage under these policies will not be canceled, non-renewed materially changed, with the limits reduced without a minimum of thirty (30) days prior written notice, by certified mail, being given to the Owner (the certificate holder named in the lower left hand corner of ACORD Form 25S).**

**§11.1.7 (Owners), (Architect), Reynolds Construction Management, Inc. (Construction Manager) and any others listed in the Certificates of Insurance are named as additional insured for all required coverages except worker's compensation, in and as their interest appear.**

**§11.1.8 The limits specified herein are minimum requirements and shall not be construed in any way as limits of liability or as constituting acceptance by Owner of responsibility for all deductibles applicable to any insurance. No acceptance and/or approval of any insurance or insurance certificates by Owner or Construction Manager shall relieve Contractor from any liability or obligation imposed by the provisions of the Contract Documents.**



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**§11.1.9** All insurance required by the Contract Documents must involve insurance providers that are licensed and authorized to conduct business in the Commonwealth of Pennsylvania. The insurance carrier of whom the Contractor has purchased insurance coverage are to have "A-" or better rating plus a financial rating of VI or better with the A.M. Best's Company (Key Rating Guide - Latest Edition).

**§ 11.2 Owner's Liability Insurance**

~~The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.~~ **§ 11.2.1** The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

**§ 11.3 Property Insurance**

**§ 11.3.1** Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a 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. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

**§ 11.3.1.1** Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, 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 the Architect's, Contractor's, and Construction Manager's services and expenses required as a result of such insured loss. The form of policy for this coverage shall be Completed Value.

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

**§ 11.3.1.3** If the property insurance requires deductibles, the Owner shall pay costs 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, Construction Manager, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.


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**§ 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, adjoining 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 Construction Manager, 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 the Owner and Contractor may have to the proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Construction Manager, Construction Manager's consultants, Architect, Architect's consultants, Owner's 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.~~ reach. 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


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binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or distribution of insurance proceeds in accordance with the direction of the arbitrators.

### § 11.4 Performance Bond and Payment Bond

**§ 11.4.1 The** ~~Owner shall have the right to require the Contractor to~~ **Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising** ~~thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.~~**thereunder. Bonds shall be obtained from a company authorized to do business in the State of Pennsylvania and be acceptable to the Owner, and the cost thereof shall be included in the Contract Sum. The amount of each bond shall be equal to 100 percent (100%) of the Contract Sum.**

**§ 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. **The Contractor shall deliver the required bonds to the Owner after receiving written intention to award and prior to executing the Agreement.**

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

**§ 11.4.4 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 permit a copy to be made.**

**§ 11.4.5 All bonds required by the Contract Documents must involve a bond surety that are licensed and authorized to conduct business in the Commonwealth of Pennsylvania and listed in the Department of Treasury Circular 570, with a capacity which meets or exceeds the contract amount, and the bonding financial institute of whom the Contractor has purchased bond coverage are to have "A-" or better rating plus a financial rating of VI or better with the A.M. Best's Company (Key Rating Guide - Latest Edition).**

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

**12.1.1.1 Work that is rejected or fails to conform to the requirements of the Contract Documents, that requires any review, research, recommendation, meetings or direction by the Construction Manager, Architect or any of their consultants in order to substantiate same or to approve remedies or alternate solutions will be prepared to compensate the Construction Manager and Architect for such additional work at standard prevailing rates by the Owner. The Owner will duly back charge the Contractor for such additional costs and deduct same from retainage or Application for Payment.**

**§ 12.1.2** ~~If a portion of the Work has been covered which the Construction Manager or Architect has not specifically requested to observe prior to its being covered, the Construction Manager or 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 one of the other Contractors in which event the Owner shall be responsible for payment of such costs.~~**If, within one (1) year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Subparagraph 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 respond within 2 hours (where defect/deficiency is of emergency nature) and within 24 hours (where**


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**defect/deficiency is not of any emergency nature) to inspect and correct the work to the satisfaction of the Owner, unless the Owner has previously given the Contractor a written acceptance of such condition. This period of one (1) year shall be extended with respect to portions of Work first performed after Substantial Completion and the actual performance of the Work. This obligation under this Subparagraph 12.2.2 shall survive acceptance of the Work under the Contract and Termination of the Contract. The Owner shall give such notice promptly after discovery of the condition. Should the Contractor fail to remedy the defect/deficiency, the Owner shall have the right to correct the condition. The Contractor will be responsible for any and all cost incurred by the Owner to remedy the condition. Nothing contained in this paragraph shall decrease the responsibility set forth in the Performance Bond.**

### § 12.2 Correction of Work

### § 12.2.1 Before or After Substantial Completion

The Contractor shall promptly correct Work rejected by the Construction Manager or 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 Construction Manager's and 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 shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

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

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

**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors or other Multiple Prime 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 will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.


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## 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.~~

**§ 13.1.1** 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.

**§ 13.1.2 Non-discrimination: By submitting a bid and executing Contract Documents, the Contractor shall be deemed to agree as follows:**

**§ 13.1.2.1 No Contractor, Subcontractor, or any person acting on his or their behalf shall, by reason of race, creed, or color, discriminate in the hiring of any employee for work hereunder against any citizen of the Commonwealth of Pennsylvania who is qualified and available to perform work to which the employment relates, or thereafter discriminate against or intimidate any employee so hired; If Contractor, its employees, subcontractor, suppliers or any other person or entity responsible to Contractor fails to comply with any applicable law or requirement of this Agreement or the Contract Documents, upon written notice from Construction Manager, Contractor shall commence to cure such non-compliance within twenty-four (24) hours and shall achieve compliance within seventy-two (72) hours of receipt of written notice. Any failure of Contractor to do so after written notice to comply shall constitute a breach of contract and the Owner, in addition to its other rights in the event of a breach, shall have the right to terminate Contractor's right to perform the Work.**

**§ 13.1.2.2 That the Contractor will comply with the Pennsylvania Human Relations Act in providing equal employment opportunities in connection with all work performed by him at the jobsite, pursuant to the provisions of Act No. 222, October 27, 1955, as amended and supplemented, known as the "Pennsylvania Human Relations Act".**

**(a) Contractor shall not discriminate against any employee, applicant for employment, independent contractor any other person because of race, color religious creed, ancestry, age, sex, national origin, handicap or disability.**

**§ 13.1.3 Site Excavation: Contractor shall agree that, not less than three (3) working days prior to beginning excavation or demolition Work as defined in Act 172 of Commonwealth of Pennsylvania, amending Act 287 of December 10, 1974, he shall request the information required by Section 5 of the Act and shall inform each operator employed at the site of the Work of the information received with respect to location of underground installations. Contractor shall agree to report immediately, to the user of the underground installations and to the Owner and Architect, any break in its line of dent, gouge, groove, or other damages to such lines, to their coating or cathodic protection, made or discovered in the course of the excavation or demolition Work.**

**§ 13.1.4 Anti-pollution Legislation and Erosion Control: Contractors shall comply with all applicable statutes, rules and regulations.**

### § 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.


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**§ 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. Written notice to the Owner shall be deemed to have been duly served if delivered in person or sent by Registered or Certified mail to: Reynolds Construction Management, Inc. with a copy mailed to Gary Bixby, Director of Facilities, Community College of Philadelphia.

**§ 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, Construction Manager, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

**§13.4.3 Should the Contractor suffer injury or damage to person or property because of any act or omission of the Owner or of any of the Owner's employees or agents for whose act the Owner is allegedly liable, the claim shall be made in writing to the Owner within thirty (30) days after the first observance of such injury or damage, otherwise such claim shall be waived. This clause shall not allow claims for injury or damages, which are otherwise precluded by these Contract Documents. Owner shall not be responsible for actions or inactions of other Contractors.**

**§13.4.4 In the event Contractor shall breach any obligation imposed by the Contract Documents, in addition to all other damages, losses, costs and relief, whether in law or equity, which Owner may recover, Owner also shall be entitled to an award for any reasonable attorneys' fees incurred in attempting to enforce or recover damage by reason of the Contractor's breach.**

**§ 13.5 Tests and Inspections**

**§ 13.5.1** Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Construction Manager and Architect timely notice of when and where tests and inspections are to be made so that the Construction Manager and 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 Construction Manager, 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 Construction Manager and 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 Construction Manager and Architect of when and where tests and inspections are to be made so that the Construction Manager and Architect may be present for such procedures. Such costs except as provided in Section 13.5.3, shall be at the Owner's expense.

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

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



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**§ 13.5.5** If the Construction Manager or Architect is to observe tests, inspections or approvals required by the Contract Documents, the Construction Manager or 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 the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~the rate of three percent (3%) simple interest per annum. Interest on final payment shall be governed by Section 3941 of the Pennsylvania Commonwealth Procurement Act. 62 Pa.C.S. **§** 3941.

**§ 13.7 Time Limits on Claims**

The Owner and the Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and the Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

**§13.8 STATE HIGHWAY REQUIREMENTS**

**§13.8.1** Perform Work within the right-of-way of State Highways in accordance with the requirements of the Commonwealth of Pennsylvania Code, Title 67, Transportation, Department of Transportation, Chapter 459, Occupancy of Highways by Utilities, July, 1989. The Regulations are made a part of this Contact and are bound in following these General Conditions.

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

**§ 14.1 ~~Termination by the Contractor~~Termination By the Contractor**

**§ 14.1.1** ~~The Contractor may terminate the Contract if the~~ **If the Work is stopped for a period of** ~~30 consecutive days~~ **sixty (60) days under final, non-appealable order of any court or other public authority having jurisdiction, 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,~~ **subcontractor of their agents or any other persons performing any of the work under a contract with the Contractor, then the Contractor may, upon fourteen (14) days written notice to the Owner, Construction Manager, and the Architect, terminate the Contract and recover from the Owner payment of all Work agreed upon by all parties as being properly executed. In no event shall Owner be responsible for lost profit or any indirect or consequential damages, for any of the following reasons:**

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

**.2** An act of government, such as a declaration of national emergency that requires all Work to be stopped;

**.3** Because the Construction Manager has not certified or 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, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

**.4** The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

**§ 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.



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~~**§ 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, Construction Manager 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~~ fourteen (14) days' written notice to the Owner, Construction Manager and Architect, terminate the Contract and recover from the ~~Owner as provided in Section 14.1.3.~~
Owner.

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

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

- **.1** ~~repeatedly~~ refuses or fails to supply enough properly skilled workers or proper materials;
- **.2** fails to make 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 ~~substantial~~ breach of a provision of the Contract Documents.
- **.5** otherwise is guilty of material breach of a provision of the Contract Documents; or
- **.6** if the Contractor is adjudged bankrupt or files for bankruptcy or creditor protection under the laws of this United States. Contractor shall provide Owner with thirty (30) days' written notice before filing.

**§ 14.2.2** When any of the above reasons exist, the Owner, after consultation with the Construction Manager, and 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 legal fees incurred by the Owner in connection with the termination and in collecting any sums due on account of the termination, compensation for the Construction Manager's and 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, upon application, be certified by the Initial Decision Maker after consultation with the Construction Manager, and this obligation for payment shall survive termination of the Contract.

**§ 14.2.5** In the event the Owner terminates the contract for cause, or declares the Contractor to be in breach or default of the contract, and such cause or declaration of breach or default is determined to be valid and justified, in addition and without prejudice to all other rights, remedies and relief which the Owner may obtain under this Agreement and pursuant to the law, the Owner shall be entitled to payment by Contractor of all reasonable professional fees, including attorney's fees, architectural fees, engineering fees, and consulting fees (together with reasonable expenses and disbursements incurred in connection therewith) which the Owner may incur in connection with any legal proceedings or action (including professional fees rendered in anticipation of such proceedings or action). This provision shall create no right to the Contractor or to any other person or entity for payment of such costs or expenses.


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**§ 14.3 ~~Suspension by the Owner for Convenience~~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 the 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 this Contract.

**§ 14.4 ~~Termination by the Owner for Convenience~~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 costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

## ARTICLE 15 CLAIMS AND DISPUTES

**§ 15.1 Claims**

**§ 15.1.1 Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, 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~~ Owner with a copy sent to the Construction Manager and ~~Architect, if the Construction Manager and or Architect is not serving as the Initial Decision Maker. Claims by either party~~ Architect Claims by the Contractor must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the ~~claimant~~ Contractor first recognizes the condition giving rise to the Claim, whichever is ~~later.~~ later, or shall be deemed waived

. **§15.1.2.1 Contractor's Certification**: Every Claim submitted by the Contractor shall include a certification under oath by an officer of the Contractor that (1) the Claim is made in good faith; (2) the supporting data are accurate and complete to the best of the Contractor's knowledge and belief; (3) the amount or other relief requested accurately reflects the amount or relief for which the Contractor believes the Owner is liable; and (4) the certifying officer is duly authorized to certify the claim on behalf of the Contractor.

**§ 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 Construction Manager will prepare Change Orders and the Architect will issue a Certificate for Payment or Project Certificate for Payment in accordance with the decisions 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 10.3.


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**§ 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.~~ Work, including a schedule analysis. In the case of a continuing delay only one Claim is necessary. Extension of time shall be the sole recourse for delays and shall not act as an entitlement to Contractor for damages for said delays.

**§ 15.1.5.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal 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.

**§ 15.1.7** To the extent the Contractor commences legal proceedings against the Owner, and the Owner prevails, partially or completely, on any or all of its own claims or defenses to the Contractor's claims, leaving the Contractor with less than one hundred percent (100%) recovery, Owner shall be entitled to payment by Contractor of all reasonable professional fees, including attorney's fees, architectural fees, engineering fees, and consulting fees, together with all other costs or expenses, including the cost of any of Owner's employees' time, associated with analyzing any claim, pursing litigation or defending the claim or litigation, which Owner may incur in connection with said litigation. This provision shall create no right to the Contractor or any other person or entity for payment of such costs or expenses.

**§ 15.2 Initial Decision**

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

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

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

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data


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will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

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

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

**§ 15.2.6.1** Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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

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

**§ 15.3 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**

**§ 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


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written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

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

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

**§ 15.4.4 Consolidation or Joinder**

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

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

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



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