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AIA® Document A133™ – 2019

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

AGREEMENT made as of the ____ day of _____ in the year ____.

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

Grady Memorial Hospital Corporation (d/b/a Grady Health System)
c/o: Tom Doenitz, VP Design and Construction
50 Hurt Plaza SE, Suite 301
Atlanta, Georgia 30303
Phone: (770) 335-5021
Email: twdoenitz@gmh.edu

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

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

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

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The Owner and Construction Manager agree as follows.

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

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

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

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ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

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

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§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:
(Provide total and, if known, a line item breakdown.)

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

.1 Design phase milestone dates, if any:

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.2 Construction commencement date:

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.3 Substantial Completion date or dates:

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.4 Other milestone dates:

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

See Exhibit I.3, Phased Delivery Plan.

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

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§ 1.1.6.1 Not used.

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

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

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

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

.1 Geotechnical Engineer:

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.2 Civil Engineer:

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

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

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

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

Construction Manager's approved Project Team List is set forth in Exhibit D.4.

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

See Exhibits C.6 (DSSP Reporting to Accompany Pay Applications) and C.7 (RFP and Grady Supplier Portal Project Manual(s) and Standard Terms and Conditions).

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

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§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Construction Manager shall appropriately

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adjust the Construction Manager's services, schedule for the Construction Manager's services, and, to the extent permitted under this Agreement, the Construction Manager's compensation. The Construction Manager's entitlement to adjustment in its compensation, if any, shall be determined by the actual extent of increased scope of services directly attributable to the material change, as approved by the Owner (a "Material Increase"). Any such adjustment may be based upon projections of the increased costs and reduced to either a stipulated sum or not to exceed amount. It shall in all respects be Construction Manager's responsibility to substantiate, with reasonable certainty, the extent and amount of any approved Material Increase. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten (10) days' prior notice to the other party.

ARTICLE 2 GENERAL PROVISIONS

§ 2.1 The Contract Documents

The Contract Documents consist of the Agreement between Owner and Construction Manager (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, and Exhibits and other documents listed in Article 15 of the Agreement, and Modifications issued after execution of the Contract. A Modification is (i) a written amendment to the Contract signed by both parties, (ii) a Change Order, (iii) a Construction Change Directive or (iv) a written order for a minor change in the Work issued by the Architect pursuant to this Contract. A Modification shall only operate to alter the terms and conditions of the Contract Documents to the specific and express extent called for in the Modification itself. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements).

§ 2.2 Relationship of the Parties

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

§ 2.3 General Conditions

The general conditions of the contract shall be as set forth in the AIA A201–2017 General Conditions of the Contract for Construction, as modified, which document is incorporated herein by reference (the "General Conditions"). The term "Contractor" as used therein shall at all times mean the Construction Manager defined herein, and the terms "Contractor Party", and "Contractor Parties" as used therein shall mean Construction Manager Party and Construction Manager Parties as defined in Section 3.4 herein, respectively, as applied to both the Preconstruction Phase and the Construction Phase of the Project.

§ 2.4 Registration via Grady Supplier Portal and Compliance with Solicitation Requirements

Prior to the execution of the Agreement, the Construction Manager shall comply with Owner's procurement process by registering with and completing all Vendor Certification requirements listed or linked in the Grady Supplier Portal (www.gradyhealth.org/suppliers). Construction Manager acknowledges and agrees that the submission of a response to any solicitation applicable to the Project (request for proposals (RFP) or request for qualifications (RFQ) constitutes the agreement of a vendor or supplier to comply with and be bound by all requirements listed and/or made available through links on the Supplier Portal that are applicable to the solicitation in question (RFP/RFQ) (see Grady Supplier Portal Project Manual(s) and Standard Terms and Conditions). Absent an explicit and written waiver issued to Construction Manager by Owner at the time of an award, all such requirements, including but not limited to the Owner's Standard Terms and Conditions and volumes of the Grady Project Manual (Vols. I-IV) applicable to the Project solicitation, are explicitly incorporated into the Agreement as if set forth specifically herein. Compliance with all such requirements by Construction Manager shall be a material term of Construction Manager's performance under the Contract.

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ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of the General Conditions referenced in Section 2.3. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 3.1 Preconstruction Phase

§ 3.1.1 Extent of Responsibility

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

§ 3.1.2 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other. The Construction Manager will be responsible for performing the following duties including, but not limited to, cost estimating, budgeting, value engineering, constructability review, scheduling, identifying inconsistencies or omissions that might affect the GMP, and preconstruction planning throughout the Preconstruction Phase. The Owner's total Project Budget is $_____. The Construction Manager will perform such duties, including but not limited to budgeting, value engineering, and scheduling, consistent with the Owner's program, schedule, and current budget. If, at any time, the Construction Manager's estimates of the Cost of the Work exceed the latest approved Project budget, the Construction Manager shall inform the Owner and Architect in writing and make recommendations for corrective action.

§ 3.1.3 Consultation

§ 3.1.3.1 The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

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

§ 3.1.3.3 The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 3.1.4 Project Schedule

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

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§ 3.1.5 Phased Construction
The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction to the extent required under Exhibit I.3. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

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

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

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

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

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

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

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall promptly carry out its Preconstruction Phase responsibilities as required to fulfill that objective.

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

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

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

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

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§ 3.1.13 Compliance with Laws

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

§ 3.1.14 Other Preconstruction Services

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

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

N/A

§ 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's Contingency described in Sections 3.2.4 and 6.2.5, and the Construction Manager's Fee described in Section 6.1.2.

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

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

- **.1** A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract (including but not limited to the General Conditions);
- **.2** A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- **.3** A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's Contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- **.4** The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based;
- **.5** A date by which the Owner must accept the Guaranteed Maximum Price;
- **.6** An updated Construction Schedule;
- **.7** A list of subcontractor and supplier bidders;
- **.8** A schedule for Subcontractor Buyout;
- **.9** A review of bid items, alternates, constructability feedback, and other items requested by the Owner for incorporation into the Construction Documents; and
- **.10** Evidence of the Construction Manager's ability to provide the bonds if such bonds are required under the Contract Documents.

§ 3.2.4 In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order ("Contingency"). The Contingency and Construction Manager's use thereof shall be restricted as set forth in Article 6.

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

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

§ 3.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

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

§ 3.2.9 If applicable based on Owner's tax-exempt status, the Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

§ 3.3 Construction Phase

§ 3.3.1 General

§ 3.3.1.1 For purposes of Section 8.1.2 of the General Conditions, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 3.3.1.2 The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties. The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment. The Guaranteed Maximum Price Amendment will contain the Construction Schedule, a preliminary version of which is attached hereto as Exhibit D.3, which will include Milestone Completion Dates and the required date(s) for Substantial Completion. Time is of the essence in the performance of all Work hereunder. The final Construction Schedule submitted to the Owner with the GMP Amendment will replace the existing Exhibit D.3 upon execution of the former by the parties.

§ 3.3.1.3 The date of commencement shall be as established in Section A.2 of the GMP Amendment, subject to any restrictions or conditions established therein, and documented in a Notice to Proceed issued by the Owner in the form set forth in Exhibit I.1. The Construction Manager shall not knowingly, except by prior agreement or instruction of the Owner in writing, commence operations on or allow delivery of materials to the Project site or elsewhere prior to (i) the effective date of the insurance and bonds required by this Agreement; and (ii) furnishing evidence of such insurance to the Owner, and (iii) the Owner's acceptance thereof. The date of commencement of the Work shall not be changed by the effective date of such insurance. The Construction Manager's acceptance of the Notice to Proceed shall serve as conclusive evidence that (i) all required permits have been issued, (ii) any required mortgage or lien documents have been filed, and (iii) the site is available for the Construction Manager to commence Work pursuant to its planned means, methods and sequence.

§ 3.3.1.4 Construction Manager shall execute and record a Notice of Commencement in the form attached hereto as Exhibit C.8, providing the name and address of Owner and Construction Manager, the full legal description of the property and all other information required by O.C.G.A. § 44-14-361.5(b), no later than seven (7) days after the actual commencement of the Work. Owner shall post a certified copy of said Notice on the jobsite no later than fifteen (15) days after the actual date of commencement of the Work, which shall be at all times maintained until the completion of the Project. Construction Manager shall furnish the Owner with a copy of all Notices to Contractor received from Contractor Parties in response to said Notice of Commencement.

§ 3.3.1.5 The Construction Manager acknowledges and agrees that its activities undertaken in the course of completing the Work contemplated hereunder shall be undertaken in full awareness of and in compliance with the terms, conditions,

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restrictions and covenants applicable to the construction of improvements on or development of the Project Site, pursuant to and in recognition of the data and information set forth in the Geotechnical Engineering Investigation Report Package prepared by _____ and dated _____ ("Geotechnical Report Package"). The Construction Manager acknowledges that the aforementioned Geotechnical Report Package was provided for review and study prior to the Construction Manager's submission of the GMP proposal to Owner; that it has reviewed its contents with care; and that it has taken the whole of the information set forth therein into consideration when proposing and/or agreeing to the Guaranteed Maximum Price as set forth in the GMP Amendment.

§ 3.3.2 Administration

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

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

§ 3.3.2.3 Reports

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to in writing by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager shall make available to Owner upon request daily reports and logs and other standard documentation for the Project.

§ 3.3.2.4 Daily Logs

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

§ 3.3.2.5 Cost Control

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

§ 3.3.4 Construction Manager Party Definition

For purposes of this Agreement, Construction Manager, its Subcontractors, Sub-Subcontractors, Suppliers, suppliers to any of the foregoing, or any other person or entity over whom Construction Manager exercises authority or control, or for whom Construction Manager is responsible, shall each individually be a "Construction Manager Party", and some or all collectively, shall be the "Construction Manager Parties."

§ 3.3.5 Substantial and Final Completion

§ 3.3.5.1 Construction Manager shall achieve Substantial Completion (as defined in Section 9.8 of the General Conditions) of the entire Work, and of any Milestone Portions of Work, not later than the date(s) respectively set forth in Sections A.2.3.1 and A.2.3.2 of Exhibit A for the same, and shall achieve Final Completion (as defined in Section 9.10 of the General Conditions) of the entire Work not later than thirty (30) days after the Architect's issuance of the Certificate of Substantial Completion applicable to the entire Work.

§ 3.3.5.2 In the event the Owner reasonably determines that the Construction Manager has not completed the applicable Milestone Portions of the Work which should be completed by the respective deadlines required for each established in Section A.2.3.2 of Exhibit A with respect to the Milestone Portions of Work, due to Construction Manager's fault or any matter within the reasonable control of the Construction Manager Parties, subject to adjustments of the Contract Time as provided in the Contract Documents (the foregoing circumstances to be characterized as "Milestone Delay"), the Owner shall have the right to reasonably order the Construction Manager to add manpower, accelerate the performance of the Work, and to work its personnel and/or other Construction Parties' personnel overtime in conjunction with such acceleration. However, prior to Owner's exercise of the aforementioned right, Owner shall be obligated to provide Construction Manager with written notice of an actual or impending Milestone Delay, and seven (7) days after receipt

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thereof for Construction Manager to cure the Milestone Delay, or if it cannot feasibly be cured in the allotted period, to provide a recovery schedule for review and consideration by Owner. Owner's approval of a proposed recovery schedule shall not be unreasonably withheld, but if Owner determines that Construction Manager's proposed recovery schedule is insufficient, Owner may then exercise its right of ordering acceleration as set forth herein. Such acceleration and overtime shall continue until the Owner reasonably determines that the Work has progressed to the state of completion required by the Milestone Completion Dates set forth in Section A.2.3.2 of Exhibit A, and/or to assure timely completion of the entire Work by the date of Substantial Completion set forth in Section A.2.3.1 of Exhibit A, at no additional expense to Owner and with no adjustment to the Contract Time, Contract Sum, or GMP.

§ 3.3.6 Adverse Weather The Construction Manager acknowledges and agrees that it has incorporated time into the Construction Schedule sufficient to absorb and accommodate, without delays in or extensions of the date of Substantial Completion of the entire Work or other Milestone Completion Dates, a cumulative total of _____ (__) days of critical path Work lost over the scheduled duration of the Project due to adverse weather experienced at the Project site (see Exhibit F). "Weather Events" shall be those adverse weather days in excess of the baseline number of days identified above that adversely affect the Project and Contractor's ability to perform critical path Work, as detailed more fully in Section 15.1.5.4 of the General Conditions. Weather conditions at locations other than the NWS weather station identified in Section 15.1.5.4 of the General Conditions and the Project site shall have no bearing upon and shall not count as Weather Events, nor shall (i) days on which the recorded adverse weather conditions affecting the Project site fail to meet the minimum threshold requirements for the same addressed in Section 15.1.5.4 of the General Conditions, (ii) days on which "unincluded weather events" (adverse conditions other than those specifically included in the definition of a Weather Event) affect the Project site, or (iii) days on which recorded adverse weather conditions at the Project site may equal or exceed the minimum thresholds established in Section 15.1.5.4 of the General Conditions, but those conditions do not impact the Construction Manager's ability to perform critical path Work as required by Section 15.1.5.4 of the General Conditions. Construction Manager shall be prohibited from seeking any extensions of time or increases in cost or compensation resulting from Weather Events or other adverse or abnormal weather conditions, and Owner shall be authorized to reject any COR, Claim, or other request for relief arising or resulting therefrom that is nonetheless submitted by the Construction Manager, except as specifically allowed pursuant to this Section 3.3.6, and Sections 15.1.5.4 and 15.1.5.7 of the General Conditions. Construction Manager assumes the risks associated with the normal weather patterns and expected precipitation of the local area in which the Project is located, and agrees, in addition to absorbing and overcoming the baseline adverse Weather Event days specifically designated herein, that the Construction Schedule is capable of absorbing and/or overcoming all daily adverse weather at the Project site amounting to less than the minimum thresholds for the same established in Section 15.1.5.4 of the General Conditions, without alteration of any Construction Schedule durations or increases in the Contract Sum.

§ 3.3.7 Construction Manager shall provide, monthly, an updated version of the Construction Schedule showing progress in the field and any impact on the critical path associated with claimed delays. Construction Manager will use commercially reasonable efforts to establish a reasonable recovery schedule for any critical path days lost in the Construction Schedule due to reasons other than Owner's fault or negligence.

ARTICLE 4 OWNER'S RESPONSIBILITIES

§ 4.1 Information and Services Required of the Owner

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

§ 4.1.2 Not used.

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

§ 4.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other

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information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Notwithstanding the foregoing, Construction Manager may not rely upon or make any Claim against the Owner or Architect, or any of their agents, representatives, or employees, with respect to any interpretation by the Construction Manager of or conclusion drawn from any technical data or any such other data, interpretations, opinions, or information.

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

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements, and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark. Construction Manager shall be responsible for independently confirming the location of utility lines and exercising reasonable care related thereto. Notwithstanding the foregoing, the Owner may, at its option, require Construction Manager to obtain such surveys and same shall be included in the Cost of the Work.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include the Geotechnical Report Package, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests, and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. The documents produced by the geotechnical engineers are not Contract Documents. Construction Manager may not rely upon or make any Claim against the Owner or Architect, or any of their agents or employees, with respect to any of the following: (i) the completeness of such reports or tests for Construction Manager's purposes, including but not limited to any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed and safety precautions and programs incident thereto; or (ii) any interpretation by the Construction Manager of or conclusion drawn from any technical data or any such other data, interpretations, opinions, or information. For example, all interpolations and extrapolations of data performed by the Construction Manager to estimate locations or quantities of subsurface strata are independent factual assumptions, which Owner does not warrant.

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

§ 4.2 Owner's Designated Representative

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

§ 4.3 Architect

The Owner shall retain an Architect to provide services, duties, and responsibilities as described in AIA Document B101™–2017, as modified. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement, upon reasonable request of the Construction Manager.

ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 5.1 Compensation

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

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

« »

§ 5.1.2 The hourly billing rates for Preconstruction Phase services of the Construction Manager and the Construction Manager's Consultants and Subcontractors, if any, are set forth below.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

See Exhibit D.5.

Individual or Position	Rate

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

§ 5.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within « » (« ») months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services may be equitably adjusted to the extent of any Material Increase.

§ 5.2 Payments

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

§ 5.2.2 Payments are due and payable upon (i) presentation of the Construction Manager's invoice and (ii) compliance with Owner's Invoicing/Payment/AR Instructions (Exhibit H.3). Amounts unpaid forty-five (45) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

Six percent (6%) per annum.

ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 6.1 Contract Sum

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

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

« »

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

« »

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

See Section 6.3.3 below for specific limitations and percentages. Owner will be obligated to pay only actual, direct costs associated with the Work that is the subject of the change, plus the percentage for overhead and profit specified by Section 6.3.3. Additional "add-on" costs including but not limited to travel expenses, per diem, general conditions, general requirements, and insurance/bond costs shall not be allowed and will not be paid. The Construction Manager shall include the foregoing language into the subcontract agreements executed with the Subcontractors on this Project. For changes in

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Construction Manager's self-performed Work, the total markup shall be limited to the same percentage applicable to Construction Manager's other change Work, as set forth in Section 6.1.3.

§ 6.1.5 Rental rates for Construction Manager-owned equipment shall not exceed _____ percent (___ %) of the standard rental rate paid at the place of the Project. For Construction Manager owned equipment, the aggregate equipment rental charges for any single piece of equipment used in all Change Order Work shall not exceed one hundred percent (100%) of the fair market value of the piece of equipment. Downtime due to repairs, maintenance, and weather delays shall not be allowed.

§ 6.1.6 Liquidated damages, if any:
Not used.

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

See Sections 6.2.3 and 6.2.4.

§ 6.2 Guaranteed Maximum Price

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

§ 6.2.2 The Construction Manager acknowledges that the Contract Sum will not be increased due to any (i) Construction Manager Party Buyout errors or omissions, (ii) costs of overcoming substandard, deficient, or delayed Construction Manager Party performance, or (iii) late deliveries, unavailability or shortages of manpower, materials, or equipment.

§ 6.2.3 Buyout Savings All reduced cost amounts Construction Manager realizes through reducing the anticipated costs of subcontracts and estimated GMP budget line items at the time of subcontract finalization shall be the "Buyout Savings", which shall be recorded in a buyout log which shall detail and document the extent of Buyout Savings realized by the Construction Manager for all executed subcontracts, measured against the estimates for the same included in the Construction Manager's Basis of Estimate used to develop the GMP Proposal. The status of Buyout Savings shall be noted and updated as necessary monthly within the schedule of values maintained and utilized by the Construction Manager in the application for payment process throughout the Project. The Buyout Savings shall not be finalized until the end of the Project, but rather shall be evaluated on an aggregate basis, meaning that savings from the favorable buyout of one line item can be used to offset the buyout losses on another line item, scope gaps, or scope busts at Contractor's discretion before the overall calculation of the Buyout Savings is performed. Such Buyout Savings shall be allocated to the Contingency.

§ 6.2.4 Savings If at the time of Final Payment, the actual Cost of the Work plus Construction Manager's Fee is less than the GMP, as such GMP may be adjusted pursuant to the Contract Documents ("Savings"), such Savings shall accrue one hundred percent (100%) to the Owner. The Project Savings will also include unused Contingency, unused bond premiums or other Subcontractor insurance savings, and reductions in the Project's Costs of the Work (excepting allowance savings, which shall inure exclusively to the Owner). Savings captured from any of these various sources shall be appropriately documented monthly, with such documentation shared between and by Owner and Construction Manager at each OAC meeting.

§ 6.2.5 Contingency

The Construction Manager shall have a Contingency as defined in Section 3.2.4 in the amount of _____ percent (___%) of the GMP amount stated in Section A.1.1.1 of Exhibit A (_____ Dollars and No/100 ($_____.00)), funded by the Owner, that is included within the Guaranteed Maximum Price and which may be utilized in the reasonable discretion of the Construction Manager, subject to restrictions included in this Section 6.2.5. and its subparagraphs. Construction Manager's Contingency may be used to cover those costs considered reimbursable as a Cost of the Work under the Contract Documents, provided the costs are not recoverable from a Construction Manager Party or insurance, except as set forth herein. It is further understood and agreed that such Contingency shall be the maximum amount available, and may only be used for the following: (i) additional costs incurred

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as a result of a failure of a bidder to whom a portion of the Work is awarded in accordance with the Contract Documents to enter into a subcontract with the Construction Manager; (ii) casualty losses and related expenses not covered by insurance and unrecoverable from a Construction Manager Party or surety and sustained by the Construction Manager in connection with the Work, except to the extent such losses or expenses are attributable, in whole or in part, to the Construction Manager's breach, error, or omission; and (iii) costs arising from default of a Construction Manger Party that are unrecoverable from such Construction Manager Party, its surety (if applicable), or from an insurance carrier. The Construction Manager shall not be entitled to any additional overhead, profit, or other markup on any Contingency expenditure as the parties acknowledge that the Construction Manager's Fee covers such overhead, profit, and other markup. The Contingency shall not be used to cover items resulting from the breach or negligence of any Construction Manager Party nor to cover Construction Manager's Fee, General Conditions Costs, or self-performed Work, except as specifically set forth in this Section or with Owner's prior written approval. The Construction Manager shall consult with the Owner on whether and to what extent to use funds from the Contingency, and all uses of the Contingency shall be subject to the Owner's prior written approval, which shall not be unreasonably withheld, and must be memorialized in an approved Change Order clearly marked as "Use of Contingency." With each Application for Payment, the Construction Manager shall provide Owner an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming month. Unless agreed by the Construction Manager or otherwise provided in the Contract Documents, Construction Manager's Contingency is not for use by the Owner for scope increases or design changes.

§ 6.2.5.1 Construction Manager agrees that with respect to any expenditure from the Contingency for which insurance or a bond may provide reimbursement, Construction Manager will in good faith exercise all efforts to obtain recovery from any surety or insurance company. Construction Manager agrees that if contingency funds are advanced to Construction Manager and Construction Manager subsequently recovers said costs from a collateral source, then said recovery will be credited back to the Contingency. Notwithstanding any other provisions of this Agreement, Contingency funds shall not be available to the Construction Manager to cover any loss to the extent that insurance coverage or reimbursement is adversely affected by the failure of the Construction Manager to give timely notice pursuant to the policy terms, including any rider or endorsement applicable thereto.

§ 6.2.5.2 The Contingency shall be maintained by Construction Manager as a separate line item on its schedule of values. Construction Manager agrees to provide a written accounting of all approved Contingency expenditures at the end of each billing period, said log to be provided to the Owner at each Pencil Draw (as that term is defined in Section 11.1.2). The use of the Contingency will follow the draw procedures outlined in Article 11 of this Agreement. To the extent the Contingency is insufficient to compensate Construction Manager for the costs described herein, Construction Manager shall bear and be responsible for that insufficiency. Any unused Contingency at the completion of the entire Work shall be added to Savings under Section 6.2.4.

§ 6.2.5.3 Any unused portion of the Contingency upon Final Payment shall be reallocated to the Savings and added to the remaining balance of the Savings.

§ 6.2.5.4 The use of the Contingency by the Construction Manager is subject to open book pricing in accordance with this Agreement.

§ 6.2.5.5 If the Construction Manager allocates Buyout Savings to Contingency from another line item in the schedule of values due to a savings realized during the buyout process, the Construction Manager shall communicate the revision to the schedule of values to the Owner and Architect prior to the submittal of the Construction Manager's next Payment Application.

§ 6.2.6 Construction Manager's Lump Sum General Conditions

Construction Manager's general conditions shall be paid on a lump sum basis in the amount of _____ Dollars and No/100 ($_____.00), as set forth in Exhibit D.1 (Construction Manager's Contract Budget/Estimate), which shall include a detailed and itemized breakdown of all general conditions line items including type of cost and duration. Construction Manager shall allocate its general conditions as a lump sum line item in the initial schedule of values included in Exhibit H.1, and those general conditions shall be billed monthly, prorated as a percentage of Work complete over the duration of the Project, as measured by the number of months included in the Construction Schedule (Exhibit D.3) formally adopted and incorporated herein at the time of the execution of the GMP Amendment. In the event of early completion of the Project, the Owner shall pay the remaining unbilled Contractor's General Conditions Costs amount to the Contractor as part of final payment.

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§ 6.3 Changes in the Work

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

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of the General Conditions.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of the General Conditions.

§ 6.3.3 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of the General Conditions as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts, but in no event shall adjustments to such subcontracts due to changes in the Work include combined allowances for overhead and profit in excess of fifteen percent (15%) of the costs included in the Change Order, cumulative for any and all such Subcontractors. No other compensation for Subcontractors will be allowed or paid by Owner.

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

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

ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 7.1 Cost of the Work

§ 7.1.1 The term Cost of the Work shall mean direct and actual costs necessarily and reasonably incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth expressly in this Article 7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

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

§ 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior written approval, at off-site workshops. See Exhibit D.5.

§ 7.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior written approval. See Exhibit D.5.

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:
(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)

See Exhibit D.5

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§ 7.2.3 Wages or salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops, or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work. See Exhibit D.5.

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law and for customary benefits such as sick leave, medical and health benefits, holidays, vacations, and pensions (but not merit or other bonuses, retirement plan contributions, or profit sharing benefits), provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification. See Exhibit D.5.

§ 7.3 Subcontract Costs

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

§ 7.4 Costs of Materials and Equipment Incorporated in Completed Construction

§ 7.4.1 Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the Project's completed construction.

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

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

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

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

§ 7.5.3 Costs of removal of debris from the Project site.

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

§ 7.5.5 That portion of the reasonable expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work. Vehicle expenses shall be limited to the currently monthly allowance for the superintendent's truck (no repairs or maintenance) and standard mileage rate for the Project Manager for miles directly attributable to this Project.

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

§ 7.6 Miscellaneous Costs

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

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

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

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

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

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

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

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

§ 7.6.6 Deposits lost for causes other than the Construction Manager's own acts or omissions, or the acts or omissions of those for whom Construction Manager is responsible.

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

§ 7.7 Other Costs and Emergencies

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

§ 7.7.2 Costs due to emergencies necessarily incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of the General Conditions.

§ 7.7.3 Costs of repairing or correcting damaged or nonconforming Work executed or performed by the Construction Manager Parties, but only when such damage or nonconformance did not result from or was not caused by an act or omission of the Construction Manager Parties.

§ 7.8 Related Party Transactions

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

§ 7.8.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall

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be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party, according to the terms of Article 9.

§ 7.9 Costs Not to Be Reimbursed. The Cost of the Work shall not include:

.1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 15;

.2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;

.3 Expenses of the Construction Manager's principal office and offices other than the site office;

.4 Overhead and general expenses, except as may be expressly included in Article 7;

.5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;

.6 Costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by and of the Construction Manager Parties;

.7 Any cost not specifically and expressly described in Article 7;

.8 Costs, other than costs included in Change Orders approved in writing by the Owner, that would cause the Guaranteed Maximum Price to be exceeded;

.9 Contributions (other than Workmen's Compensation Insurance, Federal Insurance Corporation of America, State Unemployment Insurance, Federal Unemployment Insurance), gratuities and entertainment expense. No secretarial or administrative assistant labor costs or salaries shall be reimbursed except as expressly provided in Paragraph 7.2.2;

.10 Costs for transportation and subsistence incurred by Construction Manager's employees stationed at the Home Office;

.11 Expenses for travel, including Construction Manager-supplied vehicles used for personal use, incurred by Construction Manager's employees while traveling for purposes other than the direct execution of the Work;

.12 Fines other than those due to the acts or omissions of Owner or his representatives or agents;

.13 Costs incurred due to labor disharmony, unrest, or strikes, including but not limited to delays, security, legal expenses, fines, and work stoppages or slowdowns, except to the extent otherwise expressly provided for in the Contract Documents;

.14 Consultants to the Construction Manager not previously approved by Owner in writing;

.15 Matters between Owner and Construction Manager and any other Construction Manager Parties requiring legal representation;

.16 Corporate accounting, check and accounting processing cost shall not be reimbursed;

.17 Costs of any type incurred by Construction Manager before the date of issuance by Owner of the Notice to Proceed, except as expressly set forth in this Agreement;

.18 The services of Construction Manager's purchasing, estimating, and accounting departments, and clerical staff at Construction Manager's general or established branch office, unless expressly listed in Article 7;

.19 Amounts required to be paid by Construction Manager for federal, state, or local income or franchise taxes;

.20 Other costs, damages, or expenses specifically excluded elsewhere in the Contract Documents;

.21 Overtime wages or salaries (and fringe benefits related thereto) incurred by the Construction Manager because of the Construction Manager's failure to perform the Work in a timely manner in accordance with the Construction Schedule, unless the Construction Manager has received the Owner's prior written consent to incur overtime; and

.22 Insurance deductibles or self-insured retentions.

ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS

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

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

ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

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

§ 9.1.1 When a specific subcontractor or supplier (i) is recommended to the Owner by the Construction Manager; (ii) is qualified to perform that portion of the Work, in the Owner's discretion; and (iii) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

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

ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of six (6) years after final payment, or for such longer period as may be required by law. Notwithstanding anything set forth in Section 11.2, the Owner reserves the right to conduct an audit of Construction Manager's costs for the Project at any time within the aforementioned six (6) year period.

ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one (1) calendar month ending on the last day of the month. On or before the twenty-fifth (25th) day of a month for which the Construction Manager will submit an Application for Payment, the Owner, the Architect, and the Construction Manager shall meet to review a preliminary draft of such Application for Payment (hereinafter referred to as a "Pencil Draw") prepared by the Construction Manager. The Contractor shall revise the Pencil Draw in accordance with any timely objection or recommendation of either the Owner or the Architect that is consistent with the requirements of the Contract Documents. Such revised Pencil Draw shall be resubmitted by the Construction Manager to the Owner as the Application for Payment due on the first (1st) day of the

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month following the one in which the Pencil Draw was first submitted, or, if submission of the revised Pencil Draw is not possible by the first (1st), as soon as practicable thereafter. The Construction Manager shall also submit with each Application for Payment all supporting documentation required by the Contract Documents, including Section 11.1.4 below, and a written narrative describing the basis for any item set forth in the Application for Payment that does not conform to instructions of the Owner or the Architect in connection with any applicable Pencil Draw.

§ 11.1.3 Provided that an Application for Payment has properly been timely prepared and submitted by the Construction Manager and approved by the Owner and Architect in accordance with the provisions of Section 11.1.2 (which approval shall not be unreasonably withheld), and is (i) received by the Architect not later than the first (1st) day of the month and (ii) certified by the Architect not later than the seventh (7th) day of that month in accordance with Section 9.4.1 of the General Conditions, the Owner shall make payment of the amount certified to the Construction Manager not later than the first (1st) day of the following month (a total of thirty-one (31) days). If an Application for Payment has not been properly and timely submitted to the Owner and Architect in accordance with the provisions of Section 11.1.2, or the provisions of Section 11.1.2 have otherwise not been followed by the first (1st) day of a month following the month for which payment is being sought, the Construction Manager shall first comply with all outstanding Pencil Draw requirements as applicable, and resubmit its Application for Payment as soon as practicable thereafter. In such event Owner shall make payment of all approved and certified amounts thirty-one (31) days after the Owner receives the resubmitted, properly prepared Application for Payment or seven (7) days after the Architect has certified the Application, whichever is later. Construction Manager and Owner understand and acknowledge that time is of the essence regarding the procedures governing the submission of Applications for Payment, and that the deadlines imposed hereunder are designed to allow Owner to comply with requirements regarding the timing, submission, review and approval of all draw requests applicable to payments from Lender or other financing sources to Owner. Notwithstanding anything above or elsewhere in the Contract Documents to the contrary, payments owed by the Owner to the Construction Manager shall not be considered "late" for purposes of applying interest to the amounts due until such amounts remain unpaid thirty-one (31) or more days after payment should be made in accordance with the provisions herein.

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit: (i) an executed AIA G702/G703 Application for Payment and schedule of values; (ii) copies of Subcontractor pay application requests (also AIA G702/G703) that match up with and accurately reflect the amounts noted on Construction Manager's own Application; (iii) an updated Construction Schedule; (iv) a Change Order log; (v) conditional partial lien and claim waivers for the current pay period for the Construction Manager and all of its Subcontractors, in a form approved by Owner; (vi) unconditional partial lien and claim waivers for the immediately preceding pay period for the Construction Manager and all of its Subcontractors, in a form approved by Owner; (vii) payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, (viii) fully executed DSSP Reporting Forms as set forth in Exhibit C.6; and (ix) any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

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

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

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

§ 11.1.5.3 When the Construction Manager allocates costs from the Contingency to another line item in the schedule of values in accordance with Section 3.2.4.5, the Construction Manager shall submit supporting documentation to the Architect.

§ 11.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (i) the percentage of

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that portion of the Work which has actually been completed, or (ii) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 11.1.7 In accordance with the General Conditions, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

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

.1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;

.2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;

.3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and

.4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

.1 The aggregate of any amounts previously paid by the Owner;

.2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of the General Conditions;

.3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;

.4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of the General Conditions;

.5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Section 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and

.6 Retainage withheld pursuant to Section 11.1.8.

§ 11.1.8 Retainage

§ 11.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:
(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Ten percent (10%) from each Application for Payment, subject to and as detailed further in Sections 11.1.8.1.1 and 11.1.8.2.

§ 11.1.8.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

Bond and insurance premiums (if applicable), Construction Manager's prorated lump sum general conditions payments, general requirements, and material, equipment, and systems for which deposits must be made, and Owner's prior written approval is acquired, prior to purchases.

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)

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At the time the Work of the Project has reached fifty percent (50%) complete, measured by Work in place and supplemented with documentation supporting the same provided by Construction Manager, and after securing the agreement of the Owner and Architect regarding the same, overall retainage held for the Project may be reduced to five percent (5%) by reducing retainage withheld on monthly payments to Construction Manager to zero percent (0.00%) for the duration of the Project, at the sole discretion and with the consent of Owner. Upon the written request of the Construction Manager and, if approved by and at the sole discretion of the Owner, retainage may also be released in full to early completion Subcontractors, provided all requirements and conditions precedent to final payment for each such Subcontractor under consideration have been satisfied (including the execution of unconditional and final Lien releases and waivers) and all applicable governmental approvals have been received by Owner. Owner shall have the right to reinstate and withhold retainage of ten percent (10%) at any time to the extent that Construction Manager has not complied, or fails more than once to comply, with the requirements of this Agreement or elsewhere in the Contract Documents.

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)

Upon Substantial Completion of the Work or designated Milestone Portion of the Work, the Owner will pay all withheld retainage to Construction Manager, less two hundred percent (200%) of the value attributable to any incomplete, defective, and/or nonconforming Work (including, without limitation, all "punch list" Work), and following Construction Manager's provision of close out documentation as reasonably determined by the Architect and Owner.

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

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

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts (not to exceed ten percent (10%)), and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (i) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (ii) that the Architect has made exhaustive or continuous on-site inspections; or (iii) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 11.2 Final Payment

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

- **.1** the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of the General Conditions, and to satisfy other requirements, if any, which extend beyond final payment;
- **.2** the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment;
- **.3** the Construction Manager has completed and/or complied with all requirements for Final Completion and final payment as set forth in Section 9.10 of the General Conditions, including Owner's receipt of all close-out documents and attic stock materials; and
- **.4** a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

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

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

§ 11.2.2.2 Within seven (7) days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of the General Conditions. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of the General Conditions. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 11.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request Senior Officer Resolution and, if necessary, mediation of the disputed amount pursuant to Sections 15.2 and 15.3 of the General Conditions, respectively. A request for Senior Officer Resolution shall be made by the Construction Manager within thirty (30) days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request Senior Officer Resolution within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 11.2.3 The Owner's final payment to the Construction Manager shall be made no later than forty-five (45) days after the later to occur of (i) the issuance of the Architect's final Certificate for Payment or (ii) the Construction Manager's completion or satisfaction of all items or requirements set forth in Section 11.2.1, or as follows:

N/A

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

§ 11.3 Interest

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

Six percent (6%) per annum

ARTICLE 12 DISPUTE RESOLUTION

§ 12.1 Senior Officer Resolution

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

§ 12.1.2 All Claims arising out of, or relating to, this Agreement or Construction Manager's services provided hereunder shall initially, prior to non-binding mediation or the commencement of legal proceedings, be submitted to a Senior Officer from each party for resolution by mutual agreement between said Senior Officers, as set forth in Section 15.2 of the General Conditions. Any mutual agreement by the Senior Officers shall be final and binding upon the parties. For purposes of this section, the term "Senior Officer" shall mean, with respect to the Construction Manager, the Construction

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Manager's chief executive officer, president, managing partner, chief financial officer, or any principal or vice president, and with respect to Owner, the chief executive officer, president, chief financial officer, General Counsel, or director of Owner or its affiliates.
(If the parties mutually agree, insert the name, address and other contact information of the Senior Officers for each party who will be called upon to satisfy the requirements of this Section 12.1.2.)

Owner:
« »
« »
« »
« »

Construction Manager:
« »
« »
« »
« »

§ 12.2 Binding Dispute Resolution
For any Claim subject to, but not resolved by Senior Officer Resolution, or by mediation pursuant to Article 15 of the General Conditions, the method of binding dispute resolution shall be as follows:
(Check the appropriate box.)

[« »] Arbitration pursuant to Article 15 of the General Conditions.

[« »] Litigation in a court of competent jurisdiction.

[« X »] Other: *(Specify)*

Pursuant to Sections 13.1 and 13.7 of the General Conditions, at the Owner's sole discretion, either (i) arbitration pursuant to Section 15.4 of the General Conditions or (ii) pursuant to Section 15.5 of the General Conditions, litigation in a court of competent jurisdiction.

For purposes of this Agreement, "a court of competent jurisdiction" shall mean the state and Federal courts of competent jurisdiction situated in Fulton County, Georgia, which shall be the exclusive forums for dispute resolution that goes beyond Senior Officer Resolution or mediation. If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 13 TERMINATION OR SUSPENSION

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

§ 13.1.1 If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven (7) days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven (7) days' written notice to the Owner.

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

§ 13.1.3 Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven (7) days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven (7) days' written notice to the Owner, for the reasons set forth in Article 14 of the General Conditions.

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§ 13.1.4 In the event of termination of this Agreement pursuant to Section 13.1.1 or Section 13.1.3, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager be compensated for unperformed work, nor shall Construction Manager be entitled to Fee on unperformed Work, lost profit or unabsorbed overhead.

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

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

.2 Add the prorated Construction Manager's Fee computed upon the Cost of the Work properly performed to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

.3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

In no event shall the Construction Manager be compensated for or entitled to Fee on unperformed work, nor shall Construction Manager be entitled to lost profit or unabsorbed overhead.

§ 13.1.6 The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. As set forth more fully in Article 5 of the General Conditions, all subcontracts, purchase orders, and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

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

§ 13.2.1 Termination

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of the General Conditions.

§ 13.2.2 Termination by the Owner for Cause

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

.1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;

.2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager' Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;

.3 Subtract the aggregate of previous payments made by the Owner; and

.4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of the General Conditions.

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

§ 13.2.3 Termination by the Owner for Convenience

If the Owner terminates the Contract for convenience in accordance with Article 14 of the General Conditions, then the Owner shall pay the Construction Manager as set forth in Section 14.3 therein.

§ 13.3 Suspension

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

ARTICLE 14 MISCELLANEOUS PROVISIONS

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

§ 14.2 Successors and Assigns

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

§ 14.2.2 The Owner may, without consent of the Construction Manager, assign the Contract to any affiliate of the Owner, or any third-party purchaser of the Project or the Project site. Upon such assignment, the Owner shall have no more rights or obligations under the Contract Documents, all of which shall be assumed in full by the assignee. The Construction Manager shall execute all consents reasonably required to facilitate such assignment.

§ 14.3 Insurance and Bonds

§ 14.3.1 Preconstruction Phase

Unless set forth differently in Exhibit B, the Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement (insurance requirements for Construction Phase Services are set forth exclusively in Exhibit B, per Section 14.3.2). If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than « » ($ « ») for each occurrence and « » ($ « ») in the aggregate for bodily injury and property damage.

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

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower

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coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than « » ($ « ») each accident, « » ($ « ») each employee, and « » ($ « ») policy limit.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than « » ($ « ») per claim and « » ($ « ») in the aggregate.

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

Coverage	Limits
See Exhibit B.	

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

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1, which shall collectively be included in Exhibit G.1.

§ 14.3.2 Construction Phase
After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in Exhibit B.

§ 14.3.2.1 At the Owner's sole discretion, the Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

§ 14.4 Notice in electronic format, pursuant to Article 1 of the General Conditions may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:
(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

Any formal agreement between the parties pertaining to notice in electronic format, if desired, shall be provided via separate written instrument executed by the party representatives identified in Sections 1.1.8 and 1.1.12.

§ 14.5 Other provisions:

N/A

ARTICLE 15 SCOPE OF THE AGREEMENT
§ 15.1 This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

§ 15.2 The following documents comprise the Agreement:

- **.1** AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- **.2** AIA Document A133™-2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed
- **.3** AIA Document A133™–2019, Exhibit B, Insurance and Bonds
- **.4** AIA Document A201™–2017, General Conditions of the Contract for Construction

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.5 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this Agreement.)

Not Used.

.6 Other Exhibits: The following exhibits are Contract Documents as defined under Article 1. Therefore, a breach of the requirements of any of the Exhibits constitutes a breach of the Contract Documents.

Exhibit A	GMP Amendment
Exhibit B	Insurance and Bonds
Exhibit C.1	List of Drawings and Specification Sections
Exhibit C.2	Substitution Request Form
Exhibit C.3	Alternates
Exhibit C.4	Allowances
Exhibit C.5	Legal Description of Property
Exhibit C.6	DSSP Reporting to Accompany Pay Applications
Exhibit C.7	RFP/RFQ and Grady Supplier Portal Project Manuals and Standard Terms and Conditions (versions most current at Effective Date)
Exhibit C.8	Notice of Commencement
Exhibit D.1	Contract/Budget Estimate
Exhibit D.2	Clarifications and Qualifications
Exhibit D.3	Construction Schedule
Exhibit D.4	Construction Manager's Project Team List
Exhibit D.5	Construction Manager's Standard Equipment and Hourly Personnel/Labor Rates
Exhibit D.6	AIA Form A305 CM Qualifications
Exhibit D.7	List of Subcontractors
Exhibit D.8	Construction Manager's Safety Program
Exhibit D.9	Sample Subcontract Form
Exhibit D.10	Subcontract Addendum
Exhibit D.11	Consent to Assignment of Subcontracts
Exhibit E	Georgia Statutory Lien Waiver and Release Forms
Exhibit F	Weather Events Defined
Exhibit G.1	Construction Manager's Certificates of Insurance
Exhibit G.2	Builder's Risk Policy
Exhibit G.3	Payment and Performance Bonds (if applicable)
Exhibit H.1	Schedule of Values (AIA G702 and G703 Continuation Sheet)
Exhibit H.2	List of Documents to Accompany Applications for Payment
Exhibit H.3	Owner's Invoicing/Payment/Accounts Receivable Instructions
Exhibit H.4	List of Close-Out Documents and Requirements for Final Completion and Payment
Exhibit I.1	Notice to Proceed
Exhibit I.2	Milestone Portions of Work
Exhibit I.3	Phased Delivery Plan
Exhibit J.1	Stored Materials Tracking Log
Exhibit J.2	Attic Stock
Exhibit K	Site Logistics Plan

This Agreement is entered into as of the day and year first written above ("Effective Date").

OWNER *(Signature)*	**CONSTRUCTION MANAGER** *(Signature)*
« »« »	« »« »
(Printed name and title)	*(Printed name and title)*

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AIA® Document A201™ – 2017

General Conditions of the Contract for Construction

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

« »
« »

THE OWNER:
(Name, legal status and address)

Grady Memorial Hospital Corporation (d/b/a Grady Health System)
c/o: Tom Doenitz, VP Design and Construction
50 Hurt Plaza SE, Suite 301
Atlanta, Georgia 30303
Phone: (770) 335-5021
Email: twdoenitz@gmh.edu

THE ARCHITECT:
(Name, legal status and address)

« »« »
« »

TABLE OF ARTICLES

1 GENERAL PROVISIONS

2 OWNER

3 CONTRACTOR

4 ARCHITECT

5 SUBCONTRACTORS

6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

7 CHANGES IN THE WORK

8 TIME

9 PAYMENTS AND COMPLETION

10 PROTECTION OF PERSONS AND PROPERTY

11 INSURANCE AND BONDS

12 UNCOVERING AND CORRECTION OF WORK

13 MISCELLANEOUS PROVISIONS

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

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

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

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14 TERMINATION OR SUSPENSION OF THE CONTRACT

15 DISPUTE RESOLUTION

DRAFT

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, Exhibits and other documents listed in Article 15 of the Agreement, and Modifications (as defined in Section 2.1 of the Agreement) issued after execution of the Contract.

§ 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 (i) between the Architect and Contractor, (ii) between the Owner and a Contractor Party other than the Contractor, (iii) between the Owner and Architect or Architect's consultants, or (iv) between any persons or entities other than the Owner and Contractor. It is not intended nor should it be inferred that this Contract creates any intended third-party beneficiaries or any rights of action in any person or persons that are not parties to this Contract. As such, no other person or persons shall have any right of action hereon

§ 1.1.3 The Work

The term "Work" means all reasonably necessary and inferable 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, including final completion of the construction in accordance with the requirements of the Drawings and Specifications. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards, and workmanship for the Work, and performance of related services. Any General Requirements section of the Specifications or Project Manual shall be deemed to govern all sections of the Specifications and all aspects of the Work unless otherwise expressly stated in the Contract Documents.

§ 1.1.7 The Project Manual

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract, and Specifications.

§ 1.1.8 Governing Laws

Governing Law or Governing Laws means any law, ordinance, rule, code, regulation, statute, or order, by any federal, state, or local governing body or authority having jurisdiction over the Project, that affects the Work.

§ 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 to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. Dimensions shall be figures rather than determined by scale or rule. In the event of a conflict or inconsistency among the Contract Documents, the Contractor shall provide the greatest quantity, largest degree of safety, highest quality, or most stringent material or Work.

§ 1.2.1.1 The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any Governing Law, or is

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otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

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

§ 1.2.2.1 The Contractor acknowledges that it is not possible to indicate all connections, fittings, fastenings, etc. which are required to be furnished for the proper execution of the Work and which are reasonably inferred from the Drawings. Any unindicated connections, fittings, fastenings, etc. which are reasonably inferred as required for the proper execution of the Work shall be provided/furnished by the Contractor at no additional cost, using industry standards, common sense, and good construction practice as a basis for making such inference. Corrections, fittings, fastenings, etc. required for the proper execution of the Work, whether explicitly shown and included in the Contact Documents or reasonably inferable therefrom, shall be furnished by Contractor as part of the Guaranteed Maximum Price.

§ 1.2.2.2 The Contractor shall verify all dimensions prior to execution of any particular phase of Work. Whenever inaccuracies or discrepancies are found, the Contractor shall consult the Architect prior to any construction or demolition, via a written request for information ("RFI"), and the Architect shall promptly make a determination in writing. Any adjustment by the Contractor without such a determination from the Architect shall be at Contractor's own risk and expense. Should any dimensions be missing, the Architect will be consulted and, after consultation with the Owner, will supply such dimensions prior to Contractor's execution of the Work. Dimensions for items to be fitted into the construction conditions at the Project site will be taken at the Project site. Whenever a stock size manufactured item or piece of equipment is specified by its normal size, the actual space requirements for setting or entrance to the setting space shall be determined by the Contractor and communicated in writing to the Architect prior to construction thereof. Unless specifically required by the Contract Documents, Contractor shall not be required to take extraordinary steps prior to the execution of the Work, such as borings, invasive investigation, or demolition, to determine existing conditions prior to commencement.

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

§ 1.2.4 If any item or material shown on the Drawings is omitted from the Specifications, or vice-versa (except when the Drawings and Specifications clearly exclude such omitted item), and when such item or material is clearly required to complete the detail shown or specified, the Contractor shall furnish and install such item or material of the type and quality established by the balance of the detail shown and specified, with no increase to the Contract Sum or in the Contract Time.

§ 1.2.5 Where a typical or representative detail is shown on the Drawings, this detail shall constitute the standard for workmanship and materials throughout corresponding parts of the Work.

§ 1.2.6 Any Summary of Work as outlined in the Specifications shall not be deemed to limit the Work required by the Contract Documents. The Contractor and each Subcontractor shall be responsible for thoroughly examining all Drawings, including all details, plans, elevations, sections, schedules, and diagrams, as well as all measurements and dimensions, for each particular type of Work, and for coordinating the Work described in the Drawings with the related Specifications.

§ 1.2.7 The Drawings are intended to show the arrangement, design, and extent of the Work, and are partly schematic in nature. They are not to be scaled for roughing-in measurements or used as shop drawings.

§ 1.2.8 The Architect may from time-to-time issue additional Drawings and Specifications to provide coordination and otherwise facilitate completion of the Project. To the extent such further issuances make the Drawings and Specifications more specific and detailed, and are (a) reasonably necessary to coordinate or provide conforming details for the architectural, structural, mechanical, electrical, plumbing, and other plans, specifications, and addenda included with the Drawings and Specifications, or (b) necessary to accurately reflect the scope, quality, quantity, function, or intent expressed in the Drawings and Specifications (all such matters described in (a) and (b) preceding are herein called "Completion Details"), the additional Drawings and Specifications shall not give rise to any right on

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the part of the Contractor to any increase in the Contract Time or Contract Sum. In determining its ability to properly execute and complete the entire Work within the Contract Time and for the Contract Sum, the Contractor has taken into account the fact that additional Drawings and Specifications with Completion Details may be issued during the course of its performance of the Work. Updated or additional Drawings and Specifications issued by the Architect and/or its consultants shall be added to Exhibit C.1 to the Agreement after issuance.

§ 1.3 Capitalization

Terms capitalized in these General Conditions include those which are (i) specifically defined, (ii) the titles of numbered articles and identified references to Sections, Subsections, and Clauses in the document, or (iii) 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.

§ 1.4.1 Contractor shall be responsible to Owner in all respects for the proper performance of the Subcontractors and other Contractor Parties, and to ensure proper and timely payment to Subcontractors. References in the Contract to the "fault" or "responsibility" of Contractor or problems "caused" by Contractor shall be deemed to include, but not be limited to, Contractor's responsibility to Owner for all negligence, errors, omissions, breaches of contract, breaches of warranty (express or implied), or other improper conduct of the Subcontractors and any other Contractor Party.

§ 1.5 Execution of Contract Documents

§ 1.5.1 The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

§ 1.5.2 By executing the Contract, the Contractor acknowledges that it has satisfied itself as to the nature and location of the Work, the general and local conditions, including those bearing upon transportation, disposal, handling, and storage of materials and waste, availability of labor, water, electrical power, roads, and uncertainties of weather, the character, quality, and quantity of surface materials to be encountered, the character, quality, and quantity of equipment and facilities needed prior to and during the execution of the Work, and all other matters a reasonably diligent Contractor would investigate to satisfy itself as to conditions affecting the Work or the cost thereof under this Contract. Any failure by the Contractor to acquaint itself with all the available information concerning these conditions will not relieve him from any obligations with respect to this Contract.

§ 1.5.3 Claims for additional compensation or time arising out of the failure of the Contractor to familiarize itself with conditions at the site will not be allowed.

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

§ 1.6.1 The Drawings, Specifications, and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor Contractor Party shall own or claim a copyright in the Instruments of Service, and subject to Owner's use rights in same, and unless otherwise indicated, the Architect and the Architect's consultants shall be deemed the authors of them and will retain all common law, statutory, and other reserved rights, in addition to the copyrights. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon final completion of the Work, unless otherwise directed by Owner. They are not to be used by the Contractor or any Contractor Party on other projects, or for additions to this Project outside the scope of the Work of the Contract, without the specific written consent of the Owner.

§ 1.6.2 The Contractor and other Contractor Parties are authorized to use and reproduce applicable portions of the Instruments of Service appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Instruments of Service. Submittal or distribution to authorities having jurisdiction ("AHJ") or others to meet official regulatory requirements, or for other purposes in connection with this Project, shall not be construed as publication in derogation of the Architect's or Architect's consultants' copyrights or other reserved rights. The Owner, in addition to use rights that may be available to it at law or under its agreement with the Architect, reserves the right to use any of the

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Instruments of Service in connection with any repair, renovation, or alternation of the Project at a future date whether the original Architect is employed or not.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner will act through the Contractor and the Contractor's Representative as more particularly described in the Agreement.

§ 2.1.2 The Owner shall furnish the Contractor, within fifteen (15) days after receipt of a written request, information that is reasonably 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. Exhibit C.5 to the Agreement is the legal description of the Owner's property on which the Project is to be constructed.

§ 2.2 Intentionally Omitted

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 The Owner, upon written request of the Contractor, shall furnish surveys and other information reasonably available to it as to the physical characteristics, legal limitations, and utility locations for the site of the Project. The Contractor shall be entitled to reasonably rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Neither the Owner nor the Contractor shall be responsible for locating unreported, abandoned or unrecorded underground utility lines, cables, pipes, and/or pipelines. Owner may elect to add the excavation and removal of said obstruction to Contractor's scope of Work, and in such event shall pay Contractor the reasonable costs associated with such removal, in which case a Change Order will be prepared and executed.

§ 2.3.2 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 changes in existing facilities.

§ 2.3.3 The Owner shall furnish to the Contractor a legal description of the Project site (see Exhibit C.5 to the Agreement) and furnish documents necessary for the Contractor to confirm the location of each utility. The Owner will, at the Contractor's request, make available to the Contractor such soil borings, tests, and reports as it may have available. Other information or services relevant to the Contractor's performance of the Work under the Owner's control will be furnished by the Owner with reasonable promptness after receipt from the Contractor of a reasonable written request for such information or services.

§ 2.3.4 Under no circumstances shall any document provided by Owner be considered a Contract Document unless it is expressly identified as such in Section 2.1 of the Agreement.

§ 2.4 Owner's Right to Stop the Work

If Contractor, in the Owner reasonable judgment: (i) fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2; (ii) fails to carry out the Work in accordance with the Contract Documents; (iii) fails or refuses to provide a sufficient amount of qualified supervision, or properly supervised and coordinated labor, materials, or equipment, so as to be able to complete the Work within the Contract Time; (iv) fails to remove and discharge within ten (10) days any lien filed upon Owner's property by anyone claiming by, through, or under Contractor; or (v) disregards the instructions of Architect or Owner when based on the requirements of the Contract Documents, 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; provided, however, the right of 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 Contractor or any other person or entity, and any delay resulting from such work stoppage shall not extend any Milestone Date identified in the Contract or the required dates of Substantial or Final Completion. Nothing herein shall be deemed to limit the Owner's rights with respect to termination as set out in Article 14 herein.

§ 2.5 Owner's Right to Carry Out the Work

If, after receipt of a written order to stop the Work from the Owner or its designated representative in accordance with Section 2.4, or other notice of deficiency provided to Contractor by Owner in accordance with the Contract

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Documents, the Contractor defaults, fails or neglects to carry out the Work as required by the Contract Documents, or constructively abandons the Project through a reduction in manpower or supervision that adversely impacts the achievement of Milestone Dates established in the Construction Schedule, and fails within a seven (7) day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued reducing the Contract Sum and a concomitant reduction in Contractor's Fee, and deducting from payments then or thereafter due the Contractor the estimated reasonable cost of correcting such deficiencies, including, but not limited to the Owner's attorneys' fees, consultant fees and related costs, disbursements and expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. In the event the estimated costs deducted by the Owner to pay for supplementation and other costs identified above are in excess of the actual costs incurred, Owner shall reimburse Contractor such excess amounts no later than sixty (60) days after the time of final payment, assuming no other deductions, set-offs, or withholding of such amounts is appropriate under the Contract. In the event of actual or constructive abandonment of the Project by Contractor, Contractor shall not be entitled to any further payment until such time as Owner is able to fully remedy Contractor's deficiencies and determine whether sufficient funds exist to cover the damages resulting from or caused by same. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. The right of the Owner to correct deficiencies in the Work shall not give rise to any duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.6 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (i) granted in the Contract Documents, (ii) at law, or (iii) in equity. In no event shall the Owner or the Architect have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

ARTICLE 3 CONTRACTOR

§ 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and as referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed in the State of Georgia, and registered, if required in the jurisdiction(s) where the Project is located, and shall perform all Work in compliance with Governing Laws. The Contractor's representative designated in Section 1.1.12 of the Agreement 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. The Contractor accepts the relationship of trust and confidence established between the Contractor and the Owner by the Agreement and the General Conditions of the Contract. The Contractor covenants with the Owner to furnish its best skill and judgment and to cooperate with the Architect in furthering the interests of the Owner, to furnish efficient business administration and superintendence, to use its best efforts to furnish at all times an adequate supply of skilled workers and materials, and to perform the Work in the best way and in the most expeditious and economical manner consistent with the interests and expectations of the Owner.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents, and submittals approved pursuant to Section 3.12.

§ 3.1.3 Effect of Observations and Approvals of the Work. The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections, reviews, evaluations of the Work and recommendations related thereto, or approvals required or performed by persons or entities other than the Contractor, or by approvals, inspections, evaluations of the Work, periodic observations of the Work and status thereof as set forth in written monthly reports or other written evaluations, of the status of the Work and Contractor's performance thereof, whether prepared, required, or performed by Owner, Owner's consultants, Architect, other third-party inspection or evaluation consultants, Owner's geotechnical or other engineer, or any other persons or entities other than the Contractor. Contractor shall be solely liable for any damages resulting from or arising out of defects or deficiencies in the Work, unless Owner expressly directs Contractor to perform such defective or deficient Work and Contractor files a written objection thereto with the Owner and Architect prior to the performance of the Work in question.

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§ 3.1.4 Contractor represents and warrants to Owner, that Contractor (i) is financially solvent, able to pay all debts as they mature and possesses sufficient working capital to operate its business continuously and to perform its obligations hereunder; (ii) is able to furnish the means and methods, tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligation hereunder and has sufficient experience and competence to do so; (iii) acknowledges that the execution, delivery, and performance of the Agreement is within Contractor's powers and has been duly authorized; (iv) possesses a significant amount of experience and expertise in the business, administration, construction, construction management, and supervision of projects of the size, complexity, and nature of this Project, and will perform the Work with the care, skill, and diligence of an experienced and qualified general contractor operating in the same geographic location of the Project, and constructing projects of similar size, complexity, and cost as the Project; and (v) is duly licensed, certified, and/or registered to perform general contracting in the State of Georgia and/or Fulton County and any other applicable jurisdictions, (vi) is duly registered with the State of Georgia as a foreign corporation (if applicable) prior to the execution of this Agreement, (vii) will ensure that Subcontractors in the following trades will be properly licensed by the State of Georgia under the applicable statutes governing licensing requirements: Electrical, Plumbing, HVAC, Fire Sprinkler, Low Voltage Electrical and Utility; and (viii) is otherwise authorized to carry out the Work in accordance with this Agreement, the Contract Documents, and these General Conditions.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Prior to and continuously during the execution of the Work, the Contractor and each Contractor Party performing Work shall carefully study and compare all Drawings, Specifications, and job conditions and shall immediately notify the Owner and the Architect in writing of any errors, inconsistencies, discrepancies, conflicts, and/or omissions it observes. The Contractor shall request and have the same clarified or corrected by the Architect before proceeding with the Work. Work ordered, fabricated, or constructed by the Contractor without notification to the Owner and Architect of such observations shall be corrected by the Contractor at its own expense. If the Contractor discovers any errors, inconsistencies, omissions, or discrepancies in the Contract Documents and proceeds with the performance of the Work without at once timely notifying the Owner and the Architect and requesting additional drawings, clarifications, or other instructions from the Architect as specified in this Section 3.2.1, the Contractor shall assume full responsibility for such performance and shall bear all costs of correcting any resulting errors, inconsistencies, omissions, or discrepancies in the Work, and such costs shall not cause an adjustment to the Contract Sum.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.3; take field measurements and verify field conditions, including existing structures such as structures relating to the Work; and carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Any errors, inconsistencies, or omissions shall be reported immediately to the Architect and Owner via a written RFI. Before ordering material or performing Work, the Contractor shall verify measurements at the Project site for the particular Work and be responsible for the correctness of same. Any noticeable discrepancy in this respect shall be reported to the Architect and Owner immediately via a written RFI for their consideration and decision.

§ 3.2.3 To the extent discoverable by Contractor, the Contractor shall notify the Architect of materials, systems, procedures, or methods of construction indicated in the Contract Documents which the Contractor believes may be incorrect, inadequate, obsolete, or unsuitable for the intended purpose. The Architect will make a determination of these matters in writing.

§ 3.2.4 Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar references, no substitution in lieu of that product may be made unless listed in Exhibit C.2 or otherwise accepted by the Owner prior to execution of the Contract, or if accepted after compliance with Section 3.4.2 as an approved change in the Work, via a Change Order or Construction Change Directive. When two (2) or more products are shown or specified as equal alternatives, the Contractor has the option to use either of those shown or specified.

§ 3.2.5 In the review of or during the progress of the Work, the Contractor may propose modifications or product substitutions of the Contract Documents, in accordance with the requirements of Section 3.4.2, including value engineering proposals. Subject to Section 3.4.2, if these modifications or product substitutions are accepted by the Architect and/or the Owner's engineering consultants in accordance with the Contract Documents, and approval by

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Owner via executed Change Order accompanied by changes to the affected Drawings and Specifications, the Contractor shall implement the modification, substitution, or other value engineering proposal, and shall not be responsible for the result of such modification, product substitution, or other value engineering proposal, except to the extent such modification, product substitution, or other value engineering proposal was undertaken by Contractor without the requisite prior approval of the Architect or Owner's engineering consultants. Proposed modifications or product substitutions that pertain to the Contractor's Design Build Services shall be accompanied by a signed and sealed letter or other affirmative statement from Contractor's engineer of record for such Design Build Service that the proposed modification or product substitution is acceptable as an "equal or better" in the engineer's professional judgment.

§ 3.2.6 The Contractor shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for long-lead or other items or materials that must be ordered well in advance of construction, and shall expedite and coordinate the ordering and delivery of such. If the Owner agrees to procure any items prior to the establishment of the GMP, the Owner shall procure the items on terms and conditions acceptable to the Contractor, as agreed to in writing. Upon the establishment of the GMP, the Owner shall assign all contracts for these items to the Contractor and the Contractor shall thereafter accept responsibility for them.

§ 3.2.7 Contractor's review of the preliminary design and Contract Documents prepared by the Architect, as well as other information furnished by the Owner during the pre-construction phase of the Project, is intended to assist the Owner in furthering its interest in the strategic planning, coordination, and construction of the Project. Notwithstanding anything else to the contrary in this Agreement, but subject to compliance with the pre-construction responsibilities set forth in the Contract Documents, Contractor's review of these documents during the pre-construction phase of the Project is not for the purpose of discovering design errors, omissions, or lack of coordination among, or inconsistencies between, the design documents, applicable governmental regulations and requirements, or other Owner-furnished information. Contractor will, however, report to the Owner and Architect any apparent errors, inconsistencies, conflicts, or omissions in, among, or between those disparate sources that are discovered by Contractor. It is recognized that Contractor's review is made solely in its capacity as a contractor and not as a licensed design professional, and Contractor shall not be required to provide any professional design services in the context of its pre-construction services, except as required by the requirements of the Contract Documents related to the performance of Contractor's Design Build Services.

§ 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 contrary instructions concerning these matters. Absent the prior written approval of the Owner to the contrary, Contractor's obligation to provide competent supervisory personnel for the Project shall require full-time supervision on site through Final Completion of the Project, with additional supervision added upon the reasonable request of the Owner. For purposes of this Contract, "full time supervision" wherever called-for or required shall mean the on-site presence of competent personnel, approved in advance by Owner and included in the Contractor's Project Team List attached to the Agreement as Exhibit D.4, with experience in the supervision/superintendence of the construction of hospital, healthcare, or related projects of similar size, scope, complexity, and cost as compared to the Project. Such qualifications and job-site presence shall be required for Contractor's lead superintendent, or otherwise compliant full time supervision, previously approved by the Owner in writing, who shall be present on the job site on any day and at any time on which Subcontractors or other Contractor Parties are present and performing Work, including punch list Work, until such time as the Project achieves Final Completion or the Owner agrees otherwise, in writing. The Contractor acknowledges and agrees that any representative retained by the Owner to act for the Owner's benefit shall have no duty or responsibility to the Contractor except where specifically stated herein, and no act or failure to act by such Owner's representative shall relieve the Contractor of any obligations under this Contract.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of all Contractor Parties, and any other persons or entities performing portions of the Work under a contract with the Contractor.

§ 3.3.3 The Contractor shall be responsible for all sequencing, and inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work. The Contractor shall coordinate all field work and shop drawings of the various trades prior to installation of the Work. Excepting any subsurface conditions, authorization of the beginning of subsequent Work by Contractor shall constitute Contractor's affirmative representation and acceptance that the underlying and adjacent Work in sufficiently complete, accurate and in

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accordance with the requirements of the Contract Documents such that the subsequent Work may properly begin. By proceeding with and allowing subsequent Work to be placed on existing Work, Contractor assumes all risks of loss due to defective or incomplete Work that has been subsequently covered by Contractor. In addition, the Contractor shall provide the testing laboratory and Owner with a minimum of twenty-four (24) hours' notice prior to any Work involving filling, lifts or paving, so that the soils (geotechnical) engineer may be present during this portion of the Work.

§ 3.3.3.1 The Contractor has the responsibility to ensure that all Contractor Parties and their agents and employees adhere to the Contract Documents, and that they order materials on time, taking into account current market and delivery conditions and that they provide materials on time. Contractor shall coordinate its Work with that of the other parties working on the Project, including deliveries, storage, installations and construction utilities. Workmanship and materials shall be installed in accordance with the manufacturer's recommendations, instructions, and/or requirements, where such recommendations, instructions, and/or requirements (i) are available from the manufacturer and (ii) do not conflict with the Contract Documents. In the event Contractor discovers, or reasonably should have discovered, a conflict between the manufacturer's recommendations or requirements and the Contract Documents, the conflict shall be brought to the Owner and Architect's attention in writing via an RFI and the final decision shall be made by the Architect. Notwithstanding any other provision in the Contract Documents, in the event Contractor breaches its obligations under this Section 3.3.3.1, it shall be responsible for all delays and additional costs that result, including those associated with errors or omissions in the Drawings and Specifications that would have been revealed through Contractor's proper performance (but not including error or omissions which a reasonably experienced Contractor, carrying out its coordination responsibilities under this Contract with reasonable diligence, would not have discovered).

§ 3.3.3.2 The Contractor shall familiarize Owner's personnel with the operation of all systems and equipment. In cooperation with the Architect, Contractor, prior to Substantial Completion, shall provide the maintenance personnel of Owner with such services as may be necessary in checking for readiness of the utilities, systems, and equipment installed in the Project, assist in their initial start-up, testing, and commissioning, and provide initial training of such personnel to familiarize them with such systems and equipment, and take and provide video of such training sessions. Owner may elect to defer some of the above-described training, in writing, until after Substantial Completion but prior to Final Completion.

§ 3.3.4 At least bi-weekly, a meeting on the site involving the Contractor, the Architect, and the Owner shall be held to review progress and coordinate work schedules for the Work ahead. The Contractor shall have in attendance at these meetings the job superintendent or the Project Manager or another person authorized to make decisions for the Contractor. In addition, with the Owner's approval and at the Owner's sole discretion, the Architect may be allowed to conduct "virtual" or hybrid site visits, for impromptu, ad hoc, or urgent situations in which Architect's participation is desired by Owner, Construction Manager, or both.

§ 3.3.5 The Contractor shall check all materials and services to be incorporated into the Work, including but not limited to quality and quantity, and shall keep full and detailed records and accounts, including but not limited to said records and accounts as may be necessary to determine the Cost of the Work or changed amounts.

§ 3.3.6 The Contractor shall keep current a detailed Schedule of Values of the various portions of the Work, including quantities if required by the Owner or the Architect, divided so as to identify the portion of the Work to be provided by each Subcontractor and to facilitate payments to Subcontractors, prepared in the form attached to the Agreement as Exhibit H.1, and with such detail as required to be acceptable to and approved by the Owner and the Architect. The Schedule of Values submitted with each Application for Payment shall include a detailed, accurate, and up to date statement of the Project's overhead costs, general conditions, Contractor Fee, Change Orders, and other information requested by the Owner.

§ 3.3.7 Within thirty (30) days of the execution of the Agreement, Contractor shall inform the Owner of all portions of the Work which it wishes to self-perform. The Owner may at its option require the Contractor to seek competitive lump sum bids from prequalified subcontractors for such portions of the Work. In such instances, the Contractor will be required to submit a comparable lump sum bid for review by the Owner. The Owner, at its option, may select the Contractor or one of the competing subcontractors to perform such portions of the Work. The Contractor's lump sum bid for such work shall include all labor, materials, equipment, warranty, general conditions and fees associated with such work. Rather than seeking competitive bids, the Owner may also, at its option, negotiate a lump sum amount with the Contractor on a time and material basis.

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§ 3.3.8 Contractor shall maintain a daily report which shall include the date, weather conditions, deliveries received, Subcontractors and other Contractor Parties on site, general description of Work accomplished, and problems or conflicts arising in the field. Said reports shall be maintained at the job site in an orderly manner and available to the Owner and/or his Representative for review at any time. Contractor shall submit the format of such daily report to the Owner for approval prior to commencement of the Work.

§ 3.3.9 Contractor shall notify the Owner in writing immediately of any damage, defects, or deficiencies of Owner-furnished, Contractor-installed equipment upon receipt of such equipment by the Contractor.

§ 3.3.10 The Contractor shall be responsible for controlling any labor disputes that may arise among his employees or the employees of other Contractor Parties.

§ 3.3.11 The Contractor shall use reasonable care that all material delivered to the job site shall be so stored and handled as to preclude any discoloration therein or the inclusion of any foreign substances, and to prevent any damage thereto which might reduce its effectiveness as part of the Work. All Work shall be executed in a neat, skillful, and workmanlike manner. Only skilled and competent workmen who satisfactorily perform their duties shall be employed on Work, and, when requested by Owner or Architect, Contractor shall discharge and shall not reemploy on Work any person who commits trespass or who is, in the Owner's opinion, disorderly, dangerous, insubordinate, incompetent, or otherwise reasonably objectionable.

§ 3.3.12 Contractor shall be obligated to undertake and perform proper due diligence with respect to the identification, marking and location of existing Utilities, including compliance in all applicable respects with any and all laws or requirements of any authorities having jurisdiction over the location of the Project, including the "call before you dig" GA811 procedures found at www.ga811.org. Assuming compliance with the foregoing, any unmarked or unidentified utility, water, gas or sewer line, conduit, duct bank, fiber optic cable, telephone, telegraph or electric wire or cable ("Utilities") broken, damaged or cut by the Contractor or other Contractor Parties, excluding work performed by utility company or city contractors, shall be replaced by the Contractor and the cost of performing such work shall be reimbursed as a Cost of the Work. In the event such damage occurs, Contractor shall notify Owner in writing promptly but in all cases within twenty-four (24) hours after it occurs, unless the damage is to the duct banks, conduit and/or other underground utilities being located, identified and/or moved from the Project site by Contractor as part of its scope of Work hereunder (as applicable), in which case Contractor shall notify Owner immediately. Damage to marked and identified Utilities shall be repaired at Contractor's sole cost. Any damage caused by work performed by a utility company or city contractors shall, upon Owner's prior approval, be repaired or replaced by Contractor, and, if such repair or replacement is performed by Contractor, shall be included in a Change Order as an increase to the Cost of the Work. Repairs shall be made immediately, and no other affected Work shall be performed until all breaks or damage has been repaired and service to the affected Utility restored.

§ 3.3.13 If any of the Work is required to be inspected or approved by any Governmental AHJ, the Contractor shall cause inspection or approval to be requested, scheduled, and performed in a timely manner to ensure no delay in the critical path of the Construction Schedule resulting from scheduling difficulties or conflicts with the AHJ inspectors. Contractor shall not request, order, or call for inspections earlier than necessary, and shall be responsible and pay for any additional costs, fees, expenses, and damages resulting from inspections being rescheduled due to the required Work not being ready for said inspection. No inspection performed or failed to be performed by the Owner hereunder shall be a waiver of any of the Contractor's obligations hereunder or be construed as an approval or acceptance of the Work or any part thereof.

§ 3.3.14 Notwithstanding anything to the contrary in Article 6, with reasonable notice and at the Owner's written request, the Contractor shall schedule, coordinate and attend preconstruction meetings with applicable Utility vendors servicing the Project or the Project site, including but not limited to Georgia Power, Southern Company, Scana Energy, Gas South, Atlanta Gas Light, ATT, Time Warner, Comcast/Xfinity, Spectrum (Charter), Georgia Natural Gas, etc. Such Utility vendor coordination and scheduling efforts shall be provided by Contractor as may be required or necessary during the full course of the Project and the performance of the Work, through Final Completion, to allow said Utility vendors reasonable access to the site, scheduling and coordination with the Work necessary to accommodate the installation or incorporation of Utilities at the Project site and/or the work of Separate Contractors retained by Owner (or provided by the Utility vendors themselves) to accomplish the same. Notwithstanding the foregoing, Contractor shall be entitled to adjustments of the Contract Sum and/or Contract Time, as appropriate, for any delays caused solely by Utility vendors.

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§ 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 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order and, as applicable, after compliance with the requirements of Section 3.2.5 above regarding Design Build Services. All substitution requests or proposals shall utilize the Substitution Request Form attached to the Agreement as Exhibit C.2 and be undertaken in accordance with the following procedure. For any proposed or requested substitution, Contractor shall provide to the Architect for the Architect's review: (i) a completed Substitution Request Form with all information concerning the proposed substitution included therein, including but not limited to cost, aesthetic or schedule impacts, Contractor's representation that the proposed substitution is an equal or better to the specified item, and any other information providing a basis for the proposed substitution, (ii) submittals for the proposed substitution, (iii) technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the proposed substitution, and (iv) submittals for the originally specified product or item that the substitution is intended to replace. Within a reasonable time, the Architect will provide to the Owner a written opinion that identifies the proposed substitution as an "equal or better" product or item, or as something lesser. Following Owner's receipt of the Architect's written opinion that the proposed substitution is an "equal or better" the Owner shall send written notice via a letter to the Contractor advising the Contractor that the proposed substitution has been approved. If the Architect in its professional judgment believes the proposed substitution is not an "equal or better", and constitutes a lesser product or item, the proposed substitution shall be deemed denied, and the Architect shall provide written notice of its opinion to the Owner and Contractor. Only those substitutions that are undertaken in accordance with the aforementioned procedure, and for which the Contractor can produce the Owner's written notice of acceptance, shall be considered incorporated into the requirements of the Contract Documents. Except for approved value engineering proposals, which shall be the responsibility of the Architect to coordinate with the Contract Documents, Contractor expressly assumes the responsibility of coordinating any approved substitutions into the Work, including taking steps to ensure that Subcontractors are provided with appropriate warranties, installation instructions, and operating procedures related to same. Any substitutions undertaken without Owner's written approval indicated as noted above shall be considered defective Work, not in compliance with the Contract Documents.

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

§ 3.4.4 Whenever any provisions of the Contract Documents conflict with any agreement or regulation of any kind in force among members of any trade associations, unions, or councils, the Contractor shall make all necessary arrangements to reconcile any such conflict.

§ 3.4.5 By making requests for substitutions based on Section 3.4.2, the Contractor: (i) represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal to or superior in all respects to that specified; (ii) represents that the Contractor will provide at least the same warranty for the substituted product as the Contractor would for the product specified; (iii) certifies in writing that the substitute complies with the applicable requirements of the authorities having jurisdiction over the Project; (iv) certifies that the cost data presented is complete and includes all related costs under this Contract (excepting the Architect's redesign costs, if any), and waives all claims for additional costs related to the substitution which subsequently become apparent; and (v) will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects, including changes to As-Built record drawings reflecting the change.

§ 3.4.6 Any materials stored off site shall be stored in a bonded, insured warehouse facility at a location agreed upon with the Owner in writing, insured for at least one hundred percent (100%) of their value, and recorded in the Stored Materials Tracking Log attached to the Agreement as Exhibit J.1.

§ 3.5 Representations and Warranties

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will

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be free from defects and that the Work will conform to the requirements of the Contract Documents, including any materials or components specified as a sole source. Work not conforming to these requirements, including any substitutions, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse by Owner, by Owner's improper or insufficient maintenance or operation, alterations to the Work not executed by the Contractor, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Except with respect to Contractor's Design Build Services and Contractor's obligations under Sections 3.4.2 and 3.4.5, notwithstanding any other provision of the Contract Documents, it is agreed that Contractor does not expressly or impliedly warrant the adequacy, sufficiency, or suitability of the Drawings, Specifications, specified materials, or equipment, or other Contract Documents, including, without limitation, any specified sole source or brand-named products, equipment, or materials. This warranty is in addition to any and all other warranties, expressed or implied, extended by the Contractor pursuant to the provisions of this Contract or applicable law.

§ 3.5.2 All guarantees or warranties of materials furnished to the Contractor or other Contractor Parties by any manufacturer or supplier shall be deemed to run for the benefit of the Owner. The Contractor shall and does hereby assign to the Owner the benefits of all warranties and guarantees of all Contractor Parties (to the extent such Contractor Parties provide a warranty or guarantee under its subcontract or agreement with Contractor or another Contractor Party), but such assignment shall not relieve the Contractor of its warranty obligations to the Owner under the Contract or at law. In connection therewith, the Contractor further agrees to perform the Work in such manner consistent with and to preserve all manufacturers' or suppliers' warranties. Contractor shall enforce any such guarantees or warranties, to the extent enforceable by Contractor, without cost to Owner and for Owner's benefit. Notwithstanding the foregoing assignment, prior to final acceptance of the Project by the Owner, the Contractor shall deliver to the Owner via the Architect Owner a complete copy, in both .pdf format and in loose-leaf binders, of (i) all guarantees and warranties on material furnished by all manufacturers and suppliers to the Contractor and all of its Subcontractors, and (ii) all operating and maintenance data for all manufacturers whose equipment is installed in the Work, and As-Built drawings for the Work as specifically defined in the Specifications and required elsewhere herein. The guarantees, warranties, and operating and maintenance data shall be grouped together by trade and properly indexed. The Contractor shall obtain from manufacturers and suppliers guarantees and warranties according to the Contract terms. The documentation must also clearly describe proper operational and maintenance activities required to sustain said warranties. The guarantees and warranties herein shall not be construed to modify or limit in any way any rights or actions which the Owner may otherwise have against the Contractor by law or statute, or in equity.

§ 3.5.2.1 All warranties and guarantees required by Section 3.5.2 shall begin to run on the date stated on the AIA Form G-704 Certificate of Substantial Completion applicable to the designated Milestone Portion of Work under consideration, and shall extend for a minimum of one full year unless warranties or guarantees of a longer period of time are stated in the individual sections of the Specifications. This provision is not intended to limit the Contractor's general warranty provided in Subparagraph 3.5.1, above. Contractor's extended or special warranties provided hereunder shall include and cover the specific items and associated time periods set forth in the Specifications, each of which shall extend beyond the one (1) year period set forth herein.

§ 3.5.3 Contractor represents that it is able to furnish the plant, tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligation hereunder, that it is authorized to do business in the State where Project is located and in all governing local jurisdictions, and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over Work and the site of the Project, and that its execution of the Agreement and its performance hereunder are within its duly authorized power.

§ 3.5.4 Contractor shall be liable to Owner for all costs or damages, direct or consequential, which Owner incurs because of Contractor's failure to perform the Work, or any part thereof, in accordance with the Contract Documents, or as a result of any defect in the Work. Contractor's liabilities in this regard shall include, but not be limited to, the failure of Contractor Parties of any tier to perform any aspect of Work in accordance with the Contract Documents.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect, or known by the Contractor to be going into effect during the duration of the Project. In carrying out its obligations hereunder, Contractor shall contemporaneously provide Owner with written documentation evidencing (i) the proper giving of notice where required and (ii) proper and timely payment of all applicable licenses, fees and taxes, including proof that said payments have been properly applied or allocated to the correct municipal or other

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governmental/jurisdictional account or designation for the Project, so as to ensure that payments made are properly credited to the Owner and/or Project. Contractor's failure to provide such contemporaneous documentation shall, in addition to the rights afforded the Owner pursuant to Section 9.5.1 of these General Conditions, upon receipt of written notice from the Owner, obligate the Contractor to provide reimbursement to the Owner for any such taxes or fees for which Owner is subsequently billed and forced to pay following an audit by the affected municipality or jurisdiction. Said obligation shall survive the completion of the Project or termination of this Agreement for a period not to exceed six (6) years.

§ 3.7 Permits, Fees, and Notices

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded. Costs for all permits, fees, and inspections shall pass through to the Owner at direct cost, with no Contractor markups or percentages added.

§ 3.7.1.1 The Contractor shall apply for required licenses, permits, inspections and/or approvals sufficiently in advance of the time required to allow the Contractor and/or the Architect to respond to any AHJ comments, conditions or requests (including, without limitation, changes to the Work required to obtain approval of any AHJ) without delaying the progress of the Work, and shall timely arrange for any necessary inspections by governmental AHJ to enable the Owner to receive all necessary occupancy permit(s).

§ 3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of AHJ applicable to performance of the Work. Copies of such notices shall be available to Owner upon request.

§ 3.7.3 The Contractor shall perform all Work in accordance with Governing Law, and if it observes that any portion of the Contract Documents is at variance with same, the Contractor shall promptly notify the Architect and Owner in writing prior to beginning the work, and necessary changes shall be accomplished by appropriate Modification. If Contractor becomes aware that any portion of the Contract Documents is contrary to Governing Laws, and performs Work in accordance with that portion without having provided Owner and Architect with prior written notice of same, the Contractor shall assume full responsibility for such Work and shall bear the costs attributable to correction without increase in the Contract Sum, and such costs shall not be a cost of the Work or otherwise recoverable. The Contractor warrants it is familiar with all Governing Laws concerning the recognition, handling and disposal of waste materials and rubbish, and that it will obey such requirements. The Contractor shall provide the Owner copies of all manifests and disposal records required by any Governing Law for any hazardous or other substances that have been handled or disposed by or through the Contractor.

§ 3.7.4 Subject to Section 3.3.1.7 of the Agreement, if the Contractor encounters conditions at the site that are (i) subsurface or otherwise concealed physical conditions that differ materially from those (a) indicated in or reasonably inferable from the Contract Documents and/or the Geotechnical Report Package, and (b) disclosed or reasonably should have been disclosed by the Contractor's prior inspections, tests, reviews, or Preconstruction Phase services undertaken for the Project, or (ii) unknown physical conditions of an unusual nature that (a) differ materially from those ordinarily found to exist and generally recognized as inherent (or which would be found by or recognized as inherent by an experienced contractor) in construction activities of the character provided for in the Contract Documents, and (b) were not disclosed nor reasonably could have been disclosed by the Contractor's prior inspections, tests, reviews, or Preconstruction Phase services undertaken for the Project, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than fourteen (14) days after first observance of the conditions. If the Contractor suspends any operations or is delayed or impacted based on such concealed or unforeseen conditions, the Contractor shall provide immediate written notice to the Owner and Architect. Claims of concealed or unknown conditions must be adequately documented by the Contractor, and it shall permit the Architect, geotechnical engineer, and the Owner the opportunity to observe the condition(s) giving rise to the claim before existing conditions are disturbed. The Architect or the Owner's geotechnical engineer will promptly investigate such conditions and, if the Architect or geotechnical engineer 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, but only if such conditions were not known or discovered, and could not have been known or discovered, by Contractor from a visual Project site inspection and a diligent review of the geotechnical information contained in the Geotechnical Report Package. If the Architect or geotechnical engineer determines that the conditions at the site are not materially different from those

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indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect or geotechnical engineer shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's or geotechnical engineer's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.4.1 If the Owner determines an equitable adjustment is appropriate under Section 3.7.4, and if the Contractor has complied with the notice requirements under that section, then the Contract Sum and/or Contract Time shall be adjusted by Change Order to the extent (i) the Cost of the Work (excluding Contractor's general conditions) increases as a result of such conditions; and (ii) the Contractor's general conditions costs increase solely as a result of such conditions, but only to the extent that the increase causes the GMP to be exceeded. In no event shall the Contractor be entitled to an increase in the Contract Sum for any additional general conditions costs relating to a delay in performance because of such conditions (e.g., "standby costs" or the Contractor's Fee related thereto), unless (a) such delay is the sole basis for Contractor's failure to meet a Milestone Completion Date, and (b) the Contractor complies with the notice requirements in Section 15.1.2. In such event, the Contractor shall be entitled only to the additional general conditions costs actually incurred, arising directly and solely from the delay, and only to the extent those additional general conditions costs cause the GMP to be exceeded.

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

§ 3.7.6 Notwithstanding anything contained herein or the Contract Documents to the contrary, the Contractor shall, by appropriate means of supervision, monitoring, and coordination, ensure that all Work performed hereunder complies with the Contract Documents, and that, when so performed, the Work and the completed Project will comply with the Contract Documents in effect at the time the Work is performed.

§ 3.8 Allowances

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents, which are set forth in Exhibit C.4 to the Agreement. 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, which shall be returned to the Owner;
- **.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 (i) the difference between actual costs and the allowances under Section 3.8.2.1 and (ii) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness and no later than the date after which the absence of such selection would cause delay in the critical path of the Work. However, once those packages are selected, Contractor shall not be released to purchase or procure allowance packages without prior written approval of the Owner. The Contractor shall furnish Owner a schedule reflecting the dates by which allowance selections need be made so as to avoid delay to the Work.

§ 3.8.4 The Contractor shall submit a written quotation to the Owner of the costs associated with an allowance prior to incurring any costs associated with the allowance. Under no circumstances shall the Contractor incur any costs related to an allowance on behalf of the Owner without the prior written authorization of the Owner. The Contractor shall not be entitled to additional Fee on any individual allowance, but instead shall be entitled to additional Fee only in the event that the cumulative total of the actual cost of all allowances exceeds the stated amounts set forth in the Contractor's Allowance Log (included in Exhibit C.4 to the Agreement), submitted to the Owner at the time of

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execution of the GMP Amendment. In such event, the Contractor shall be entitled to apply its Fee to the delta between the amount of the actual costs and the stated values of the cumulative total of allowances in the Allowance Log. In the event the cumulative total cost of all allowances results in actual costs less than the stated values in the Allowance Log, the Contractor shall issue a deductive Change Order to reflect the credit due back to the Owner in the amount of its Fee percentage applied to the delta between the actual costs and the stated allowance values, which shall then be credited to the Owner.

§ 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 on a full-time basis during performance of the Work, in accordance with the requirements of Section 3.3.1. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

§ 3.9.2 The Owner reserves the right to request the removal from the Project of the Contractor's superintendent or any Contractor Party or employee thereof who, in the reasonable discretion of the Owner, is not properly performing its duties in accordance with the Contract Documents or is interfering with the operations of any facility on or adjacent to the site of the Work, but this in no way relieves Contractor of the obligations to select, assign, and supervise competent and qualified personnel. Contractor shall replace any such removed personnel with qualified personnel at no additional cost to Owner.

§ 3.9.3 The Contractor shall provide to the Owner a written list of the Contractor's Project team personnel no later than the date the Notice to Proceed is issued by the Owner, which shall become Exhibit I.1 to the Agreement. The Contractor shall not employ a proposed superintendent, project manager, or other executive or supervisory personnel to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not make any changes to its Project team without prior written approval from the Owner and Architect, which shall not be unreasonably withheld. If a member of Contractor's Project team chooses to terminate his employment with the Contractor of his own accord, the Contractor will provide an immediate replacement which is acceptable to the Owner and Architect at no increase to the Contract Sum.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The schedule shall be in time-scaled precedence format with the critical path clearly indicated.

§ 3.10.2 The initial schedule for the Work setting out key Milestone Completion Dates is attached as Exhibit D.3 to the Agreement (the "Construction Schedule"). Milestone Portions of the Work eligible for partial Substantial Completion are set forth in Exhibit I.2 to the Agreement. Under no circumstances shall any of the Milestone Completion Dates in the Contract Schedule be changed absent a properly executed Change Order or the issuance of a Construction Change Directive. Within seven (7) days of the execution of this Agreement, the Contractor shall prepare and submit for the Owner's approval a progress schedule for the performance of the Work of the entire Project reflecting all Milestones Completion Dates in the Contract Schedule along with all of the significant activities required to complete the Work, prepared, updated, and maintained at regular monthly intervals, utilizing a detailed, precedence-style critical path management ("CPM") or Primavera-type format, satisfactory to the Owner and Architect. The Contractor shall give timely and specific notice to the Owner, the Architect, and their respective consultants of any change in the logic of the schedule or any part thereof, or the removal of any restraints, or the deduction of any duration, and the rationale behind same. The progress schedule shall (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy related to each of the Milestone Portions of Work as well as the entire Work; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (in the timely achievement of all Milestone Completion Dates), and shall include (iv) the number of activities and milestones required by the Owner; (v) the expected starting and completion dates for each trade, (vi) Project Schedule Milestone Completion Dates set forth in Section A.2.3.2, including dates for the Substantial Completion and Final Completion of the entire Work, (vii) the dates upon which the Work or Milestone Portions of Work will be ready for occupancy, and (viii) the scheduling of delivery and installation of Owner-furnished equipment or fixtures, if any. The progress schedule shall also cover field

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tasks, significant material deliveries, other off-site restraints such as permits, inspections, and approvals as required, and shall provide for the duration and sequence of each major item of Work and function to be performed, including the review of Shop Drawings in accordance with a schedule approved by the Architect. Tasks shall be broken down into activities that allow monitoring monthly progress.

§ 3.10.3 From the initial schedule and other information as developed, the Contractor, in cooperation with the Owner and major Subcontractors, will continuously monitor, and shall revise and update monthly, the progress schedule. The progress schedule shall be further revised or expanded to provide more detailed information concerning the time requirements for all parts of the Work and other elements of the Project as such information is developed. The Contractor and each Subcontractor shall provide revised data in order to assist the Contractor in determining the most appropriate and acceptable construction schedule and acceleration opportunities of the Work, and to update the schedule. The Contractor shall provide schedule updates within ten (10) days following a request from the Owner.

§ 3.10.4 The progress schedule shall set out, in addition to the elements set forth in the preceding Sections, the following:

.1 a listing of all long-lead-time items and a schedule for the acquisition and delivery of such items;

.2 a detailed construction progress schedule showing the different stages of progress required in the Work and which clearly reveals the critical path(s) to Substantial Completion;

.4 the itemization of work provided by the Owner or others for the Contractor's incorporation into the Work; and

.5 the completion of punch list Work and the close out of the Project.

§ 3.10.5 Contractor shall also prepare and furnish, along with the progress schedule, Project cash flow projections and schedules in form and content acceptable to Owner for the purchase and delivery of all major equipment and material together with monthly updating thereof.

§ 3.10.6 The Contractor shall be solely responsible for the original progress schedule, all updates, changes, alterations or amendments. Neither the Owner, Architect, nor any of the Owner's Consultants shall be responsible for the accuracy or sufficiency of any schedule prepared or presented to the Owner. The Contractor warrants to the Owner that the progress schedule has been prepared in good faith, is accurate to the best of the Contractor's knowledge and that the Owner may rely thereon in regard to any and all decisions or actions by the Owner about the Project.

§ 3.10.7 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Owner's and the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall be coordinated with the progress schedule. The sequence and timing of the Contractor's submittals shall permit an orderly review by the Owner, Architect, and Architect's Consultants, and the submittal schedule shall allow reasonable added time according to the number and complexity of drawings in each submittal and for the checking, correction and rechecking or corrections, as well as for return of approved or rejected shop drawings and samples to the Contractor and, in turn, to any Subcontractor or other Contractor Party. If the Contractor fails to submit a submittal schedule, or fails to adhere to the current, Owner-approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review and approval of submittals by the Architect and its consultants.

§ 3.10.8 The Contractor shall perform the Work in accordance with the most recent schedules submitted to and approved by the Owner and Architect.

§ 3.10.9 The Contractor's progress schedule shall provide for the most expeditious and practicable execution of the Work. The Contractor shall also work closely with the Owner to confirm that the progress schedule accurately reflects the status of the Project. Whenever the Owner in its reasonable discretion determines from its review of the construction progress schedule that the Substantial Completion Date or other Milestone Completion Dates may not be met due to Contractor's negligence or other failure to perform in accordance with the requirements imposed upon it by the Contract Documents, the Contractor shall, within five (5) business days of the Owner's request, submit a recovery plan detailing how Contractor intends to make up for lost time sufficient to timely complete the Work. If Owner determines that Contractor's recovery plan is unrealistic, or if Contractor fails to timely submit a recovery plan showing how it will achieve timely Substantial Completion, Owner may by way of written notice (the "Recovery Notice") direct Contractor to take such further actions as Owner deems necessary in its reasonable discretion to put the

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Project back on schedule, with no increase to the Contract Sum or Contract Time (unless the delay is caused by an event set forth in Section 8.3.1.2, thereby permitting potential adjustment of the Contract Sum and/or Contract Time under the appropriate subparagraphs of Section 15.1.5). Such actions include but are not necessarily limited to any or all of the following:

.1 Increase construction manpower substantially eliminating the back-log of Work and return the project to schedule;

.2 Increase the number of working hours per shift per day or the amount of construction equipment or any combination of the foregoing which will substantially eliminate the back-log of Work and return the Project to schedule; or

.3 Reschedule activities to concurrently accomplish activities to the maximum degree practicable, in the time required by the Contract Documents.

All recovery and/or acceleration efforts taken by the Contractor shall be at the Contractor's own expense, except in the following limited circumstance: in the event (i) the Owner issues a Recovery Notice to the Contractor; (ii) the underlying event(s) causing the delays would entitle the Contractor to an extension of the Contract Time pursuant to Section 8.3.1.1; and (iii) the Contractor provides the Owner with reasonable prior written notice of its intent to seek additional compensation for its recovery/acceleration efforts with respect to such excusable delays, the Contractor shall be entitled to an adjustment in the Contract Sum equal to those additional Costs of the Work directly attributable to the Contractor's efforts, plus fee in the amount of ___ percent (___%). If the Contractor, in the Owner's reasonable discretion, fails to meaningfully initiate the requested action within five (5) business days of receiving a Recovery Notice from the Owner, or thereafter fails to diligently pursue such actions through to successful completion, the Owner may (i) take action to attempt to return the project to schedule and (ii) deduct the cost of such actions, including attorneys', experts', and consultants' fees, from the monies due or to become due to the Contractor. If the delay is due to a reason articulated in Section 8.3.1.2, the Contractor shall submit to the Owner a recovery plan upon the Owner's request, and otherwise proceed in accordance with Article 15.

§ 3.10.10 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the Owner's activities or existing operations on the site premises or adjacent thereto, or any employees or invitees thereof, or work being performed by Owner. The Contractor shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation, or as otherwise directed by the Owner. Any postponement, reschedule, or performance of the Work under this Section 3.10.10 may be grounds for an extension of the Contract Time, if permitted under Section 8.3.1.1, and an equitable adjustment in the Contract Sum in the form of additional general conditions under Section 8.3.1.2, if (i) the performance of the interrupted, postponed, or rescheduled Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents, (ii) such rescheduling or postponement is required for the convenience of the Owner, and (iii) such rescheduling or postponement was the sole cause of delay in the performance of previously scheduled critical path activities.

§ 3.11 Documents and Samples at the Site

§ 3.11.1 The Contractor shall maintain at the site for the Owner one record copy of the Contract Documents, including Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked accurately to currently to record and reflect the status of Contractor's performance of the Work, with all approved additions, deletions, corrections, revisions, field changes, selections, and all other approved changes made during the course of construction ("As-Builts"), and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be in electronic form and, if requested by the Owner, paper copy, available to the Architect and Owner for review and inspection upon request, and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed before final payment is made. As-Built record Drawings shall be subject to approval by the Owner and Architect, and in addition to the foregoing, shall show (i) final locations of concealed and below grade conduits, mechanical, electrical and plumbing Work, including all low voltage infrastructure, if any, under this Contract; and (ii) all Work performed by Contractor under this Contract which was not shown on the Drawings listed in this Contract, including all Addenda, Modifications, Change Orders, Submittals, responses to RFIs, Architect's Supplemental Instructions, and other Modifications.

§ 3.11.2 To the extent the Contractor is provided approved permit Drawings and other documents at the site, the Contractor shall maintain all approved permit drawings and other documents at the site, so as to make them accessible to inspectors, the Architect, and the Owner at all times that the Work is in progress. Such documents shall be delivered to the Architect before final payment.

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§ 3.11.3 Operations and maintenance manuals required under Section 3.5.2 shall be arranged in proper order, indexed, and suitably bound; include complete keying schedules, names, addresses, and twenty-four (24) hour service numbers of manufacturers and their local representatives and directory, and listing of all Subcontractors and maintenance contractors, the area of responsibility of each and the name and telephone number of the responsible member of each organization, and equipment. The volumes shall be provided electronically and, at Owner's option, also bound in multi-ring binders with plastic covers. Typewritten, drawn or photographic material shall be protected by clear plastic sleeves. Contractor shall state by endorsement that each manual is complete and accurate. Contractor shall assemble these manuals for each section, review them for completeness and submit them to the Architect for transmission to the Owner. If requested by the Owner, in addition to the electronic copies, Contractor shall provide suitable transfer cases and deliver manuals therein, indexed and marked into separate books for each division of Work.

§ 3.11.4 Electrical, plumbing, and mechanical Subcontractors shall each keep at the site at all times a separate set of blackline as-built prints of the Drawings showing their respective Work, on which the exact physical location and configuration of the Work as actually installed shall be noted neatly, accurately, and promptly, as the Work progresses, including any revisions or deviations from the Contract Drawings. These as-built MEP prints shall be incorporated into the As-Builts provided by the Contractor to the Owner prior to final payment.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor Parties 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 and Mock-Ups 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. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 Prior to submission, the Contractor shall thoroughly check all Shop Drawings and Samples as to measurements, sizes of members, materials, and all other details to satisfy itself that they conform to the intent of the Contract Documents. The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect, Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors. Subcontractor or other Contractor Party Shop Drawings found to be inaccurate or otherwise in error are to be returned for correction before submittal to the Architect. The Contractor shall verify the Shop Drawings of all other Contractor Parties for interrelated work, as required for proper and complete performance of the Work. All Shop Drawings submitted by the Contractor shall include the date of submittal and be stamped by the Contractor with the wording "APPROVED FOR SUBMITTAL" or marked through some other means to clearly indicate to the Architect that submittals have been reviewed and approved by the Contractor. Submittals not conforming with all of the forgoing or which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action. The Contractor shall be responsible for any delay as a result of improper submittal.

§ 3.12.6 Contractor shall comply with the submittal review procedure set forth herein and in Section 3.10, or as otherwise prescribed by Owner in writing and approved by Architect. By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals to ensure compliance with the requirements of the Work and the Contract Documents. Samples shall be identified by a permanent label giving the manufacturer's name, trade name, material type, intended application, Project name, Contractor's name, Subcontractor's or supplier's name,

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and date of submission. Manufacturers' installation directions shall be provided with each sample. Each submission shall be accompanied by a transmittal form in a format mutually agreed upon by the Owner, Architect, and Contractor. The Contractor shall prepay all transportation costs and deliver samples to the Architect's office, job site, or testing laboratory. Samples will not be returned unless return is requested at the time of submission.

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

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents, and all damages which may result therefrom, by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (i) the Architect has given written approval to the specific deviation as a minor change in the Work, or (ii) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof. The Contractor warrants the adequacy for the purpose intended of any Shop Drawings or portion of a Shop Drawing that alters, modifies or adds to the requirements of the Contract Documents.

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

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. To the extent the Contractor is required to provide design information in support of portions of the Work, including without limitation those components of the Project that are the subject of all Design Build Services, the Contractor shall cause such services or certifications to be provided by a properly licensed, qualified and insured design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional for the Project and/or submitted to Owner or Architect for review. The Contractor agrees to provide the Design Build Services based on the standards of professional care applicable to each of the respective engineering disciplines responsible for them, and agrees that all engineers and other professionals utilized by Contractor will be held to this same standard. 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. Pursuant to this Section 3.12.10.1, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents, but shall be responsible for the adequacy of the performance required by the Design Build Services and to the extent that there is an error or omission in design of the Design Build Services provided by the Contractor, then Contractor shall be responsible for any cost associated with the corrected design and for all fees, costs and damages sustained by Owner as a result of the error or omission.

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

§ 3.12.11 The Contractor shall make submittals in the manner and in the number of copies specified in the Contract Documents.

§ 3.12.12 Nothing in the Architect's review or approval of Shop Drawings and Samples shall be construed as

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authorizing additional Work or increased cost to the Owner.

§ 3.12.13 Substitutions of material or equipment on an "or equal" basis shall not be proposed or requested in Shop Drawing or Sample submittals unless approval (i) is requested in compliance with the substitution request procedures set forth in Section 3.4.2 and (ii) the request is made within thirty (30) days after award of any subcontract, providing to Owner and Architect all supporting data and samples as will permit a fair evaluation of the proposed substitution with respect to quality, performance, serviceability, warranty, and cost difference. Samples may not be employed in the Work without the express written permission of the Architect and Owner.

§ 3.12.14 The Contractor shall not be entitled to a time extension relative to the timely achievement of any Milestone Completion Date if the Contractor failed to submit Shop Drawings, Samples, or submittals in sufficient time to allow for adequate review and approval. The Contractor shall submit all Shop Drawings and submittals in accordance with the approved submittal schedule and at least fourteen (14) days before these items are required for use in the Project. Unless otherwise agreed by the Owner and Contractor, the Owner shall respond or shall cause the Architect to respond to such Shop Drawings and other submittals within ten (10) days after their receipt from the Contractor. Notwithstanding the foregoing, if the Owner and the Contractor agree to a different submittal schedule, which shall be in written form, the Owner and Contractor shall comply with the date set forth on such schedule.

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall comply with the Site Logistics Plan attached to the Agreement as Exhibit K, and otherwise (i) conduct the Work in a manner that minimizes or eliminates any adverse impact to surrounding areas and environments, or on the Owner's existing operations, (ii) confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents, and (iii) not unreasonably encumber the site (including planned staging, storage, and layout) with materials or equipment without Owner's prior written approval. Only materials and equipment that are to be used in connection with the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Reasonable protection of construction materials and equipment to be used for or incorporated into the Work stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. However, nothing herein shall prohibit the Contractor from seeking to recover any losses under the Builders Risk insurance policy, as may be appropriate and if allowed under the terms and conditions of said policy and of the Contract Documents. The Contractor acknowledges that the property on which the Project and Work are located may be occupied and in use during the execution of the Work, and Contractor agrees that it shall perform and coordinate its work in such a manner that the portions of the property occupied and in use will not be encumbered, nor will its use be interfered with or interrupted. The Contractor shall ensure that the Work is performed at all times in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. Any use or occupancy of the property as described in this Subsection shall not give rise to any right on the part of the Contractor or any other Contractor Party to an increase in the Contract Sum or Contract Time.

§ 3.13.2 Without limitation of any other provision of the Contract Documents, the Contractor shall comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and, if applicable, the Owner's existing buildings, structures, or other aspects of ongoing operations at the site ("Existing Buildings"), as amended from time to time. The Contractor shall immediately notify the Owner in writing if during the performance of the Work, the Contractor finds compliance with any portion of such rules and regulations to be impracticable, setting forth the problems of such compliance and suggesting alternatives through which the same results intended by such portions of the rules and regulations can be achieved. The Owner may, in the Owner's sole discretion, adopt such suggestions, develop new alternatives or require compliance with the existing requirements of the rules and regulations. The Contractor shall comply with all insurance requirements applicable to Owner's use and occupancy of some or all of the Project site and/or Existing Buildings during the performance of the Work.

§ 3.13.3 The Contractor shall not interrupt utility service to the site or to adjacent buildings, nor encroach upon adjacent property for storage of materials or any other reason, nor shall any of the Contractor's employees be permitted on said properties without written permission of the adjacent property owners. Any and all signage of the Contractor or other Contractor Parties must be approved in writing by the Owner in advance of placement on the site.

§ 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 and in quality fashion. All areas requiring cutting, fitting, or patching shall be restored to the conditions existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

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

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor and Contractor Parties (i) shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract; (ii) shall maintain streets, alleys, and sidewalks around the Project site in a clean condition, remove all spillage and tracking arising from the performance of the Work from such areas, establish a regular maintenance program of sweeping and hosing to minimize accumulation of dirt and dust upon such areas, and (iii) shall provide sufficient means for the prompt disposal of all food and other trash on a daily basis. The Contractor is fully responsible for all rodent control until Substantial Completion of the entire Work, and any rodent problems, mutually agreed by Owner and Contractor to be caused by or the result of Contractor's activities, affecting the Owner or its operations shall be remediated by the Contractor, whether during the course of the performance of the Work or following Substantial Completion. If the Contractor's waste materials interfere with the progress of the Work or the Owner's operations, the Contractor shall remove such waste materials and rubbish daily. At Final Completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, temporary construction, and surplus materials from and about the Project.

§ 3.15.2 If the Contractor Parties fail to clean up as provided in the Contract Documents, and fails to cure within three (3) days after receipt of written notice of such failure from the Owner, the Owner may do so and the cost thereof shall be charged to the Contractor, with a corresponding reduction in the Guaranteed Maximum Price by deductive Change Order and a proportional reduction in the Contractor's Fee; alternatively, the Owner shall be entitled to reimbursement from the Contractor. In the event the Owner undertakes the removal of same from the Site of the Project, such removal will in no way qualify or limit the Contractor's obligations under the Contract Documents, including, without limitation, Contractor's indemnity obligation under Section 3.18.

§ 3.15.3 Contractor shall be responsible for broken glass, at or before Final Completion of the Work, and as directed by Owner, shall replace such damaged or broken glass. After broken glass has been replaced, Contractor shall remove all labels, wash, and polish both sides of all glass.

§ 3.16 Access to Work

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

§ 3.16.2 Access and Utilities Provision. Subject to all applicable Laws and the terms and conditions of the Contract Documents, the Owner shall provide to the Contractor Parties all reasonable and necessary access to the Project necessary to facilitate the prosecution of the Work, including without limitation, appropriate areas of the Project site for the location of the Contractor's trailers, stored materials, equipment (including, without limitation, cranes, scaffolding, and other equipment reasonably necessary for the prosecution of the Work), parking areas, and delivery access as may be necessary for the Contractor to prosecute the Work. Said access shall be consistent and compliant with Exhibit K to the Agreement provided, however, that the Owner shall not be obligated to provide any such access or areas to the extent that such provision is unreasonable or unnecessary for the prosecution of the Work as required by the Contract Documents.

§ 3.16.3 Following seven (7) calendar days' prior written notice to Contractor and receipt of Contractor's written approval, which shall not be unreasonably withheld, Owner and its agents, representatives, and Separate Contractors, shall have the right to occupy and/or work within, or cause to be occupied any area of the Work and use any elevator previously certified complete and ready for use in order to do whatever fit-out work is necessary to complete the interior of the building(s) (to the extent that such work is not included in the Work of the Contract), to install fixtures and equipment as soon as such area or piece of equipment is sufficiently completed or installed so that such occupancy will not detrimentally interfere with or delay the Work remaining to be performed by Contractor, and notwithstanding that all Work of a given portion of the Work hereunder shall not have been completed at the time of such occupancy. Contractor shall coordinate the Work with Owner or Owner's designated agents, representatives, Separate Contractors

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and tenants. However, such occupancy, properly scheduled and coordinated with the Contractor before completion of Contractor's Work, shall not operate to cause a Change in the Cost of Work or the Contract Time, nor shall such occupancy or use negate any insurance required by this Agreement, subject to Contractor's written notice. Owner and those holding through Owner, however, will assume the risk of any delays or damage to the Work arising out of occupancy prior to completion of the Work, and shall assume all liability for personal injuries or property damage arising out of such occupancy and activities of Separate Contractors, unless where such damage or injury is due to the negligence or the intentional act or omission of any Contractor Parties.

§ 3.17 Royalties, Patents and Copyrights

The Contractor shall pay all royalties and license fees. THE CONTRACTOR SHALL DEFEND SUITS OR CLAIMS FOR INFRINGEMENT OF COPYRIGHTS AND PATENT RIGHTS AND SHALL HOLD THE OWNER AND ARCHITECT HARMLESS FROM LOSS ON ACCOUNT THEREOF, BUT SHALL NOT BE RESPONSIBLE FOR SUCH DEFENSE OR LOSS WHEN A PARTICULAR DESIGN, PROCESS, OR PRODUCT OF A PARTICULAR MANUFACTURER OR MANUFACTURERS IS REQUIRED BY THE CONTRACT DOCUMENTS OR WHERE THE COPYRIGHT VIOLATIONS ARE CONTAINED IN DRAWINGS, SPECIFICATIONS, OR OTHER DOCUMENTS PREPARED BY THE OWNER OR ARCHITECT. HOWEVER, IF THE CONTRACTOR HAS REASON TO BELIEVE THAT THE REQUIRED DESIGN, PROCESS, OR PRODUCT IS AN INFRINGEMENT OF A COPYRIGHT OR A PATENT, THE CONTRACTOR SHALL BE RESPONSIBLE FOR SUCH LOSS UNLESS SUCH INFORMATION IS PROMPTLY FURNISHED TO THE OWNER AND ARCHITECT. CONTRACTOR SHALL BE FULLY RESPONSIBLE AND LIABLE FOR ANY CLAIMS OF THE NATURE AND TYPE DISCUSSED HEREIN THAT ARE OR MAY BE ASSERTED BASED ON THE DESIGNS INCLUDED IN ANY DESIGN BUILD SERVICES, WITHOUT EXCEPTION.

§ 3.18 Indemnification

§ 3.18.1 TO THE FULLEST EXTENT ALLOWED BY LAW, THE CONTRACTOR SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS OWNER, OWNER'S REPRESENTATIVES, AND ALL RELATED ENTITIES, INCLUDING ALL PARENTS, SUBSIDIARIES, AGENTS, DIRECTORS, BOARD MEMBERS, OFFICERS, CONSULTANTS, AND EMPLOYEES OF ANY OF THEM (COLLECTIVELY, "OWNER ENTITIES"), FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, JUDGMENTS, AWARDS, FINES, INJURIES, SETTLEMENTS, AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES AND EXPENSES ("INDEMNITY CLAIMS"), CAUSED BY, ARISING FROM, OR RELATED TO, IN WHOLE OR IN PART, ANY BREACH OF THE CONTRACT DOCUMENTS, THE PERFORMANCE OF THE WORK, OR ANY NEGLIGENT ACT OR OMISSION BY THE CONTRACTOR OR OTHER CONTRACTOR PARTIES; 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), WHETHER CAUSED IN PART BY ANY INDEMNIFIED PARTY HEREUNDER OR NOT. NOTWITHSTANDING THE PRECEDING SENTENCE, TO THE EXTENT A LOSS WAS CAUSED BY AN OWNER ENTITY'S OWN NEGLIGENCE, THE CONTRACTOR'S INDEMNITY OBLIGATIONS UNDER THIS PROVISION SHALL BE COMMENSURATELY REDUCED BY THE PERCENT OF FAULT DIRECTLY ATTRIBUTABLE TO SUCH NEGLIGENCE. SUCH INDEMNITY OBLIGATIONS SHALL NOT BE CONSTRUED TO NEGATE, ABRIDGE, OR REDUCE OTHER RIGHTS OR OBLIGATIONS OF INDEMNITY WHICH WOULD OTHERWISE EXIST AS TO ANY OWNER ENTITIES. CONTRACTOR ACKNOWLEDGES AND AGREES THAT THE DUTY TO DEFEND, AND THE DUTY TO INDEMNIFY AND HOLD HARMLESS OWED TO THE OWNER ENTITIES UNDER SECTION 3.18 AND ITS SUBPARAGRAPHS ARE SEPARATE AND DISTINCT DUTIES OWED BY IT, AND THAT THE DUTY TO DEFEND IS NOT CONTINGENT UPON A PRECEDENT FINDING OF LIABILITY ON THE PART OF CONTRACTOR NOR THE CONFIRMATION OF THE EXISTENCE OF A DUTY TO INDEMNIFY OR HOLD HARMLESS BASED UPON SUCH LIABILITY. NOTHING IN THIS SECTION 3.18 OR ITS SUBPARAGRAPHS SHALL REQUIRE CONTRACTOR TO INDEMNIFY ANY INDEMNIFIED PARTY FOR SUCH INDEMNIFIED PARTY'S NEGLIGENCE.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor or other Contractor Party, the indemnification obligation under Subsection 3.18.1 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for that Contractor Party under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.18.3 The defense and indemnity provisions of Section 3.18 expressly survive final completion of the Project or, unless such termination is pursuant to the provisions of Section 14.1.1 below, termination of the Agreement.

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§ 3.18.4 By signing the Agreement, Owner and Contractor acknowledge that the indemnity provisions set forth in Section 3.18 and its subsections were *mutually negotiated and accepted.*

§ 3.19 Liens

§ 3.19.1 The Contractor shall turn the Work over to the Owner free and clear of all liens, notices of lien, claims of lien, security interests, claims, and encumbrances resulting or arising from the Contractor Parties' performance of the Work ("Liens"), under the express condition that the Owner has complied with all applicable payment provisions of the Contract pertinent to the Work that is subject to any such Lien. In the event that a Lien is filed or recorded against the Project or the property on which it is located by a Contractor Party, excepting only those Liens resulting from the Owner's failure to meet the above-referenced condition, the Contractor shall bond off or otherwise discharge the same within seven (7) days of notice of same, or within seven (7) days of receipt of written demand by the Owner, whether or the Contractor believes the claim underlying the Lien is valid, enforceable, legally defensible, reasonable or not. Contractor shall deliver to Owner within forty-eight (48) hours of Contractor's receipt, copies of all Lien notices received by Contractor under applicable lien laws. Contractor shall promptly pay each Contractor Party performing labor upon or furnishing materials for the Work upon receipt of payment from Owner, as provided elsewhere in the Contract, and keep the Work and jobsite free and clear of any and all Liens; provided, however, if a Lien is filed and Contractor wishes to dispute it, Contractor shall promptly advise Owner thereof in writing and deposit with Owner within five (5) additional calendar days thereafter a statutory bond in an amount sufficient to cause such Lien to be removed as a matter of record. If Contractor fails to post such bond, then Owner shall have the right to proceed in accordance with Section 3.19.2, at the Owner's sole discretion. Any bond obtained for the purpose of discharging a Lien under Section 3.19 shall be (i) issued by a surety acceptable to the Owner, (ii) in form and substance compliant with applicable Georgia statutory law and satisfactory to the Owner, and (iii) in an amount not less than two hundred percent (200%) of the amount claimed in such Lien. By posting a lien bond or other acceptable security, however, the Contractor shall not be relieved of any other responsibilities or obligations under Section 3.19. If a Lien is filed due to the fault, failure to perform, or negligence of the Contractor, the cost of any premiums incurred in connection with such bonds and security shall be the responsibility of the Contractor and shall not be part of, or cause any increase to, the Contract Sum or the Contractor's Fee. Contractor's obligations under this provision shall survive Final Completion of the Project for Liens filed in connection with the Work of the Contract.

§ 3.19.2 To the extent the Contractor fails to bond off a Lien within seven (7) days of receiving notice of the Lien, or evidence of the existence of the Lien, or within seven (7) days of receipt of written demand from Owner, and said Lien is not the result of Owner's failure to comply with the payment provisions of the Contract with respect to payments from Owner to Contractor, Owner reserves the right, after providing Contractor notice and five (5) days' opportunity to cure, to settle or discharge any disputed Lien by any means it deems advisable, at its sole discretion, and deduct either the costs of settling or discharging the Lien, including bond premiums and reasonable attorneys' fees, from any future sum due the Contractor. In the event Owner exercises this remedy and future sums due the Contractor at the time of exercise are insufficient to fully reimburse Owner, Contractor shall be responsible for paying Owner all costs associated with Owner's exercise of this remedy that exceed remaining amounts due to the Contractor, which may be awarded in the context of litigation proceedings or, in the event the parties elect to proceed with arbitration, by the arbitrator in accordance with Section 12.2 of the Agreement and Section 15.4 of this Agreement.

§ 3.19.3 In the event one or more of Owner's rights with respect to Liens under the Contract Documents are found to be unenforceable, all other such rights shall remain in full force and effect.

§ 3.20 Value Engineering

§ 3.20.1 In addition to its obligation to undertake value engineering during the Preconstruction Phase as set forth in Section 3.1.2 of the Agreement, Contractor shall use its best efforts to apprise Owner of opportunities for value engineering with respect to all aspects of the Work during the Construction Phase and the actual performance of the Work. As used herein, the term "value engineering" shall mean performing aspects of the Work for less cost but of equal performance quality than what is called for in the Contract Documents, or performing aspects of the Work at the same cost but with superior performance quality from that called for in the Contract Documents. Should any aspect of the Work be value engineered pursuant to this Section, such shall be incorporated into a Change Order. Under no circumstance shall such value engineering constitute acceptance by Owner of any defect in the Work, or as acceptance of Work that is of lesser performance quality than that called for in the Contract Documents.

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ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement, and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative(s).

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld. Notwithstanding anything to the contrary set forth in the Contract, the Architect's duties and responsibilities are set forth in the Agreement executed by Owner and Architect for the Project, the relevant portions of which may be provided to Contractor on request.

§ 4.1.3 If the employment of the Architect is terminated, the Owner will employ a new Architect against whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the former Architect.

§ 4.2 Architect's Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment, and with the Owner's concurrence, from time to time during the period for correction of the Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract. Notwithstanding anything in the Contract to the contrary, Owner may communicate directly with Contractor, and Owner may choose to administer all or some aspects of the Contract; the Architect's administration of the Contract shall be as more specifically described in the Agreement Between Owner and Architect executed for the Project. The foregoing notwithstanding, the Contractor shall administer the Design Build Scope, consistent with the Architect's responsibilities related to all other aspects of the Work or Project, including contract administration.

§ 4.2.2 The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations (i) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (ii) to endeavor to guard the Owner against defects and deficiencies in the Work, and (iii) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

§ 4.2.3 The Contractor acknowledges that the Architect does not have authority to make any decision or give any direction to the Contractor that would impact the Contract Sum or Contract Time without the prior written approval of the Owner. Neither the Architect nor the Owner will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor or other Contractor Parties performing portions of the Work. Neither the Architect nor the Owner shall be responsible for compliance with OSHA or other Federal, State, and local regulations applicable to the construction activities undertaken by Contractor Parties in the course of performing the Work of the Project.

§ 4.2.4 Communications

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall endeavor to notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Contractor Parties shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

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

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§ 4.2.6 The Owner has the authority to reject Work of the Contractor Parties for any reason set forth in the Contract Documents. The Architect, after consultation with Owner in each instance, has authority to reject Work that is defective and/or does not conform to the Contract Documents. Rejections of Work by the Owner shall be set forth in formal, written communications to Contractor, while those of the Architect shall at a minimum be included in Architect's monthly field reports, which shall include all noted deficiencies. Whenever the Architect considers it necessary or advisable, the Architect, with Owner's prior written consent, will have authority to require inspection or testing of the Work in accordance with Section 13.4, whether such Work is fabricated, installed, completed, or not. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor or other Contractor Parties performing portions of the Work.

§ 4.2.7 The Architect will review and, with prior written consent of the Owner, 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 Section 3.12.14 and the approved submittal schedule, or otherwise with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or Separate Contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12, or any of its other obligations under the Contract Documents. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may, with Owner's prior written consent, authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4 only if specifically requested by the Owner and/or Owner's geotechnical engineer.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion in accordance with the definition of and requirements for the same set forth in Section 9.8 and its subparagraphs, and the date of Final Completion in accordance with the definition of and requirements for the same set forth in Section 9.10 and its subparagraphs; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10, upon and after Contractor's compliance with the applicable requirements of the Contract Documents.

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

§ 4.2.11 The Architect will interpret and make written recommendations concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon in the B101 Agreement between Owner and Architect, or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until ten (10) days after written request specifying this Section 4.2.11 is made for them.

§ 4.2.12 Interpretations and recommendations 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 recommendations, 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 recommendations so rendered in good faith.

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

§ 4.2.14 The Architect will review and initially respond to written requests for information about the Contract Documents as set forth in the B101 Agreement between Owner and Architect, or otherwise with reasonable promptness, but in any event not to exceed fourteen (14) days after receipt of the same. The Architect's final response to such requests will be made in writing within any time limits agreed upon by the Owner and Architect or otherwise with reasonable promptness, so as to cause no delay to the critical path of the Work. In some cases, this time may need to be lengthened for complex issues, or shortened for emergency situations, as mutually agreed to in writing by the Owner and Architect, in all such cases endeavoring to cause no delay to the critical path of the Work, in the event that the Architect, in the exercise of its professional judgment, determines that additional time is required to provide an accurate and complete response. 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 at all tiers. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform labor or services for a portion of the Work at the site, or offsite or to furnish materials or equipment incorporated into or utilized in performing the Work. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor at all tiers.

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner and through the Architect the names of the 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 greater than $50,000 in value, and any additional information that Owner or Architect may reasonably require. Contractor shall exercise its best efforts to solicit bids from at least three (3) bidders for each trade. At least five (5) business days prior to entering into any subcontracts, purchase orders or other agreements for services, material, supplies and equipment, Contractor shall provide Owner with (i) copies of all bids/proposals, including the detailed scope of work underlying each bid, cost of such Work itemized by any conditions, exclusions or alternatives, (ii) a bid spread/analysis of all bids and (iii) a copy of the Subcontractor's schedule of values (AIA G702/703) for approval by Owner. On the Subcontractor Log, Contractor shall show the name, trade, address, phone number, email address, and contact for each Subcontractor and Supplier providing bids in connection with the Project, and any additional information upon the request of the Owner. On the bid/spread analysis, Contractor shall show (a) the total amount of each bid, (b) the respective variances between bid amounts, (c) comments by Contractor to highlight scope similarities and differences, and (d) such additional information as may be reasonably requested by Owner. The Owner may reply within fourteen (14) days to the Contractor in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the fourteen (14) day period shall constitute notice of no reasonable objection. The bids and proposals shall be reviewed with the lowest qualified bid incorporated into the Guaranteed Maximum Price.

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

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. The Contractor shall not solicit bids from, or award subcontracts to, persons or entities to whom Owner has objected. If, after award of a subcontract, the Owner objects to a person or entity to whom Owner has previously consented, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate

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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 responsibly in submitting names as required, and has strictly complied with the requirements of Article 15 related to the submission of a Claim.

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

§ 5.2.5 Acceptable reasons for substitution of a Subcontractor pursuant to Section 5.2.4 shall be limited to the following:

.1 Business failure of Subcontractor;

.2 Inability of Subcontractor to provide bonds, if required;

.3 Failure of Subcontractor to perform according to approved schedule or other provisions of the Contract Documents; or

.4 Other reasons which might make Subcontractor unable to perform according to the Contract Documents, as evidenced in writing provided by the Subcontractor.

§ 5.3 Subcontractual Relations

§ 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. No later than the execution of the GMP Amendment, the Contractor shall prepare and provide to the Owner and Architect a list of Subcontractors that includes the name, trade, address, phone number, email address, and contact for each Subcontractor performing Work on the Project. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. All warranties provided by the Subcontractors, including express and implied warranties in the Contract Documents and the agreements between the Contractor and the Subcontractors and all warranties provided by law, shall run to and be for the benefit of the Owner, and the Owner shall have direct right of action against the Subcontractors for any breach of said warranties, in addition to any other remedies which might be available under this Contract.

Notwithstanding any provision of this Section 5.3 or its subparagraphs, any part of the Work performed for the Contractor by a Subcontractor shall be pursuant to a written subcontract between the Contractor and such Subcontractor, which shall be prepared on the Contractor's standard form of subcontract, amended as required to include the requirements set forth herein and elsewhere throughout the Contract Documents. See Exhibits D.9 and D.10 to the Agreement. The Contractor's standard form of subcontract and purchase order shall be subject to the Owner's prior approval (which approval shall not be unreasonably withheld). Each subcontract and purchase order shall contain the following provisions (with all references to a Subcontractor including material suppliers):

.1 Require that such Work be performed in accordance with the requirements of the Contract Documents;

.2 Waive all rights the contracting parties may have against one another or that the Subcontractor may have against the Owner for damages caused by fire or other perils covered by the insurance described in the Contract Documents (and require the Subcontractor's insurance carrier to endorse its coverage to waive subrogation);

.3 Require the Subcontractor to carry and maintain applicable insurance coverage in accordance with the applicable requirements of the Contract Documents, including but not limited to Exhibit B to the Agreement, and to file certificates of such coverage with the Contractor;

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.4 Require the Subcontractor to include the Owner as an additional named indemnitee in any indemnity in favor of the Contractor and, as an additional insured under each liability insurance policy required to be maintained by the Subcontractor (excepting professional liability coverage, as may be applicable), as required by Exhibit B to the Agreement;

.5 Require the Subcontractor to submit certifications, waivers, and releases of liens for Work completed by it and by its Sub-subcontractors, in accordance with lien release and waiver provisions set forth in Article 9 and in the Agreement, using the forms collectively attached as Exhibit E to the Agreement, as a condition to the disbursement of progress payments due and owing in accordance with the Contract Documents;

.6 Require submission to the Contractor of applications for payment in the form of AIA G702 and G703, and in compliance with such provisions pertaining to the same contained in the Contract Documents;

.7 Require the Subcontractor to furnish to the Contractor in a timely fashion all information necessary for the preparation and submission of the reports required under the Contract Documents and close-out documentation required for final payment;

.8 Require the Subcontractor's acknowledgement and agreement to the assignment provisions set forth below in Section 5.4 and Exhibit D.11 to the Agreement;

.9 Require the Subcontractor to provide its express consent to the application of Section 13.8 to the subcontract, concerning time limits on claims requirements applicable to this Agreement and applying the same to each Subcontractor; and

.10 Require the Subcontractor to accept and agree to all requirements set forth below in Section 5.5 and its subparagraphs.

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

§ 5.3.3 Contractor shall ensure that each subcontract shall state that the Owner is and shall be a third-party beneficiary of such subcontract, and that the Owner shall have the right, but shall not be obligated, to assert claims directly against the Subcontractor for breach of contract, breach of express warranties, breach of implied warranties including warranties of merchantability and of fitness for a particular purpose, negligence and other claims arising out of or related to the Work or the Project. The Owner and Contractor acknowledge and agree that the purpose of this Section 5.3.3 is to enable the Owner, in addition to the Contractor, to assert claims for damages and indemnification directly against Subcontractors that are or may be responsible for breach of the Contract, defects in the Work, and other damages incurred by the Owner arising out of or related to the Work or the Project.

§ 5.3.4 Failure to comply with the requirements of Section 5.3.3 shall constitute a material breach of the Contract by Contractor.

§ 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 without need for the execution of consents or further documentation from the Contractor, 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 which 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 a bond relating to the Contract;

.3 assignment does not relieve Contractor of its obligations under the subcontract pertaining to Work performed prior to the termination by the Owner, and Owner shall only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the Owner's exercise of any rights of the conditional assignment as provided in the Contract Documents; and

.4 that the assignment is conditioned upon the Owner assuming the Contractor's obligations under the subcontract, including payment of any past due amounts to the Subcontractor at the time of termination, provided that the Owner had not previously paid the Contractor those amounts.

All subcontracts and purchase orders shall provide that they are freely assignable by the Contractor to the Owner and its assigns as required herein. Such right of assignment is part of the consideration to the Owner for entering into this

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Contract with the Contractor and may not be withdrawn prior to Final Completion of the Work. When the Owner accepts the assignment of a subcontract agreement, and the Subcontractor executes the Consent to Assignment form attached to the Agreement as Exhibit D.11, the Owner assumes the Contractor's rights and obligations under the subcontract, subject to the following. Provided that Contractor has received payment from Owner for such Work in accordance with the payment provisions of the Contract, such provisions shall also include an acknowledgement by Subcontractor that (i) Owner shall have no responsibility or liability to Subcontractor relating to duties owed by Contractor to Subcontractor prior to the date of assignment, (ii) that Subcontractor's sole recourse in the event of a claim related to Work performed prior to the date of assignment shall be solely against Contractor, and (iii) Subcontractor shall not use Contractor's failure to make payment to Subcontractor or other breach of the Subcontract by Contractor related to Work performed prior to the date of assignment as the basis for any post-assignment claim, action, slow-down or suspension of Work, or other act or omission designed or undertaken to interfere with the diligent performance of the Work for Owner.

§ 5.4.2 Upon such assignment, if the Subcontractor's portion of the Work has been suspended for more than thirty (30) days through no fault of the Subcontractor or other Contractor Parties down-tier from Subcontractor, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting solely from the suspension, if evidence of such increases and sole attribution to the suspension is provided to Owner for review and confirmation.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

§ 6.1.2 Intentionally omitted.

§ 6.1.3 The Contractor shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, and the Owner shall require its own forces, Separate Contractors, and any Utility vendors performing work or services at the Project site during the course of Contractor's performance of the Work, to cooperate with the Contractor with respect to such coordination. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the Contract Schedule or current progress schedule deemed necessary after a joint review and mutual agreement.

§ 6.2 Mutual Responsibility

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

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

§ 6.2.3 The Contractor shall reimburse the Owner for costs and damages the Owner incurs that are payable to a Separate Contractor because of the delays, improperly timed activities, damage to the work of Separate Contractors, or defective construction caused by any Contractor Party. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of an Owner's Separate Contractor's delays, improperly timed activities, damage to the Work, or defective construction ("Separate Contractor Interference"), to the extent Contractor can demonstrate that (i) such Separate Contractor Interference was the sole cause of said additional costs incurred by Contractor, and (ii) with respect to time and time-related expenses, the Separate Contractor Interference in question adversely impacted the critical path of a Milestone Portion of the Work as a result thereof.

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

§ 6.3 Owner's Right to Clean Up

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive or a deductive Change Order requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone. Deductive Change Orders may be issued by mutual agreement of the Owner and Contractor, after consultation with the Architect. If a deductive Change Order arises or is requested by the Owner or Architect due to Work installed by any Contractor Party incorrectly, defectively, or otherwise not in accordance with the requirements of the Contract Documents, the Contractor shall propose credits therefor, to be validated and approved by the Architect as appropriate for the scope of Work in question. In the event Contractor and Owner are unable to reach agreement on a deductive Change Order, whether concerning the need for a deductive Change Order of any value, or the particular value of a deductive Change Order the need for which the parties agree exists, the dispute shall be subject to the Claims procedure outlined in Article 15. Contractor's actions taken pursuant to Sections 7.1.2.1 through and including 7.1.2.6 below shall be undertaken strictly subject to Section 3.2.4.

§ 7.1.2.1 Within fourteen (14) days of discovering a condition that may give rise to a change in the scope of the Work, the Contract Sum, or the Contract Time, Contractor shall designate such condition as a "Potential Change Item" ("PCI"), shall record the PCI on an internal PCI log, and shall review the PCI with the Owner and the Architect at the next Owner-Architect-Contractor ("OAC") meeting concerning the Project.

§ 7.1.2.2 Within twenty-one (21) days of recording a PCI on the PCI log, Contractor shall provide Owner and Architect with a Change Order Request ("COR") that includes all documents and other information needed to substantiate the scope of the change in the Work, any adjustment in Contract Sum and/or Contract Time that Contractor believes shall be necessitated by such condition, and any schedule impact(s) related to or arising from the condition, to the extent it is able to ascertain and quantify those variables. The COR shall include Contractor's request, in writing, for a corresponding adjustment of the Contract Sum and/or Contract Time. Impacts not identified (to be distinguished from those identified, but for which the full extent of the impact has yet to be determined) in the COR shall be waived.

§ 7.1.2.3 Within fourteen (14) days of receiving the COR and supporting information provided by Contractor pursuant to Section 7.1.2.2, Owner and Architect shall, in writing, take one of the following actions: (i) approve the COR and issue a Change Order incorporating the COR (adjusting the Contract Sum and/or Contract Time accordingly), (ii) reject the COR, or (iii) notify Contractor of any additional information that may be required for Owner and Architect to determine whether to approve or reject the COR.

§ 7.1.2.4 Contractor shall, within five (5) days of the notification required under 7.1.2.3(iii), provide any additional information requested by Owner and Architect. Upon receipt of such additional information, Owner and Architect shall, in writing and within five (5) days, either (i) approve the COR in whole or in part and issue a Change Order incorporating the COR (adjusting the Contract Sum and/or Contract Time accordingly), (ii) issue a Construction Change Directive, in the event that the parties agree upon the change but cannot agree on the adjustment to the Contract Sum or Contract Time requested by the Contractor in the COR, or (iii) reject the COR.

§ 7.1.2.5 If Owner and Architect reject a COR in whole or in part pursuant to Section 7.1.2.3 or Section 7.1.2.4 and Contractor disagrees with such action, the rejected COR or portion thereof shall be treated as a "Claim" and Contractor shall be entitled to request from the Architect the supporting information for the rejection of the COR or portion thereof, as follows. The Architect will render an initial decision approving or rejecting the Claim, or indicating that the

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Architect is unable to resolve the Claim. This initial decision shall (i) be in writing; (ii) state the reasons therefor; and (iii) notify the parties 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. If the parties are thereafter unable to reach agreement following the issuance of the Architect's decision and the basis therefor, the Contractor shall be entitled to seek mediation pursuant to Article 15, and, if mediation is unsuccessful, the Contractor may proceed with dispute resolution proceedings in accordance with the terms of the Contract.

§ 7.1.2.6 Absent an emergency situation, the existence of which shall be determined (if necessary) by the Owner with the Architect's agreement, Contractor shall not be required to proceed with any Work on the Project that is the subject of a pending COR until Owner and Architect have taken the actions required by Sections 7.1.2.3 or 7.1.2.4. While a COR is pending, Contractor shall reserve all rights to seek damages resulting from any impact on the Project caused solely by Owner's and Architect's failure timely to process the COR, assuming that the Contractor properly identified such impact(s) when the COR was initially submitted. Contractor may pursue such damages as a separate Claim under Article 15.

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

§ 7.2 Change Orders

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

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

§ 7.2.2 Proposals for a change involving an increase or decrease in the Contract Sum shall be submitted by the Contractor in a completely itemized breakdown form which shall include but not be limited to the following: Material quantities and unit prices (separated by trade), labor costs, construction equipment costs and/or rental charges, Contractor's general conditions, and fee (subject to Section 6.1 of the Agreement).

§ 7.2.3 The cost or credit to the Owner resulting from a change in the Work shall be determined in one or more of the following ways:

- **.1** by mutual acceptance of a negotiated lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- **.2** by unit prices stated in the Contract Documents or subsequently agreed upon;
- **.3** by cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- **.4** by the method provided in Subparagraph 7.2.4.

§ 7.2.4 If none of the methods set forth in Subparagraphs 7.2.3.1, 7.2.3.2, or 7.2.3.3 are agreed upon, the Contractor, provided he receives a written order signed by the Owner, shall promptly proceed with the Work involved. The cost of such Work shall then be determined on the basis of the actual expenditures and/or savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, calculation of Fee as set forth in the Agreement. In such case, and also under Subparagraphs 7.2.3.3 and 7.2.3.4 above, the Contractor shall isolate in its job accounting system and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data for inclusion in a Change Order. In such event, reimbursable costs shall be determined in accordance with Article 7 of the Agreement. Pending final determination of cost to the Owner (which determination shall be made in a timely manner), Contractor must continue performance of the Work, and payments on account shall be made on the Contractor's Certificate for Payment. The adjustment to the Contract Sum for any extra, deletion or change, whether it results in a net increase or decrease in the Contract Sum, will be the amount of the actual net cost plus the Contractor's Fee. The Contractor's Fee shall be figured on the basis of the net cost, whether deductive or additive with respect to that change. The cost of a change determined under the methods in Subparagraphs 7.2.3.1, 7.2.3.3, and 7.2.3.4 shall include all costs directly related to the change, and the Contractor shall itemize these costs and provide appropriate supporting data as may be necessary to establish correctness.

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§ 7.2.5 An executed Change Order is conclusively presumed to (i) include all adjustments in the Contract Time and Contract Sum necessary to complete the change to the Work and all related parts of the Work and (ii) resolve all outstanding issues between Owner and Contractor regarding the Contract Time and Contract Sum, except as is otherwise specifically, clearly, and prominently recorded on the Change Order itself. In the event a line item of an executed Change Order is left blank or otherwise ambiguous with respect to increases in the Contract Time occasioned by the Change Order, such shall conclusively be deemed to mean that the Contract Time shall not be increased, and that the date of Substantial Completion shall remain unchanged.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared and signed by the Architect and Owner, directing (i) a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both, or (ii) the Contractor to proceed with Work that is the subject of a dispute between Owner and Contractor, regarding cost, time and/or whether the Work constitutes a change or is part of existing scope. The Owner may by Construction Change Directive, without invalidating the Agreement, order Contractor to proceed with Work within the general scope of the Agreement consisting of additions, deletions other revisions, or Work that is the subject of cost and/or time disputes between the Owner and Contractor, with the Contract Sum and Contract Time being accordingly adjusted up or down, or not at all, as the case may be.

§ 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 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.

§ 7.3.5.1 If the Contractor agrees with the method proposed in the Construction Change Directive for adjustment of the Contract Sum and/or Contract Time, then Contractor shall use its best efforts to provide to Architect and Owner (within twenty-one (21) days of the Contractor's receipt of the Construction Change Directive) such pricing and other information that may be required to calculate the adjustment to the Contract Sum or Contract Time based upon the proposed method, together with such calculation. If it appears that Contractor shall be not able to provide such information and calculation within twenty-one (21) days, Contractor shall so notify Architect and Owner, explain the reason for the delay in providing the information, and provide Architect and Owner with Contractor's best estimate as to when the information will be available.

§ 7.3.5.2 Within ten (10) days of receiving from Contractor the calculation of the adjustment to Contract Sum and/or Time, together with substantiating information, pursuant to Section 7.3.5.1, Owner and Architect shall, in writing: (i) approve the adjustment and issue a Change Order incorporating it, (ii) reject the adjustment, or (iii) notify Contractor of any additional information that may be required for Owner and Architect to determine whether to approve or reject the adjustment. In the event the Owner and/or Architect reject the proposed adjustment, the Contractor shall proceed in accordance with Section 7.3.7.

§ 7.3.5.3 Contractor shall provide, within ten (10) days, any additional information requested by Owner and Architect pursuant to Section 7.3.5.2. Upon receipt of such additional information, Owner and Architect shall, in writing and

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within ten (10) days, either (i) approve the adjustment and issue a Change Order incorporating it or (ii) reject the adjustment. In the event the Owner and/or Architect reject the proposed adjustment, the Contractor shall proceed in accordance with Section 7.3.7.

§ 7.3.5.4 If Owner and Architect reject an adjustment pursuant to Section 7.3.5.2 or Section 7.3.5.3 and Contractor disagrees with such action, the parties shall proceed in accordance with Section 7.3.9.

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner, with the Architect's assistance, shall determine the method and the adjustment on the basis of reasonable cost expenditures and cost savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum in accordance with Section 15.1.4, an amount for Contractor's Fee as set forth in the Agreement. Markups for fee for all trades and other Contractor Parties shall be allowed, not to exceed a cumulative fifteen percent (15%) for all affected by the change. In such case, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

.1 Costs of labor;
.2 Costs of materials, supplies, and equipment, whether incorporated or consumed;
.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly and solely related to the change; and
.5 Costs of supervision and field office personnel directly and solely attributable to the change.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for Fee 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, amounts not in dispute for such changes in the Work shall be included in Applications for Payment, accompanied by a Change Order indicating the parties' agreement with part of all of such costs. For any portion of such cost that remains in dispute, the parties shall resolve the dispute as a Claim in accordance with Article 15.

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

§ 7.4 Minor Changes in the Work

§ 7.4.1 The Owner and Architect have authority to order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such changes will be effected by written order signed by the Owner and shall be binding on the Owner and Contractor. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Owner and Architect and may be entitled to an adjustment to the Contract Sum and/or extension of the Contract Time.

§ 7.4.2 Notwithstanding anything contained in Article 7 to the contrary, in no event shall any changes in the Work with respect to (i) the manufacturer of a specified item or material, or (ii) the color, quality or grade, or physical composition of any specific item or material be made without the written consent of the Owner, nor shall any change in any dimension of any component of the Work or equipment incorporated into the Work be made without the written consent of Owner if such changes affect the operation or functionality of the Project or aesthetics of the Project, even if any of the above described changes would be considered a minor change in the Work.

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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, or, if no date is established in the Agreement, the date established in the Owner's Notice to Proceed. The date shall not be postponed by the failure to act of the Contractor or Contractor Parties. Contractor shall commence the Work no later than seven (7) days after Contractor's receipt of the written notice to proceed, provided Owner has obtained the Land Disturbance and other permit(s) that Owner is obligated to obtain and that are necessary to commence the Work.

§ 8.1.3 Definition of Substantial Completion. The date by which the Contractor shall achieve Substantial Completion of the entire Work in accordance with the Contract Schedule is set forth in Section A.2.3.1 of the GMP Amendment (Exhibit A to the Agreement). The determination of the date Substantial Completion is actually achieved with respect to any Milestone Portion of Work identified in Exhibit I.2 to the Agreement, or the entire Work, shall be established based upon compliance with the specific requirements pertaining to the same as set forth in Section 9.8 and its subparagraphs. These dates shall be the dates memorialized in the Architect's executed Certificate(s) of Substantial Completion applicable to any Milestone Portion of Work, including Substantial Completion of the entire Work, executed and 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. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the Work, the Project 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. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages and other security interests

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time, and achieve Final Completion no more than thirty (30) days thereafter, in accordance with Section 3.3.5 of the Agreement.

§ 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, the Contract Time may be extended as set forth herein and in Section 15.1.5 by Change Order, provided further that such extension of Contract Time shall be net of any delays caused by or due to the fault or negligence of Contractor, whether concurrent or otherwise. No extension of time shall be granted unless a Milestone Completion Date is extended by the delay, and such delay is proven by an independent critical path analysis of the work activities to comply with the requirements set forth in these General Conditions regarding a delay.

§ 8.3.1.1 Contractor will not be entitled to an extension of Contract Time, except under one or more of the following circumstances: (a) an act or omission by the Owner, its designated representative or anyone else for whom the Owner is responsible, including the Architect and Architect's Consultants, that delays the progress of the critical path of the Work; (b) the Owner approves a Change Order in writing containing an express extension of the Contract Time; (c) local labor disputes (including disputes affecting transportation) directly and materially affect the progress of the critical path of the Work, provided that Contractor has used its best skill and judgment to prevent the same; (d) Weather Events as defined in Section 15.1.5.4 and Exhibit F to the Agreement adversely impact and affect the progress of the critical path of the Work, but only if Contractor timely notifies Owner of such adverse weather conditions in writing and complies with other requirements set forth in Exhibit F and Section 15.1.5.4; (e) a court or governmental agency or AHJ over the Work causes the progress of the critical path of the Work to be delayed by a court order, change in existing Governing Laws, or interpretation thereof, or new law, provided that such action is not based on the violation of any Governing Law by any Contractor Party, or upon other default by any Contractor Party;

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(f) Force Majeure as defined in Section 15.1.5.7; (g) soil conditions materially differing from those reasonably anticipated by the Contractor based upon the information contained in the Contract Documents or the Geotechnical Report Package, as provided in Section 3.7.4, or any hazardous, toxic, regulated, or harmful materials are encountered and materially affect the progress of the Work; or (h) other circumstances for which Contractor is entitled to an extension of Contract Time pursuant to the Contract Documents, and/or other circumstances which Owner agrees, in writing, entitle Contractor to an extension of Contract Time. In the event of any such delays to the critical path of the Work, delay Contractor will keep Owner appraised of potential delays as they occur during regular Project OAC or coordination meetings. As a precondition to all the foregoing (a) through (f) (but excluding (d)), (i) Contractor must have reasonably but diligently attempted to avoid such delay by means which include, without limitation, seeking alternate sources of labor or materials or accelerated performance of the Work without increased cost to Owner due to overtime, (ii) Contractor could not have reasonably planned for such delay, and (iii) the delay or hindrance is not concurrent with any Ineligible Delay.

§ 8.3.1.2 Compensable Delays. The Contractor agrees that any delay claim seeking additional compensation for delay ("Compensable Delay") must show, at a minimum, that (i) the Owner's fault or neglect delayed the critical path for construction and thus necessarily delayed Substantial Completion of the entire Work as a result, (ii) that no act or omission of the Contractor or other Contractor Party was concurrent with any such delay, and (iii) if the delay includes Saturdays and Sundays, Contractor is able to demonstrate via the most recent iteration of the Construction Schedule, contemporaneously prepared daily job site and/or field reports, that critical path Work was scheduled to be performed on the Saturday or Sunday in question and adequate forces were onsite and available, but the Work in question could not be performed due to the circumstance(s) causing the delay. If a Compensable Delay Claim is approved by the Owner in accordance with Article 15 and memorialized in a Change Order as described in Article 7, the Contractor shall be entitled to additional compensation for its own time-related costs incurred solely as a result thereof, at a per diem rate determined by calculating a daily burn rate based upon the Contractor's total lump sum general conditions cost set forth in Section 6.2.6 of the Agreement divided by the number of days included in the Contractor's original Construction Schedule submitted with Exhibit A through Substantial Completion of the entire Work; hereafter, the "Burn Rate"), and applying such rate to the number of days included in the approved Compensable Delay. The foregoing notwithstanding, if the Burn Rate so calculated is substantially inequitable to the Owner or Contractor (as in the case of periods of the Work that involve cranes and hoisting), and in the case of alleged inequity to the Contractor the Owner agrees that the Burn Rate alone would be insufficient, the parties shall mutually agree upon an alternative method of calculation. This adjustment shall be the Contractor's sole remedy for all Compensable Delays, and the parties' agreement to implement this adjustment will be noted and approved by a zero-dollar Change Order that include the approved extension(s) of Contract Time related thereto and the express commitment of Owner to pay to Contractor all of the agreed amounts accruing from such delay(s) in accordance with the parties' agreement concerning the same as set forth in the aforementioned Change Order. Notwithstanding the foregoing, in the event any Compensable Delay occurs which runs concurrent with a delay for which the Contractor is responsible ("Concurrent Compensable Delay"), Contractor's sole remedy for the portion of such Concurrent Compensable Delay that is attributable to a Contractor-caused delay shall be an adjustment to the Contract Time, and no relief shall be given for an increase to the Contract Sum. By way of example only and not limitation, if a Compensable Delay exists for ten (10) days, and is concurrent with a Contractor-caused delay that runs for five (5) days, Contractor shall be entitled to a ten (10) day extension of Contract Time, but only five (5) of those days shall be compensable, such that the Contract Sum will be increased solely for five (5) days' worth of cost, in the manner set forth above.

§ 8.3.1.3 The parties further acknowledge and agree that Contractor's ability to request relief from the Owner for any alleged delay experienced by Contractor in its performance of the Work shall be limited solely to those specific circumstances explicitly set forth above in Sections 8.3.1.1 and 8.3.1.2. Contractor acknowledges and agrees that any other delay causing or contributing in whole or in part to Contractor's failure to timely perform the Work in compliance with any of the Milestone Completion Dates, including but not limited to schedule delays/slippage, interference, sequencing conflicts, delays occasioned by end user/purchaser-induced delays, the acts or omissions of any Contractor Parties, suppliers to Contractor Parties, or other third parties for whom Owner is not specifically responsible as set forth above, or other situations that are not expressly included in Sections 8.3.1.1 and 8.3.1.2 (collectively, "Ineligible Delay"), constitute risk that is intentionally allocated to and knowingly accepted by the Contractor. Such Ineligible Delay shall not serve as the basis for, and shall not be submitted to Owner in the context of any Contractor request for relief based thereon, in whole or in part, whether the relief requested is an extension of Contract Time and/or payment of additional time-related expenses in the form of general conditions. Any Contractor request for relief (including but not limited to any PCO or Claim) that is based in whole or in part on an Ineligible Delay shall be deemed rejected by Owner without resort to the PCO notice, documentation, review, and evaluation process set forth in Article 7 hereof, or in the event of a Claim, without resort to the procedures set forth in Article 15

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regarding the resolution of Claims.

§ 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.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

§ 9.1.1 The Contract Sum is stated in the Agreement and, subject to authorized adjustments, is the total amount payable by the Owner to the Contractor for satisfactory, proper and complete performance of the Work under the Contract Documents. Contractor will be allowed an increase in the Contract Sum only in the limited circumstances provided in the Contract, for Owner-directed changes in the Work, Owner-caused damages not excluded by any provision of the Contract, and Compensable Delay as defined in Section 8.3.1.2.

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

§ 9.2 Schedule of Values

The Contractor shall submit to the Owner and Architect a schedule of values before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work, aggregating the total Contract Sum, divided so as to facilitate payment of Subcontractors, prepared in such form as specified or as the Architect and Owner and the Contractor may require, and supported by such data to substantiate its accuracy and correctness as the Contract provisions, or the Architect and Owner, may require. The schedule of values shall be maintained as set forth in the Agreement. General conditions, Fee, Contingency, and general requirements shall be shown as separate line items, the scheduled values for which shall not be changed without prior written approval by the Owner. Contractor shall not propose a schedule of values that is "front-end" loaded, imbalanced or which otherwise deviates from the actual incurrence of costs reflected therein. This schedule, when approved by the Architect and Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment to be submitted throughout the Project, including at the time of final payment.

§ 9.3 Applications for Payment

§ 9.3.1 Prior to the date established for each progress payment, the Contractor shall submit to the Architect an itemized AIA G702/G703 Application for Payment prepared in accordance with the schedule of values, and the requirements of Section 11.1.2 of the Agreement, for completed portions of the Work. The application shall be notarized and supported by all data substantiating the Contractor's right to payment that the Owner, Owner's Lender, or Architect may require, in addition to the required documentation set forth in Section 11.1.4 of the Agreement.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders. Such Work shall be listed separately in the schedule of values, itemized and tracked from application to application so as to allow for evaluation separate and distinct from the other Work that is included and for which payment is being requested.

§ 9.3.1.2 Such Applications for Payment may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or other Contractor Party, whether because of a dispute between them or other reason.

§ 9.3.1.3 Contractor understands that in addition to compliance with the requirements set forth in Section 9.3.1 above, a condition of and as a prerequisite to the receipt of payment from the Owner in response to the submission of any Application for Payment, Contractor shall provide documentary certification that each subcontract or other contract for labor, materials, services, and/or other work included in the Application for Payment has been duly executed and delivered by all parties thereto and is effective, and that the Owner has received (i) a true and complete copy of each purchase agreement, materials contract, subcontract, or other agreement entered into by Contractor with any Contractor Party pertaining to the Project with a base price of $ .00 or greater, (ii) a complete schedule of all other subcontracts and other above-listed types of agreements then in effect, which schedule includes the name and address of each Contractor Party, the nature of the work to be performed under the contract, and the amount of the

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subcontract, and (iii) to the extent specifically requested by Owner, a copy of any other subcontract not meeting the aforementioned threshold requirements.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance and in writing by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. The Contractor shall also comply with the following specific requirements (Sections 9.3.2.1 through 9.3.2.5):

§ 9.3.2.1 Upon receipt of payment, title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in form and substance to the Owner and the Owner's Lender(s), including, without limitation, recorded financing statements, UCC filings, and UCC searches.

§ 9.3.2.2 With each Application for Payment, the Contractor shall submit to the Owner a written list identifying each location where materials are stored off the Project site, the specific materials and quantities thereof, and the value of materials at each location (see Exhibit J.1). Such materials shall be stored in a bonded warehouse or similar facility (except as set forth below), easy to locate therein, labeled explicitly for intended use on the Project, tagged to match up with invoices maintained by Contractor, segregated from materials of other ownership and/or intended for use in other projects, and protected from theft and weather. With respect to all materials stored off site, the Contractor shall ensure compliance with the following: (i) copies of each bill of sale shall be maintained, and invoices complete with each item individually listed and priced; (ii) Owner and Owner's other designee(s) are named as additional insureds on the certificate(s) of property insurance applicable to all materials in transit and/or storage; and (iii) copies of unconditional (or partial or conditional, for materials for which payment has not yet been received) waivers and releases of Lien rights shall be sent directly to Owner, and directly to any designee of Owner, including but not limited to the applicable title company, upon Owner's written request. For all off site materials not stored as set forth above, a UCC-1 Form shall be provided by Contractor where such materials or products are (a) stored by a manufacturer, supplier, or vendor on its own property or in its own facility, except those materials covered by payment and performance bonds, (b) stored in a warehouse that is not bonded, or (c) capable of being replaced without significant impact to the Construction Schedule or cost of the Work. The Contractor shall procure insurance satisfactory to the Owner for materials stored off the Project site in an amount not less than the total value thereof.

§ 9.3.2.3 To the extent applicable, the consent of any surety and/or guaranty lender shall be obtained to the extent required prior to payment for any materials stored off the Project site.

§ 9.3.2.4 Representatives of the Owner shall have the right to make inspections of the storage areas at any time, upon reasonable request.

§ 9.3.2.5 Such materials shall be (i) protected from diversion, destruction, theft, and damage to the satisfaction of the Owner and the Architect, (ii) specifically marked for use on the Project, (iii) insured as required and set forth in the Contract and (iv) segregated from other materials at the storage facility, which must be bonded and insured as requested by Owner.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner at the time of incorporation into the Project, or at the time of payment, whichever is earlier, unless Owner fails to comply with payment provisions of the Contract, in which case title does not pass until such deficiency in Owner's payment schedule is remedied. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of Liens, in favor of the any of the Contractor Parties, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work.

§ 9.3.3.1 To the extent payments are withheld under Section 9.5.1 because the Contractor fails to bond off a Lien as required, the Owner shall release any payments withheld due to said Lien if the Contractor obtains (i) a lien bond that is compliant with the requirements of Section 3.19.1 or (ii) other security acceptable to the Owner, as confirmed by the Owner in writing.

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§ 9.3.4 In addition to other required items, each Application for Payment shall be accompanied by the appropriate Lien waivers and releases from Contractor and all Contractor Parties for whom payment is sought in the Application in question, for both progress and final payments, all in the forms collectively attached to the Agreement as Exhibit E.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven (7) days after receipt of the Contractor's Application for Payment submitted in accordance with the Agreement, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. With respect to final payment and procedures governing the same, see Section 9.10.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data provided by the Contractor comprising or supporting the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that, subject to Section 9.5.1, the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (i) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (ii) reviewed or approved construction means, methods, techniques, sequences, or procedures; (iii) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (iv) 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 Notwithstanding any contrary provisions of this Contract, the Architect may, after consultation with the Owner, withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner, if in the Architect's or Owner's opinion the representations to the Owner required by Section 9.4.2 cannot be satisfactorily made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect, after consultation with the Owner, is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, the Architect may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's or Owner's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Sections 3.3.2 and 3.3.3, because of

- **.1** Contractor's failure to carry out the Work in accordance with the Contract Documents, defective Work not remedied, or incomplete Work not remedied, in each instance within the time frame(s) provided by Contract;
- **.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 other Contractor Parties 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;
- **.7** failure to obtain necessary permits (but only if such failure results from the fault, negligence of other failure to perform of the Contractor) or reasonable evidence that Contractor has failed to pay applicable sales, consumer, use and other similar taxes, or make payment for permits and governmental fees, licenses and inspections required by the Contract and necessary for proper execution and completion of the Work, or otherwise failed to comply with the requirements of this Agreement;
- **.8** costs, expenses or damages incurred by the Owner or Architect pursuant to this Agreement;
- **.9** failure to bond off or remove a Lien as required by the Contract;
- **.10** liquidated damages owed by Contractor pursuant to Section 6.1.6 of the Agreement; and

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.11 Contractor's failure to secure, maintain and comply with insurance coverages, limits and other insurance obligations under the Contract.

§ 9.5.2 In addition to the Architect's rights under Section 9.5.1, Owner may withhold payment to Contractor as may be necessary to protect Owner from loss for which the Contractor is responsible because of any of the circumstances described in subparagraphs .1 through .11 of Section 9.5.1.

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

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, but not before written notice and seven (7) days' opportunity to cure is provided to the Contractor, issue joint checks to the Contractor and to any Contractor Party to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. The amount of all such payments will be deducted from any sums owed to Contractor. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment, and the Architect shall accordingly reflect such payment on the next Certificate for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, and unless the Owner exercises its right to withhold payments certified by the Architect as provided above in Section 9.5.2, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and so notify the Architect.

§ 9.6.2 Subject to Section 9.6.7, the Contractor shall pay each Subcontractor, no later than seven (7) days after receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid other Contractor Parties amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact those Contractor Parties to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, such other Contractor Parties, except as may otherwise be required by law.

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

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

§ 9.6.7 Payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for the benefit of those Contractor Parties who performed Work or furnished materials, or both. Contractor shall make payments to Subcontractors in compliance with O.C.G.A. § 16-8-15. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment in whole or in part within fourteen (14) days after receipt of the Contractor's Application for Payment, properly prepared, supported, and timely submitted in accordance with the requirements of Article 11 of the Agreement and elsewhere in the Contract Documents, through no fault of the

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Contractor, or if the Owner does not pay all undisputed amounts to the Contractor within seven (7) days after the date established in Section 11.1.3 of the Agreement by which the amount certified by the Architect (or amount awarded by binding dispute resolution or a court of competent jurisdiction, in accordance with the Contract Documents) should be paid by the Owner, then the Contractor may, upon seven (7) additional days' written notice to the Owner, and opportunity for the Owner or the Architect to cure their respective deficiencies, stop the Work until payment of the amount owed has been received, or the Architect has taken the appropriate action regarding the Certificate. The Contract Time shall be extended appropriately to account for any such suspension or Work stoppage, and the Contract Sum shall be increased in the amount of Contractor's reasonable costs of shutdown, delay, and start-up related directly thereto. This provision does not apply to any amounts for which Owner has a good faith basis to withhold payment, credit as an offset, or otherwise refuse payment.

§ 9.8 Substantial Completion

§ 9.8.1 The Term "Substantial Completion" of the entire Work, or designated Milestone Portion of the Work identified in Section A.2.3.2 and Exhibit I.2 to the Agreement, shall mean the stage in the progress of the Work, as evidenced and established by the date the applicable AIA G704 Certificate of Substantial Completion has been executed by all parties whose signature is called for in the form, when (i) the Work or Milestone Portion of Work is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize all portions thereof for the purpose(s) for which it was intended, and (ii) the conditions set forth below are met (as may be applicable to each Milestone Portion of Work). Compliance with the applicable provisions set forth in this Section 9.8.1 is a condition precedent to the designation of any Milestone Portion of Work as Substantially Complete:

.1 A temporary certificate of occupancy ("TCO") for all elements of the Work has been issued by the appropriate AHJ;

.2 All Project systems and equipment included in the Work are safely operational as designed and all designated or required governmental inspections and certifications have been made and posted;

.3 Without limiting the generality of the foregoing, the Project Components comprising any Milestone Portion of Work will be considered Substantially Complete in accordance with the G704 Certificate(s) of Substantial Completion and applicable Exhibits pertaining to the Milestone Portion(s) in question (all as applicable to the Project scope):

Commented [CR1]: Add drafting notes that enforcement of these requirements is at Owner's discretion.

(a) Patient Rooms, Treatment Rooms/Wards, Specialty Care Units, Offices, Staff Rooms, Special-Use Areas, and other non-public areas, including any Contractor-installed equipment within, are ready for use and functioning as intended.

(b) Lobbies, Dining and Laundry Facilities, Kitchens, Corridors, Stairs/Stairwells, Elevators, Restrooms, Conference Rooms, Activity Rooms, Maintenance/Storage Areas, Amenities, and Support Spaces.

(c) Parking Lots or Garage(s)
All elements of the Work including but not limited to striping of parking areas, demarcation and striping of handicap parking areas/spaces, signage, security, entry/exit gates and related equipment, bollards, curb stops, elevators, and support spaces, etc., are installed and functioning as intended.

(e) Building Exterior, Ground Level Hardscape, Landscape and Roads
All elements of the Work for each Milestone Portion of Work including but not limited to building façades, flashing, balcony edges, coping, exterior lighting, security and controlled access systems, ingress and egress points including doors, sidewalks, pavements/markings/signage, curb & gutter, stormwater management, landscaping and gardens, water features and fountains, etc., are functioning as intended (including the safety of public areas).

(f) Roof
All elements of the Work are complete so that any roof included in a Milestone Portion of Work under consideration, or in the entire Work, is watertight, and has been inspected by the manufacturer.

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.4 The Project is free and clear of all Liens (excepting those due to Owner's failure to properly make payment in accordance with the payment provisions of the Contract); and

.5 Contractor has satisfied all other obligations required under the Contract Documents for Substantial Completion.

At the time of Substantial Completion for each Milestone Portion of Work, Contractor will transfer utility bills to the Owner for floors or building levels that have been accepted by Owner. Contractor will continue to pay utility costs on each building until completed in accordance herewith. Utilities for Parking Garages, Building Exteriors, and Roof will be transferred when they are certified substantially complete.

§ 9.8.2 When the Contractor considers that the entire Work or a Milestone Portion of Work designated in Section A.2.3.2 and Exhibit I.2 to the Agreement is substantially complete, the Contractor shall prepare and submit to the Owner and Architect a comprehensive list of items to be completed or corrected prior to final payment ("Punch List"). The Architect and the Owner will review the list of items to be completed and add such other items they may identify to be completed by the Contractor in order to complete the Work in accordance with the Contract Documents. 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. 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, nor shall it prevent Owner or Architect from issuing multiple lists until such time as all items listed on any previous Punch List have been adequately and properly addressed.

§ 9.8.3 Not later than fourteen (14) days after receipt of the Contractor's list, the Owner and/or Architect will make an inspection to determine whether the entire Work or Milestone Portion of Work is substantially complete, and prepare and issue the final Punch List(s) to the Contractor. If the Owner's or Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the requirements of Section 9.8.1 and the Contract Documents so that the Owner can occupy or utilize the Work or Milestone Portion of Work for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner or Architect. In such case, the Contractor shall then submit a request for another inspection by the Owner and Architect to determine whether the foregoing requirements have been met and Substantial Completion thereby achieved. The foregoing notwithstanding, in the event any additional inspections are required from the Architect to determine whether a Milestone Portion of Work, or the entire Work, is substantially complete, following the initial inspection set forth above, all the costs, expenses, and fees incurred by the Owner resulting from or arising out of Architect's additional inspection time shall be deducted from payments then or thereafter due to Contractor under Section 9.5.1, or shall be paid to Architect directly by the Contractor, at Owner's discretion.

§ 9.8.4 When the entire Work or Milestone Portion of Work in the Architect's opinion is substantially complete, the Architect, on the basis of its inspection of the Work with the Owner, will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion therefor; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work, and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate that require additional or corrective Work. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Milestone Portion of Work under consideration, unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificates of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Owner may withhold from such payment an amount equal to two hundred percent (200%) of the value of 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 or Milestone Portion of Work at any stage, provided such occupancy or use is consented to by the insurer and authorized by AHJ 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,

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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 Milestone Portion of Work substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of defective Work or Work not complying with the requirements of the Contract Documents. As portions of the project are completed and occupied, Contractor shall ensure that continuing construction activity will not unreasonably interfere with the use or occupancy of the completed portions thereof. Contractor will permit Owner, or other Separate Contractors who are stocking and/or installing the Owner's furniture, fixtures, and equipment (FF&E) or performing other work in the Project, access to the Project so long as the work by other contractors does not unreasonably interfere with the performance of the Work under this Agreement..

§ 9.10 Final Completion and Final Payment

§ 9.10.1 "Final Completion" of the Work shall be achieved when all items on the Punch Lists have been fully completed and corrected and the Work has been fully performed in accordance with the Contract Documents. Upon such completion, Owner shall notify Contractor in writing of Final Completion of the Work. Final payment (including the release of any remaining retainage) shall be made only after Contractor has submitted to Owner a final Application for Payment, substantiated in accordance with the requirements of Section 9.10 and its subparagraphs, along with the requirements of Section 11.2.1 of the Agreement, if required by Owner, other data establishing payment or satisfaction of all claims or obligations, such as receipts and additional releases, to the extent and in such form as may be required by the Contract Documents. The Owner shall have the option to correct, or include by the submission of other Punch Lists items, those items not completed by the Contractor by the sixtieth (60^{th}) day after issuance of the final Punch List, provided such items could have been completed had the Contractor worked with due diligence.

§ 9.10.2 Upon receipt of the Contractor's written notice that the Work has been completed in accordance with the Punch List process addressed in Section 9.8.3 above, and in the Architect's opinion the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner and Architect will promptly make such inspection and, when the Work meets the requirements of the Contract Documents and the Contract has been fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Contractor's representations set forth in its Applications for Payment and the Architect's on-site visits and inspections, the Work has been completed in accordance with the terms and conditions of the Contract and Contract Documents, and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.3 as precedent to the Contractor's being entitled to final payment have been fulfilled. If those conditions have not been fulfilled, or Architect is unable to certify to the same, Architect may decline to issue the final Certificate of Payment until such time as all missing or incomplete conditions have been remedied.

§ 9.10.3 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and the Owner (i) 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, (ii) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and written notice will be provided to the Owner immediately or as soon as practicable upon receipt of any notice of cancellation, (iii) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (iv) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, (v) all close-out documents required by Exhibit H.4 to the Agreement or under the Specifications, including operation and maintenance manuals, product, equipment, materials, and systems warranties and guaranties, (vi) As-Builts from the Contractor and all appropriate Subcontractors (i.e., MEP, low voltage and security, etc.) in electronic and hard copy format, Shop Drawings and other close-out submittals, inspection certificates, lists of applicable service contracts for systems and equipment, (vii) a complete listing of all Contractor Parties providing material or labor for the Project, with business address (telephone, e-mail addresses, and other

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contact information also included), and items supplied, or Work performed, by such Contractor Parties; (viii) copies of all test data taken; (ix) all other submissions, certifications, information, materials, or documents required by the Contract Documents; (x) final Certificates of Occupancy issued by all AHJ; and (xi) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of Liens arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor or other Contractor Party 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 in accordance with Section 3.19.1. If a 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 the Lien, including all costs and reasonable attorneys' fees, as set forth more fully in Section 3.19.2.

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

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

- **.1** Liens arising out of the Contract and unsettled and identified in writing at or before the time of final payment;
- **.2** Claims or other unsettled matters that are subject to dispute and identified in writing at or before the time of final payment;
- **.3** failure of the Work to comply with the requirements of the Contract Documents regardless of when discovered by the Owner;
- **.4** terms of special warranties required by the Contract Documents;
- **.5** latent defects or deficiencies in the Work that are unknown to Owner at the time of, or which arise subsequent to, final payment;
- **.6** audits or inspections of Contractor's Records performed by the Owner, as permitted by the Contract Documents, after final payment, or
- **.7** any other provisions of the Contract that survive final payment (including but not limited to specified Contractor indemnity and insurance obligations).

§ 9.10.6 Acceptance of final payment by the Contractor and other Contractor Parties shall constitute a waiver of Claims (Contractor) and claims (other Contractor Parties) by that payee except those previously and specifically made in writing and identified by that payee as unsettled at the time of final Application for Payment.

§ 9.10.7 The Contractor shall notify the Architect at least seven (7) days in advance of the date the Contractor will be ready for the Architect's inspections for Substantial Completion of any Milestone Portion of Work, including Substantial Completion of the entire Work, and at least seven (7) days' advance notice of the date the Contractor will be ready for Final Completion inspection.

§ 9.10.8 If Contractor does not complete (or with respect to items taking more than thirty (30) days, commence and continue to diligently pursue the completion) all final Punch List items within thirty (30) days after the receipt of the final Punch List for a given Milestone Portion of the Work related to Substantial Completion thereof, then Owner may complete one or more of such items, and retain, from amounts then or thereafter due to the Contractor, amounts to ensure satisfactory completion of such items as provided in Section 11.1.8.3 of the Agreement. Any required Work of a given Milestone Portion of Work that remains incomplete at the time the applicable Milestone Completion Date would otherwise have been achieved but for said incomplete Work may be conditionally approved by the Owner to allow the Milestone Completion Date to be nonetheless considered achieved ("Conditional Completion"). However, in such event, the Contractor must be complete the incomplete Work at issue, as noted in the applicable G704 Certificate of Substantial Completion and its exhibits (if applicable), no later than (i) sixty (60) days following Conditional Completion for that Milestone Portion of the Work, or (ii) by Final Completion of the entire Work, whichever occurs sooner.

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§ 9.10.9 Owner shall make final payment to Contractor including the outstanding balance of retainage (as may be applicable) within forty-five (45) days after all of the conditions in Section 9.10 and its subparagraphs have been fulfilled by Contractor.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall take and observe all necessary measures and precautions for the safety and protection of all property and persons in connection with performance of the Work.

§ 10.2 Safety of Persons and Property

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

- **.1** employees of all Contractor Parties or others performing the Work, and Owner's staff, patients, invitees, 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 any Contractor Parties; and
- **.3** other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable Governing Laws bearing on safety of persons or property or their protection from damage, injury, or loss. Contractor shall indemnify Owner from any claims, losses, fines, or damages, including attorneys' fees, arising out of Contractor's failure to comply with the requirements of this Section 10.2.2.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible for all reasonable measures necessary to protect any property adjacent to the Project and improvements therein from damage due to Contractor's performance of the Work, the cost of which is included in Contractor's Cost of the Work. Any damage to such property or improvements caused by Contractor's performance of the Work shall be addressed, resolved, and paid for by the Contractor without reimbursement from the Owner.

- **.1** The Contractor shall provide and maintain temporary protection, public utilities, etc. as required by the Contract Documents. The Contractor shall prohibit open flames within building enclosures, except portable flame producing tools used when such tools provide the only feasible method to perform the Work.

§ 10.2.4 When use or storage, removal, or disposal 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 (except in no event shall it be required to proceed where doing so may adversely impact the parties' ability to receive insurance coverage when such damage or loss is insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, other Contractor Parties, or any other persons or entities for whom the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. In no event shall Contractor be responsible for damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, except to the extent caused by the fault or negligence of the Contractor in accordance with Section 3.18.

- **.1** If the Contractor fails to comply with any Governing Laws within the time required of the Contractor by the Contract Documents, after receiving written notice from the Architect or Owner of such violation, the Owner may perform whatever corrective action is necessary and the cost thereof shall be borne by the Contractor as provided in Section 2.5.

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.2 The Contractor shall at all times keep improvements on and adjoining the site, including but not limited to walks, curbs, gutters, landscaping, storm drains or sewer drains, free from damage, and shall leave them in as good a condition upon completion of the Work as they were when the Work began. With the exception of normal wear and tear, any damage incurred as a result of Contractor's operations under the Contract Documents shall be promptly repaired and the cost of such repairs shall be paid by Contractor as a Cost of the Work without any increase to the Guaranteed Maximum Price.

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

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

§ 10.2.8 The Contractor shall be responsible for any action or inaction that allows mold or fungal growth to occur within interior spaces at the Project. Contractor shall be responsible for the abatement, removal and disposal of fungal growth, which abatement, removal and disposal must be performed to the satisfaction of Owner, in Owner's sole discretion.

§ 10.2.10 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 the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding twenty-one (21) days after discovery. The notice shall provide sufficient detail and contact information and statements of witnesses to enable the other party to investigate the matter. In addition, if death, serious personal injuries or serious property damages are caused, the accident shall be reported immediately or as soon as practicable by telephone or messenger to the Owner and Architect.

§ 10.3 Hazardous Materials and Substances

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

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor, and in the event such material or substance is found to be present, to cause it to be and verify it has been rendered harmless. The term "rendered harmless" shall be interpreted to mean that levels of hazardous, toxic or regulated materials or substances are less than any applicable standards set forth in regulations issued by the Environmental Protection Agency (EPA), Occupational Safety Health Administration (OSHA), State, County, City and Local Air Control Districts. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance, or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum may be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up, which adjustments shall be accomplished as provided in Article 7. The foregoing shall not apply in situations where the existence of the hazardous material or substance (i) should have reasonably been known by the Contractor based upon the information provided in the Geotechnical Reports Package provided to Contractor by Owner in advance of the commencement of construction, regarding subsurface conditions, and (ii) the Work was not stopped in accordance with Section 10.3.1 above to allow for remediation of the unknown material or substance to be undertaken as set forth in the manner described herein.

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§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 ("Hazardous Material Claim(s)") and is not effectively remediated, 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), and results from the negligence, fault or failure to perform of Owner's consultant retained to develop a plan for remediation of the hazardous material or substance. However, the foregoing shall be inapplicable (i) to the extent that such Hazardous Material Claim is due to the fault or negligence of the party seeking indemnity, or (ii) where the Hazardous Material Claim arises from or is the result of the negligence, fault or failure to perform of Contractor, a Subcontractor or other third party retained by Contractor to remediate the site and neutralize the presence of any such hazardous material or substance in accordance with the Owner's consultant's plan, instruction or design. The foregoing shall not prevent the assertion of any Claim by Contractor (on its own behalf or on behalf of Subcontractors or others over whom it is responsible or exercises authority or control) based upon exposure to a hazardous material or substance that occurs prior to the identification and remediation of such material or substance.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous, toxic or regulated materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous, toxic or regulated 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 and reimburse the Owner for the cost and expense the Owner incurs (i) for remediation of hazardous, toxic or regulated materials or substances the Contractor brings to the site and negligently handles, or (ii) where the Contractor fails to perform its obligations under Section 10.3.1, unless the cost and expense are due to the Owner's fault or negligence.

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

§ 10.3.7 The Contractor shall provide Owner with an affidavit notarized by a notary public which certifies that all hazardous waste, trash, debris, etc. have been disposed of in a manner which is in strict compliance with all current requirements of the EPA (Environmental Protection Agency), State, County, City and local districts or authorities.

§ 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 7 and Article 15.

ARTICLE 11 INSURANCE

§ 11.1 Contractor's Insurance

The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement, Exhibit B to the Agreement, or elsewhere in the Contract Documents. Prior to commencement of the Work, and as otherwise set forth in Exhibit B, Contractor shall submit to the Owner certificates of insurance reflecting the insurance coverages required of it, which shall collectively be added to the initial certificates found in Exhibit G.1 to the Agreement. If any of Contractor's insurance coverages include completed operations coverage, or are otherwise required to remain in force after final payment, certificates evidencing continuation of such coverage shall be submitted with the final Application for Payment.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in Exhibit B or elsewhere in the Contract Documents. The maintenance by Owner of the insurance shall not constitute a waiver of Contractor's indemnity or other obligations hereunder.

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§ 11.2.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.2.2 for damages caused by fire or other causes of loss covered by this separate property insurance.

§ 11.3 In the event of any conflict, discrepancy, or ambiguity between the information set forth in this Article 11 and that contained in Exhibit B, the conflict, discrepancy, or ambiguity shall be resolved by the interpretation that provides the greatest coverage to the Owner, the Project, the Project site, and the Owner's interests therein, if such an interpretation is reasonably feasible. In any other event, the more specific information contained in Exhibit B shall control.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§12.1.1 If any portion of the Work should be covered by Contractor or other Contractor Parties contrary to the request of the Architect, any governing authorities, the Owner, or to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Architect or Owner or directed by any governing authority, be uncovered by Contractor for the Owner and Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§12.1.2 If a portion of the Work has been covered that the Architect, Owner and/or governing authority has not specifically requested to examine prior to its being covered, the Architect and/or governing authority may request to see such Work and it shall be uncovered by the Contractor. If such Work is found to be 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, costs uncovering correction, and replacement shall be at the Contractor's expense unless the condition was caused by the Owner or a Separate Contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect, Owner and/or governing authority as defective or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether fabricated, installed, completed or not. Costs of correcting such rejected Work, including additional testing and inspections, the costs of uncovering and replacement or Work, and compensation for the Architect's services and expenses made necessary thereby, and all replacement costs shall be at the Contractor's expense. All warranty Work performed hereunder, whether by Contractor or other Contractor Parties, shall be coordinated, scheduled, sequenced and supervised by Contractor's management personnel, with advance notice to Owner, Owner's representative, and Owner's property management personnel, if applicable. Owner's representative and the Project's property management personnel shall be consulted concerning an agreed upon time, date and anticipated duration for the intended Work to be scheduled and take place.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, and without limiting Owner's other rights and remedies under the Contract Documents or at law, if, within one (1) year after the date(s) of Substantial Completion of the entire Work or Milestone Portion of Work, or after the date for commencement of warranties established under Section 9.9.1, or after the date(s) established by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. Contractor shall provide all labor, engineering, supervision, equipment, tools, and materials necessary to effect the remedy and shall bear all of the Contractor's expenses in connection therewith. The cost of all work incidental to such remedy, including the removal, replacement, or installation of conforming Work or materials or equipment, and the cost of transporting repaired items to and from the site, shall be borne solely by Contractor. Contractor also shall, at no cost to the Owner, perform such tests as Owner may require to verify that the

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corrected or reperformed Work or the repaired, replaced, or modified item of material or equipment conforms to the above guarantee. Contractor shall perform such work in a timely manner, consistent with Owner's reasonable requirements. The corrected or performed Work and any repaired, replaced, or modified items of material or equipment shall be covered by the guarantees and warranties provided at Section 3.5. This obligation shall survive termination of the Contract. The remedies expressed herein are cumulative and in addition to any other right or remedy available to the Owner under Governing Laws.

§ 12.2.2.2 Just before the termination of the one-year warranty periods, the Contractor shall accompany the Owner and the Architect on an inspection tour of the entire Project and shall note any defects discovered. Contractor shall diligently commence completion of all Work required to be remediated within thirty (30) days of the inspection tour unless it is determined (with Owner's agreement) that the defect is the result of a design error or other cause beyond the reasonable control of the Contractor as described in Section 3.5.1, or the remedial Work requires the acquisition of long lead items, in which case the Contractor shall notify the Owner of expected delivery date(s) for said item(s) and the date(s) on which the Contractor will begin the remedial Work thereafter.

§ 12.2.2.3 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work. The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work which 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 caused by the Contractor's correction or removal of defective Work or Work which is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents, including the existence of extended or special warranties required by the Contract Documents applicable to materials, furnishings, machinery, equipment or specific components or systems of the Work or Project. 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.

§ 12.2.6 If the Contractor fails to correct nonconforming Work within seven (7) days after receipt of written notice from the Owner, Owner's representative, or Architect, the Owner may correct it in accordance with Section 2.5 and remove and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice and demand from the Owner, the Owner may upon five (5) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to Owner.

§ 12.2.7 Owner shall have the right to operate equipment that is essential to the Owner's operations or the health and safety of occupants until defects are corrected and warranties are met and Owner shall have the right to operate rejected equipment until it is replaced without charge for depreciation, use or wear. Such use shall not constitute acceptance of nonconforming 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 the Owner and Architect jointly agree is appropriate and equitable. Such adjustment shall be effected whether final payment has been made or not.

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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; however, if the Owner has selected arbitration as the method of binding dispute resolution, the arbitration shall be conducted pursuant to the Federal Arbitration Act, which shall also govern Section 15.4. In the event any provision in this Contract conflicts with any statutory or legal requirement or other Governing Law, such provision shall be deemed deleted and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein.

§ 13.2 Successors and Assigns

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect 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 or a portion of the Contract and warranty rights thereunder to any successors-in-interest and/or successors-in-title to Owner's interest in the Project, an affiliate of the Owner's, or any third-party purchaser of the Project site. Upon such assignment, the Owner shall have no more rights or obligations under the Contract Documents, all of which shall be assumed in full by the assignee. The Contractor shall execute all consents reasonably required to facilitate such assignment, provided such consents do not materially change the terms of the Contract.

§ 13.3 Written Notice

Written notice shall be deemed to have been duly served when delivered in person or when delivered by commercial messenger or courier or received by facsimile, as follows:

.1 If to the Owner:

_____
_____
_____
_____
Contact: _____
Phone: _____
E-mail: _____

With copies to:

Owner's Representative
Tom Doenitz
Vice President, Design and Construction
50 Hurt Plaza SE, Suite 301
Atlanta, Georgia 30303
Phone: (770) 335-5021
Email: twdoenitz@gmh.edu

For all Legal Notice or Notice concerning Claims:

Charles E. Rogers
Smith Currie Oles, LLP
245 Peachtree Center Avenue, Suite 2700
Atlanta, Georgia 30303
Phone: (404) 582-8032
E-mail: cerogers@smithcurrie.com

.2 If to the Contractor:

_____
_____

Commented [CR2]: This may well be the same individual as the Senior Representative identified in the dispute resolution process, or appropriate signatory based upon dollar amount of Project. Add to drafting notes.

DRAFT

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_____
_____
Contact: _____
Phone: _____
E-mail: _____

.3 If to the Architect:

_____
_____
_____
_____
Contact: _____
Phone: _____
E-mail: _____

§ 13.4 Rights and Remedies

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

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

§ 13.4.3 The headings in the Contract are for the convenience of reference only and shall not define, limit or otherwise affect the meaning hereof. The Contract may be executed in multiple counterparts, each of which shall be deemed an original agreement and all of which together shall constitute one agreement.

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

§ 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 Governing Laws, and paid for by the Owner. Unless otherwise provided, the Contractor shall make arrangements for and coordinate the scheduling and performance of such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate AHJ, and shall only be responsible for the cost thereof in the event additional costs, fees or expenses are necessary due to failed inspections (including re-inspection or expedited inspection fees). The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (i) tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded, and directly so for (ii) tests, inspections, or approvals where building codes or applicable Laws so require.

§ 13.5.2 If the Architect, Owner, or AHJ determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect and/or the appropriate Owner engineers may be present for such procedures. Such costs, except as provided in Section 13.5.3 and elsewhere in the Contract Documents, shall be at the Owner's expense. The engagement of a testing laboratory by the Owner shall not relieve the Contractor of his responsibility for the quality of the materials, products, or equipment installed or the satisfactory performance of the Work in full compliance with the requirements of the Contract Documents.

§ 13.5.3 If 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, expedited inspections, re-inspections, compensation for any third

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party testing or non-governmental inspection entity, and compensation for the Architect's services and expenses, shall be at the Contractor's expense. The foregoing notwithstanding, the first re-inspection required for commissioning shall be at Owner's cost, with all subsequent re-inspections required at Contractor's sole cost.

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

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

§ 13.5.6 Contractor acknowledges that the Contract Documents require certain testing protocols to be carried out at specified times. Contractor expressly agrees to provide such notice, access and other assistance as is required by the Contract Documents to ensure that the testing is carried out in a timely manner and in a manner consistent with the requirements of the Contract Documents. Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.5.7 All tests shall be made in accordance with the requirements for methods of testing by the applicable ASTM specifications. The Contractor shall provide but not pay for the following services (unless the costs thereof are increased or added to as a result of Contractor's delay, fault or negligence): (i) concrete mix design(s) (to be submitted to the Architect for his review and approval prior to placement of the concrete); if the Contractor intends to pump the concrete during the course of construction, a mix design for pumpable concrete shall be prepared and submitted to the Architect for review and approval; (ii) deliver to the independent testing laboratory adequate quantities of representative samples of materials proposed for use which are required to be tested; (iii) advise Owner sufficiently in advance of construction operations to allow the testing laboratory time to complete any required check-tests and assign personnel for field inspections and testing as specified; (iv) provide adequate facilities for safe storage and proper curing of concrete test samples on the Project site for the first twenty-four (24) hours and also for subsequent field curing as required by ASTM Specifications C31; (v) furnish such nominal labor and materials as are required to assist laboratory personnel in obtaining and handling samples at site; (vi) provide material specimens for testing of brick and mortar, including construction of required masonry prisms; (vii) assure the testing laboratory is provided advance notice and access to the structural steel during fabrication so that the required shop inspections and tests can be made; and (viii) the testing laboratory is not authorized to revoke, alter, relax, increase or release Work. If it appears that the material furnished or Work performed by the Contractor fails to fulfill Specification requirements, the testing laboratory shall promptly notify the Architect and the Owner of such deficiencies. All test results and certificates of tests performed as specified and required by the individual divisions or sections of the Project Specifications shall be no more than seven (7) days old at time of submittal to the Architect.

§ 13.6 No Representations or Warranties

The Owner makes no representations, promises, or warranties of any kind or nature to the Contractor except those that are expressly and specifically made within the Contract Documents themselves. Contractor expressly acknowledges that it shall be unreasonable as a matter of law for it to rely upon any alleged representation, promise, or warranty that is not expressly set forth within the Contract Documents.

§ 13.7 Forum

Unless otherwise specifically set forth in the Contract, any arbitration, suit, or other legal action between Owner and Contractor arising out of or related to the Contract or the Work shall be commenced and conducted in Atlanta, Georgia. For litigation, the state and Federal courts of competent jurisdiction situated in Fulton County, Georgia, shall be the exclusive and only forums for dispute resolution. Any action filed hereunder shall be commenced and prosecuted exclusively in one of those forums, and the parties hereby submit to the exclusive jurisdiction of these courts. Each party further waives any objection to the venue of any legal action brought in the Federal or state courts sitting in the jurisdiction stipulated above, and agrees not to plead or claim in such courts that any such action has been brought in an inconvenient forum.

§ 13.8 Time Limits on Claims

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, and whether asserted in litigation or arbitration, against the other arising out of or related to the Contract within the time period specified by applicable Georgia statutes of limitation for such causes of action, but in any case not more than eight (8) or, if applicable, ten (10) years after the date of Substantial Completion of the Work, pursuant to O.C.G.A. § 9-3-51. The foregoing notwithstanding, the parties acknowledge and agree that all causes of

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action related to Claims asserted by the Owner for defective, improper, incomplete or non-conforming Work, and any and all damages resulting therefrom, shall accrue, and statutes of limitation and repose shall begin to run from, the date on which Owner discovers, or reasonably should have discovered, such defective, improper, incomplete or non-conforming Work, provided that under no circumstance will any cause of action accrue prior to the date of Substantial Completion nor survive longer than ten (10) years after said date. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.8.

§ 13.9 Owner and Contractor agree that, notwithstanding any other provision of this Agreement or any rights which Contractor might otherwise have at law, equity, or by statute any liability of Owner to Contractor shall be satisfied only from Owner's interest in the real property (and constructed improvements) upon which the Project is located and the proceeds thereof. Without limiting the generality of the foregoing, if Owner is or becomes a partnership, the general or limited partners, employees, agents, or affiliates of Owner shall not in any manner be personally or individually liable for the obligations of Owner hereunder or for any claims related to this Agreement or the operation of the Project. If Owner is or becomes a corporation, no officer, employee, agents, or affiliates of Owner shall in any manner be personally or individually liable for the obligations of Owner hereunder or for any Claim in any way related to this Contract or the operations of the Project.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 If the Owner fails to make payment of any undisputed amounts due the Contractor within thirty (30) days of the date payment for the same is due as described in Article 11 of the Agreement, the Contractor shall, as a requirement preceding termination, provide formal notice to the Owner of its intent to stop all Work pending receipt of the payment due. Contractor shall be entitled to exercise this right following Owner's opportunity to cure for seven (7) days following Owner's receipt of said notice. If payment is not made by the Owner within seven (7) additional days from receipt of notice, Contractor shall be entitled to terminate the Contract for default and seek payment from the Owner of all monies due the Contractor in accordance with Section 14.1.4.

Otherwise, the Contractor may, with respect to subparagraphs .1 and .2 below, suspend the Work, or, with respect to subparagraphs .3 and .4 below, terminate the Contract, if the Work is stopped for a period of sixty (60) consecutive days through no act or fault of the Contractor or other Contractor Party:

- **.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 or local AHJ such as a declaration of national emergency that requires all Work to be stopped.
- **.3** Because the Architect has not issued a Certificate for Payment, neither the Architect not the Owner have notified the Contractor of the reason for withholding certification, neither Architect nor Owner has cured said deficiency as provided in Sections 9.4.1 and 9.5.1, and Owner has failed to make payment to Contractor of any amount for the uncertified Application of Payment.
- **.4** The Owner has failed to provide to the Contractor, within a reasonable time following Contractor's request for the same, reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may also terminate the Contract if, through no act or fault of the Contractor Parties, repeated suspensions, delays, or interruptions of the entire Work by the Owner (as set forth in Section 14.5 herein), constitute in the aggregate more than one hundred percent (100%) of the total number of days scheduled for completion, or one hundred and eighty (180) days in any 365-day period, whichever is less.

§ 14.1.3 Except as may be expressly provided elsewhere in the Agreement, the provisions set forth above in Sections 14.1.1 and 14.1.2 provide the exclusive circumstances under which Contractor shall be entitled to stop or suspend the Work, or terminate the Contract.

§ 14.1.4 If one of the reasons described in Section 14.1.1 or 14.1.2 as justification for termination exists, the Contractor may, upon an additional seven (7) days' notice to the Owner and Architect and opportunity to cure following notice as described in Section 14.1.1, terminate the Contract and recover from the Owner payment for Work executed, and termination costs limited to thirty (30) days' worth of pro-rated general conditions, as calculated in Section 8.3.1.2, or the remainder of Contractor's Fee, whichever is less. If and only if Contractor's termination of the Contract is due to non-payment by the Owner, Contractor shall also be entitled to recover its reasonable attorneys' fees incurred in the course of pursuing termination.

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§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract for cause if the Contractor either (i) refuses or fails to supply enough properly skilled workers, qualified supervision or proper materials, (ii) fails to make prompt, proper payment to Subcontractors or suppliers for material or labor in accordance with the respective agreements between them and the Contractor and the Subcontractors or suppliers, (iii) disregards Governing Laws, (iv) otherwise is guilty of a breach of any material provision of the Contract Documents, (v) fails to comply with and maintain all insurance obligations required or imposed by the Contract, or (vi) if a petition is filed by Contractor, or against Contractor with its consent, under any federal or state law concerning bankruptcy, reorganization, insolvency or relief from creditors, or if such a petition is filed against Contractor without its consent and is not dismissed within thirty (30) days after the date of filing; or if Contractor is generally not paying his debts as they become due; or if Contractor becomes insolvent; or if Contractor consents to the appointment of a receiver, trustee, liquidator, custodian or the like of Contractor or of all or any substantial portion of its assets; or if a receiver, trustee, liquidator, custodian or the like is appointed with respect to Contractor or takes possession of all or any substantial portion of its assets and such appointment or possession is not terminated within fifteen (15) days; or if Contractor makes an assignment for the benefit of creditors, without the prior approval of Owner. Following any such circumstance or event, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor seven (7) days' written notice, (1) terminate the employment of the Contractor and take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor, for the purpose of finishing the Work, (2) accept assignment of subcontracts pursuant to Section 5.4 and the Contract Documents, and (3) finish the Work by whatever reasonable method the Owner may deem expedient. In such case the Contractor shall not be entitled to receive any further payment until the Work is finished and the Owner has fully and completed assessed and calculated its costs, damages, fees, and expenses incurred thereby, and then only if further payment is warranted after the setoff of all Owner costs, damages, expenses, and fees (including attorneys' fees and consultants' fees) incurred in completing the Work.

§ 14.2.2 The foregoing notwithstanding, in the event the Contractor abandons the Project and/or the Work (i) by removing its forces from the site and refusing to return, or to supply workers or materials necessary to complete the Work, or (ii) constructively abandons the Project, by refusing or failing to provide adequate forces or qualified supervision to reasonably and properly carry out and complete the Work in accordance with the Contract Documents and Construction Schedule, and then fails to cure Contractor's default(s) either as a precursor or in response to receiving Owner's written notice of termination for cause, the seven (7) day period between notice and the actual termination shall be inapplicable, and formal termination of Contractor's employment shall be effective forty-eight (48) hours after Owner's notice (and opportunity to cure) to Contractor that Owner considers the Project and/or Work abandoned and further that Owner wishes to terminate Contractor's employment.

§ 14.2.3 If the unpaid balance of the Contract Sum exceeds all costs to the Owner of completing the Work, then the Contractor shall be paid the Cost of the Work for the Work properly completed prior to termination, plus an equitable portion of the Contractor's Fee in proportion to that amount of the Cost of the Work, but only to the extent of such excess. In no event shall Contractor be entitled to profits, overhead, Fee, or costs on unperformed Work. If the unpaid balance of the Contract Sum is exceeded by the costs of finishing the Work, including compensation for the Architect's additional services made necessary thereby and all other damages incurred by the Owner (including any other design professional, legal, consulting, accounting, managerial and administrative services required to facilitate completion, costs of additional inspections and tests required, any costs incurred in retaining another contractor or other subcontractors, any additional interest or fees which the Owner must pay by reason of a delay in completion of Work, and any other actual or liquidated damages, costs and expenses the Owner incurs by reason of completing the Work or any delay in the Work) then the Contractor shall pay the difference to the Owner. The Contractor's obligation to pay such sums to the Owner shall survive the termination of the Contract.

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§ 14.3 Termination by the Owner for Convenience

§ 14.3.1 The Owner may terminate this Contract, in whole or in part, at any time without cause for any reason and in its sole discretion by giving the Contractor seven (7) days' prior written notice thereof. Upon receipt of such written notice, the Contractor shall (i) stop all Work, except as the Owner may direct otherwise, (ii) incur no further liabilities, and (iii) take all such actions as necessary or as the Owner may direct to protect the Work and to minimize all costs resulting from the termination. If the Owner so terminates this Contract without cause, the Contractor shall be entitled to receive compensation for Work properly performed as of the termination date equivalent to the percentage of the Work properly completed through the date of Owner's notice of termination, including Fee applied thereto, multiplied by the Contract Sum plus reasonable demobilization costs (i.e., dismantling and removal of Contractor's office, utility disconnection/transfer charges, and items of similar nature) approved by the Owner, less the amount of prior payments to the Contractor. Upon termination under this Section 14.3, the Contractor and every Subcontractor shall make available to the Owner, as the Owner in its discretion may direct and elect, the assignment of all contracts, purchase orders, materials, supplies, equipment and any other items pertaining to this Contract, in accordance with Section 5.4. The provisions of the Contract, which by their nature survive final acceptance of the Work, shall remain in full force and effect after such termination to the extent provided in such provisions.

§ 14.3.1 In no event, however, shall Owner be liable to Contractor for any unabsorbed overhead or unrealized profits respecting the terminated Work. Contractor's invoice for compensation in the event of termination under Section 14.3 must be supported by sufficient records and documentation to enable Owner to verify all amounts claimed by Contractor. Upon termination pursuant to this Section, Owner shall have no further obligation to Contractor respecting the terminated portion(s) of the Work, except for its obligation as described above.

§ 14.4 If any termination for cause based upon Owner's good faith assessment of Contractor's performance hereunder is subsequently determined to be unjustified by a trier of fact, the termination for cause shall be converted to a termination for convenience. In such event, Contractor's sole and exclusive remedy for such wrongful termination for cause shall be limited to the recovery specified in Section 14.3.1.

§ 14.5 Suspension by the Owner for Convenience

§ 14.5.1 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.

§ 14.5.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption by the Owner under Section 14.5.1. Adjustment of the Contract Sum shall be limited to (i) Contractor's additional general conditions pro-rated for thirty (30) days as calculated in accordance with Section 8.3.1.2, or (ii) if the suspension is for less than thirty (30) days, those actual general conditions incurred solely by virtue of the suspension, delay, or interruption. No adjustment shall be made to the extent that

.1 performance is, was, or would have been, so suspended, delayed, or interrupted by another cause for which the Contractor is responsible in whole or in part; or

.2 an equitable adjustment is made or denied under another provision of the Contract.

ARTICLE 15 DISPUTE RESOLUTION

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, adjustment or interpretation of Contract terms or conditions, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract or the Project. The responsibility to substantiate Claims shall rest with the party making the Claim.

§15.1.2 Time Limits on Claims. Claims by Contractor must be initiated, and written notice thereof provided to Owner and Architect in accordance with Section 13.3, within thirty (30) days after occurrence of the event giving rise to such Claim or within thirty (30) days after Contractor first recognizes the condition giving rise to the Claim, whichever is later. Contractor acknowledges the extreme importance to Owner of identifying and resolving Claims on an "as-encountered" basis in order for Owner to take proactive measures to address end-user complaints, maintain its business and primary strategies in the marketplace, and to avoid damages associated with delays arising from untimely assertion of Claims or the adverse effect of the same on the orderly progress, sequencing, and completion of the Work. Contractor further acknowledges the extreme and material prejudice suffered by Owner as a result of any attempted assertion by Contractor of Claims except as specifically permitted herein, in the precise manner and within the time limits established herein. The notice requirement in this Section and Section 15.1.2.1 shall be an express condition

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precedent to Contractor's right to recover under any Claim. Any waiver by Owner of the notice requirements for a Claim, event, or occurrence shall not constitute a waiver of these notice requirements for any other Claim, event, or occurrence. All information required in the notice must be submitted within the time limits established herein. Contractor further acknowledges and agrees that the time limits established herein for the initiation of any Claim are reasonable and will adequately permit Contractor to investigate, assemble and prepare its claim to the extent necessary to provide the requisite notice required hereunder to the Owner. Owner shall exercise its best efforts to provide notice to Contractor of any Owner Claims as soon as reasonably practicable (in accordance with Section 15.1.2.2 below) following Owner's knowledge and awareness of (i) the Claim, (ii) all relevant circumstances giving rise to it and (iii) the nature and extent of damages sustained or likely to be sustained by Owner as a result.

§ 15.1.2.1 Claims by Contractor must contain all the following:

(a) A narrative statement referencing and attaching the supporting documentation and specifically describing the Contractual, factual, and any architectural or engineering basis of the Claim, including reference to the appropriate Contract Documents at issue;

(b) If the Claim alleges delay to the critical path of the Work, the Claim must include the precise number of days claimed, all alleged impacts, financial or otherwise, on the Work, and the specific amount of money, if any, claimed as a result of the delay, with the understanding that additional compensation attributable to delay shall be recoverable by the Contractor only for Compensable Delay as set forth in Section 8.3.1.2;

(c) If the Claim alleges acceleration or constructive acceleration of the Work, the Claim must comply with Section 15.1.5.6 and include the precise number of days' extension of the Contract Time the Contractor claims it would have been entitled to receive, but for the acceleration, and the precise number of days by which the Work has been accelerated. No Claims for acceleration for Work that is not on the critical path shall be permitted. Claims for acceleration shall be limited to the premium portion of labor costs actually incurred for overtime during the period of acceleration; and

(d) If the Claim is for additional compensation (other than for delay), the Claim must include a detailed calculation of the precise amount claimed with all supporting documentation, and must otherwise satisfy the requirements of these General Conditions.

Claims by the Contractor may also be reserved in writing as follows. In the event Contractor is unable to ascertain with reasonable precision, at the time notice of a Claim is due to be provided to the Owner in accordance with Section 15.1.2, (i) the duration of claimed delay, (ii) the amount of financial impact resulting from delay, (iii) the amount of damage sustained or compensation to be sought in the context of a Claim, or any combination of (i) – (iii), Contractor shall notify the Owner, in writing and within the time allowed for the assertion of a Claim in accordance with Section 15.1.2. Such notice shall state with specificity the reason(s) such details are not subject to reasonable ascertainment within the time limits imposed by Section 15.1.2, identify any barriers to such ascertainment that may be in the control of the Owner or Architect, provide a reasonable estimate of the delay, damages, compensation, or financial impacts, and a reasonable estimate of a time certain by which said details can be provided to Owner with the specificity otherwise required by this Section 15.1.2.1. Notice provided in this fashion shall be deemed sufficient to reserve a Claim on behalf of Contractor. Failure of the Contractor to properly reserve a Claim by timely providing notice including (1) the requisite factual information noted in (a)-(d) above, or (2) reasons for failing to do so as required herein, shall result in a waiver of the Claim, unless the Contractor cures its failure by providing the requisite information to Owner within seven (7) days following receipt of notice of non-compliance from Owner.

§ 15.1.2.2 Subject to Section 15.1.7, Claims by Owner that are discovered by Owner prior to the Contractor's completion of the Work shall be asserted within a reasonable time of Owner's discovery of the Claim, not to exceed thirty (30) days after Owner has been apprised of or discovered the nature and extent of its damages, as well as the identity of all persons or entities involved, and shall include information necessary for Contractor to reasonably evaluate the Claim and/or to mitigate the issues raised by the Claim. If the Owner observes a non-compliant or defective condition during this period and fails to provide the Contractor with notice as set forth above and a reasonable opportunity to cure, the Owner waives the right to require correction by the Contractor. To the extent possible given the nature and extent of the Claim, and to facilitate resolution prior to the Contract's close-out, Owner agrees to notify Contractor in writing of, and provide all information then in Owner's possession that is pertinent to such Claims, not later than the time of final payment. Claims discovered or arising subsequent to the completion of the

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Project and final payment shall be noticed and reported to the Contractor within the applicable period(s) of limitation set forth in Section 13.8 above.

§ 15.1.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make undisputed payments in accordance with the Contract Documents. Subject to Section 9.10.5, the making of any payment by Owner shall not constitute a waiver of any Claims by Owner or an acknowledgement by Owner that Contractor is entitled to additional time or compensation. The failure of Contractor to continue to proceed with the Work during the pendency of the Claim shall be a material breach of this Contract.

§ 15.1.4 Claims for Additional Cost. Contractor agrees that it will be allowed an increase in the Contract Sum only in the limited circumstances provided in the Contract, for (i) Owner-directed changes in the Work, (ii) Owner-caused damages not excluded by any provision of the Contract, (iii) an order by the Owner to stop the Work where the Contractor was not at fault, (iv) failure of payment of undisputed amounts by the Owner, and (v) other Compensable Delay as defined in Section 8.3.1.2. If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided in Section 15.1.2.1 shall be given by the Contractor before proceeding to execute that portion of the portion of the Work that is the subject of the Claim. However, neither the existence of such a Claim nor the fact that Contractor has provided notice of the same to Owner shall allow or justify delay by the Contractor in the commencement of the portion of the Work at issue, or otherwise failing to maintain the progress of the Work in compliance with the Construction Schedule. Notice under this Section 15.1.4 shall contain sufficient detail and substantiating data to permit evaluation of the Claim by the Owner. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 Claims for Additional Time

§ 15.1.5.1 Claims for an extension of the Contract Time alone shall only be allowed as set forth in Section 8.3.1.1. If the Contractor wishes to make a Claim for an extension in the Contract Time, written notice as provided in Section 15.1.2.1 shall be given to the Owner. Such notice shall include (i) detailed documentation of the cause or event resulting in the need for the extension of time, (ii) a schedule analysis based upon the most current Construction Schedule, showing the impact of the cause or event on the critical path of the most current Construction Schedule, (iii) an estimate of cost, and (iv) and all information required by Section 15.1.2.1. In the case of a continuing delay, only one Claim is necessary for each continuing period of delay experienced; however, for concurrent delays, a Claim is required for each separate impact. No increase in the Contract Time shall be deemed given by implication or otherwise unless set forth in an approved Change Order, and Claims for or based upon any cause or event constituting an Ineligible Delay as set forth in Section 8.3.1.3 shall be invalid.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be valid only to the extent compliant with Section 3.3.6 of the Agreement, and noticed, supported, and documented as set forth in the applicable provisions of Sections 15.1.2, 15.1.5.4, and 15.1.5.5.

§ 15.1.5.3 The Contract Time shall be extended by Change Order by the number of days reflecting the difference between the date on which Substantial Completion of the entire Work is achieved and the date on which Substantial Completion of the entire Work would have been completed, but for the event giving rise to the right to an extension. Extensions of Contract Time shall not be granted unless a delay caused by one or more of the circumstances described in Section 8.3.1.1 extends the critical path of Work. When authorized, an extension of Contract Time shall be granted for each additional day the Contractor's achievement of the Milestone Completion Date applicable to the Substantial Completion of the entire Work was delayed.

§ 15.1.5.4 For the purposes of this Contract a "Weather Event" is defined as a day in excess of the number of expected or anticipated adverse weather days set forth in Section 3.3.6 of the Agreement, on which the Contractor is incapable of performing scheduled critical path Work for more than four (4) hours in each day because of any of the following:

(a) Rain in excess of one tenth of an inch (.10") or snow in excess of one inch (1"), as measured by the precipitation gauge kept at the Project site and substantiated by an independently recorded measurement obtained from the National Oceanic and Atmospheric Administration's National Weather Service (the "NWS") for the same date in Atlanta, Georgia at the weather station located at Hartsfield-Jackson International Airport ("HJIA"). While HJIA is in close proximity, it is understood the weather data obtained therefrom may vary from the jobsite conditions, and will be used as supporting data only with respect to precipitation. For example, if the jobsite precipitation gauge measures .11", and HJIA data records .09" of precipitation over the same period, the jobsite data will take priority.

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(b) Project site conditions such as mud, pooling of water, ice, or standing snow subsequent to the actual precipitation day(s) require "mucking out" efforts that prevent the performance of critical path sitework activities such as, but not limited to, mass grading, building pad grading, excavations, and backfill operations. Contractor will make every reasonable effort to implement effective best management practices to manage site conditions and maintain suitable soil conditions at all times.

(c) Conditions at the Project site where the critical path Work is scheduled to be performed are outside of documented product specification constraints or documented manufacturer recommendations (examples include, but are not limited to, placing concrete, roofing applications, waterproofing application, exterior envelope installation, masonry activities, welding work, fireproofing application, and EIFS application), and Contractor provides said documentation contemporaneously with the assertion of a given day as a Weather Event.

(d) Sustained wind speeds, measured by a properly calibrated wind gauge on the Project site and substantiated by an independently recorded measurement obtained from NWS for the same date and duration obtained from the weather station at HJIA, exceeding the published, permissible limits for the safe use of specific equipment or performance of certain specific tasks (but only as applied to critical path Work that requires the use of crane(s) or other aerial equipment for erection of the building structure).

(e) Installation of temporary protection measures and/or dismantling of equipment necessary to prepare the Project site for extreme weather events, such as named storms and flooding; removal of temporary protections, clean-up, and restoration of Project site as needed to resume construction activities once site clearance is granted by the authority having jurisdiction.

§ 15.1.5.5 All Weather Events shall be recorded by the Contractor's onsite Project management team, and records pertaining thereto shall be available to Owner upon request. Days from the Construction Schedule that are lost due to Contractor's inability to perform scheduled critical path Work (as set forth in Section 15.1.5.4) must be included in Contractor's daily reports and substantiated by documentation of the impact on the critical path of the Construction Schedule. Contractor shall provide daily report and schedule substantiation documentation at the next scheduled OAC meeting following any adverse weather day claimed by Contractor as a Weather Event, including precipitation and wind speed records measured by the Project site gauges and substantiated by an independently recorded measurement obtained from the HJIA NWS for the same date.

§ 15.1.5.6 Contractor agrees that any Claim seeking additional compensation for any acceleration to the Work must show that the Owner's action or failure to act expressly accelerated the Work on the critical path for construction ("Compensable Acceleration"). Compensable Acceleration shall be limited to the premium portion of labor costs actually incurred for overtime, purely and exclusively because of the acceleration. In no event shall Contractor be entitled to extended home office overhead, general and administrative expenses (as that phrase is commonly understood in keeping with generally accepted accounting principles), or additional general conditions. No costs incurred or calculated in any other manner shall be recoverable. Contractor expressly waives all Claims for impact, acceleration, lost productivity or similar damages, except as allowed herein and under Section 15.1.2.1.

§ 15.1.5.7 Force Majeure

If the Contractor is delayed at any time in the progress of the Work by Force Majeure, then provided that Contractor complies with the below requirements, the Contract Time shall be extended by Change Order, provided further that such extension of Contract Time shall be net of any concurrent delays caused by or due to the fault or negligence of Contractor. The Contractor shall cooperate in good faith with Architect and Owner to minimize the impact of any such occurrence. No extension of time shall be granted for Force Majeure unless a Milestone Completion Date is extended by the delay, and such delay is proven by an independent critical path analysis of the work activities. Contractor shall not be entitled to any compensation for Force Majeure delay. Contractor's sole remedy for Force Majeure delay shall be an extension of the Contract Time.

"Force Majeure" means catastrophic or named storms (excluding precipitation and/or wind resulting therefrom, which are addressed under Section 15.1.5.4) or floods, tsunamis, tornadoes, hurricanes, earthquakes and other acts of God, wars, civil disturbances, terrorist attacks, revolts, insurrections, sabotage, commercial embargoes, national epidemics or global pandemics unknown or unanticipated at the time of the execution of the GMP Amendment, fires, explosions, and actions or orders of governmental AHJ that were not requested, promoted, or caused by the affected party; provided that such act or event (a) delays Owner or Contractor's performance of its obligations under the Contract Documents, (b) is beyond the reasonable control of the party claiming Force Majeure and not due to its fault or negligence, (c) could not have been prevented or avoided by the party (in the case of Contractor, any Contractor

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Parties) claiming Force Majeure through the exercise of due diligence, including the expenditure of any reasonable sum, and (d) with respect to Contractor claiming Force Majeure, the act or event in question was the sole cause of Contractor's failure to meet any Milestone Completion Date set forth in Section A.2.3.2 of Exhibit A. If Contractor encounters or experiences circumstances that would qualify as a Force Majeure event hereunder except for the existence of a concurrent Contractor-controlled delay during the same period, such that condition (d) of the preceding sentence is not satisfied, but the circumstances in question (and their impacts) persist beyond the length of any Contractor-controlled delay, Contractor shall be able to claim as a Force Majeure event the "net" period of time associated with the event that outlasts the concurrent or any subsequently arising Contractor-controlled delay. For the avoidance of doubt, unless otherwise caused by an event of Force Majeure, Force Majeure shall not include any of the following: (i) economic hardship, (ii) foreseeable changes in market conditions, (iii) material shortages or supply-chain interruptions, (iv) the non-payment of money by Contractor or any other Contractor Party or failure attributable to lack of funds on the part of any Contractor Party, (v) unavailability or delayed delivery of, or inability to obtain labor or materials, or (vi) nonperformance or delay by Contractor or other Contractor Parties.

§ 15.1.6 Non-Waiver of Claims for Consequential Damages

The Contractor and Owner expressly retain and do not waive Claims against each other for consequential damages arising out of or relating to this Contract. Claims for consequential damages may include but are not limited to

- **.1** proceeds actually recovered by the insured under the insurance provided by or on behalf of the party responsible for the damage;
- **.2** Claims for indemnity under the Contract to the extent any third-party claim underlying such a Claim asserts, is based upon, seeks to recover, or includes consequential damages of any kind;
- **.3** damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business opportunity and reputation, and for loss of management or employee productivity or of the services of such persons; and
- **.4** damages incurred by the Contractor for principal office expenses including compensation of personnel stationed there, for loss and increased cost of financing, loss of business, business opportunity and reputation, and for loss of profit, including anticipated profit arising directly from the Work that is not actually performed.

§ 15.1.7 If either party to the Agreement suffers injury or damage to person or property (other than the Project itself) 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 twenty-one (21) calendar days after discovery of such injury or damage. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 15.1.8 All Claims made by the Contractor, or Contractor Party being asserted through the Contractor, shall be made by a representative of the Contractor having overall responsibility for the Contractor's affairs. The submission of a Claim shall constitute a representation by Contractor that (i) the Claim is made in good faith, (ii) the supporting data are accurate and complete to the best of Contractor's knowledge and belief; and (iii) the amount requested accurately reflects the entire adjustment to the Contract Sum and Contract Time for which the Contractor believes the Owner is liable pursuant to the Contract Documents.

§ 15.1.9 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.

§ 15.1.10 If a Claim relates to or is the subject of a Lien, the party asserting such Claim may proceed in accordance with applicable Georgia law to comply with notice or filing deadlines prior to the resolution of the Claim via mediation or arbitration, or consolidation in a court of competent jurisdiction. Notwithstanding anything in the Contract to the contrary, any action to preserve, enforce, or foreclose a Lien shall be resolved via litigation, shall be decided according to the laws of the State of Georgia, shall be filed in a court of competent jurisdiction in Fulton County, Georgia, and upon filing, shall be immediately and voluntarily stayed pending the determination of all issues of fact and underlying causes of action in the dispute resolution proceeding selected by the parties pursuant to the Agreement.

§ 15.2 Senior Officer Resolution. All Claims shall initially, prior to non-binding mediation or the commencement of legal proceedings, be submitted to a Senior Officer from each party for resolution by mutual agreement between said

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Senior Officers. Any mutual agreement by the Senior Officers shall be final and binding upon the parties. For purposes of this section, the term "Senior Officer" shall mean, with respect to the Contractor, the Contractor's chief executive officer, president, managing partner, chief financial officer, or any principal or vice president, and with respect to Owner, the chief executive officer, president, chief financial officer, General Counsel, or director of Owner or its affiliates. Should the Senior Officers fail to arrive at a mutual agreement within thirty (30) days after the submission of the Claim to them, Owner and Contractor shall in good faith mediate any Claim as a condition precedent to submitting the Dispute to formal dispute resolution as set forth below.

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract not resolved pursuant to Section 15.2, except those waived as provided for in Sections 9.10.4 and 9.10.5, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall undertake and endeavor to resolve their Claims by mediation. The parties shall jointly select the mediator; but, if the parties are not able to agree on a mediator, they shall petition the American Arbitration Association ("AAA") to schedule and carry out the mediation in accordance with its Construction Industry Mediation Procedures in effect on the date of the execution of the Agreement, which shall include the appointment of a mediator. 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 sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If a binding dispute resolution proceeding is stayed pursuant to this Section 15.3.2, the parties may, if the proceeding is arbitration pursuant to Section 15.4, nonetheless proceed to the selection of the arbitrator(s), negotiate and execute an arbitration agreement as provided by Section 15.4.1 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 Atlanta, Georgia, 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 Subject to Section 15.5, any Claim, dispute or other matter in question arising out of or related to the Contract that is subject to but not resolved by mediation pursuant to Section 15.3 may be decided by binding arbitration as set forth below rather than by litigation, if so agreed by the parties in writing. Such proceeding shall be conducted in person in Atlanta, Georgia, according to the laws of Georgia (subject to Section 13.8 herein). A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the AAA (or in the event the parties have mutually agreed in writing to use another administering agency or private agency, person or entity to administer the arbitration, then with that agency, person or entity). The parties consent to single member arbitration for disputes involving Claims alleged at a value of less than $1,000,000.00 and a three (3) member panel for disputes allegedly valued at or above that figure. Any single member arbitration shall be conducted by an experienced construction attorney as arbitrator, while a three (3) member panel may be comprised of a combination of construction professionals and a single experienced construction attorney. The parties further agree that, within sixty (60) days of the non-filing party's receipt of a demand for arbitration served hereunder (during which time the non-filing party's obligation to file a response to the demand shall be tolled), they shall work together in good faith to jointly prepare a written arbitration agreement which shall set forth in detail the terms, conditions and procedures to be followed in such proceeding, including the number and authority of arbitrators to be selected, and further that such terms, conditions and procedures shall supersede contrary terms set forth herein. The parties shall mutually select the arbitrator; if they cannot agree on the choice of an arbitrator, the parties shall apply to the AAA or other agreed upon administering agency or private agency in writing, with such agreed upon agency to appoint the arbitrator. The foregoing notwithstanding, if the parties are unable to agree upon the terms and conditions of an arbitration agreement within the sixty (60) day period established above for the preparation and execution of such an agreement, the Owner, in its sole discretion, may elect to pursue the resolution of the Claim(s) through arbitration as otherwise generally set forth in this Section 15.4 and pursuant to the AAA, or through litigation in a court of competent jurisdiction. For statute of limitations purposes, the parties agree that the date of the institution of legal or equitable proceedings based on the Claim(s) at issue shall revert back to the date on which the arbitration demand was filed, if the original demand for arbitration was timely filed in accordance with Section 15.4.1.2 below. 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.

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§ 15.4.1.1 Absent agreement of the parties to the contrary, the arbitrator is specifically empowered to award expert witnesses' fees and litigation costs to the extent allowed by contract or applicable laws. The arbitration may include, by consolidation or joinder or in any other manner, any additional persons or entities if (i) such persons or entities are materially involved in a common issue of law or fact in dispute, (ii) such persons or entities are either contractually bound to arbitrate or otherwise consent to arbitration, including by virtue of a contractual incorporation of a consent to be subject to and bound by an agreement to arbitrate such as that set forth in Section 5.3.1 of these General Conditions, and (iii) the Owner consents in accordance with Section 15.4.4. If another involved person or entity will not consent to arbitration, Owner, in Owner's sole discretion and in addition to its rights under Section 15.5, has the option to elect consolidated litigation in court by a bench trial to resolve the dispute. **EACH PARTY WAIVES ITS RIGHT TO A JURY TRIAL**. However, if another involved party will not consent to a bench trial, Owner, in its sole discretion, has the option to elect a consolidated jury trial. It is understood that the purpose of this Section 15.4.1.1 is to allow Owner to determine the best means of achieving a reasonably consolidated proceeding (not necessarily a totally consolidated proceeding) that will minimize duplicative processes and minimize the risk of inconsistent results, in the following order of preference: (a) a consolidated arbitration of significant parties, if possible; (b) alternatively, a consolidated bench trial of significant parties, if possible; or (c) alternatively, and as a last resort, a consolidated jury trial of significant parties.

§ 15.4.1.2 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 time limitation provisions of Section 13.8. For purposes of determining the timeliness of the assertion of a demand or cause of action, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 15.4.2 The arbitrator shall be empowered to rule on any arbitrability issues. The award rendered by the arbitrator or arbitrators shall be a reasoned award and shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 15.4.3 The foregoing agreement to arbitrate, as well as the agreements to consolidated arbitration/litigation set out in Section 15.4.1.1, 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 Limitation on Consolidation or Joinder

The parties acknowledge and agree that any arbitration brought hereunder may also include the Architect. The parties specifically agree to join a consolidated action or arbitration, or to allow joinder of other parties to an arbitration proceeding between them, to the extent requested by the Owner, which may include Contractor and other Contractor Parties. Contractor acknowledges that neither it nor any other Contractor Parties shall have the ability or authority to join Owner, consolidate proceedings involving the Owner, or join additional parties to a proceeding involving the Owner absent Owner's express written consent, which shall not be unreasonably withheld.

§ 15.5 Litigation

Owner has the option, to be exercised in its sole discretion, to elect litigation by a bench trial in a court of competent jurisdiction as the means of dispute resolution applicable to any Claim. In the event Contractor seeks to submit a Claim for arbitration under Section 15.4 and Owner exercises its option to choose litigation as set forth herein, Owner shall have fifteen (15) days following receipt of Consultant's written arbitration demand to notify Contractor, in writing, that Contractor must file suit in accordance with Section 13.7 and proceed with litigation rather than arbitration. If Owner fails to so notify Contractor within the requisite 15-day period, Owner waives its right to elect litigation as provided herein, and Contractor's demand for arbitration shall establish the means of dispute resolution to be followed by the parties. It is understood that the purpose of this Section 15.5 is to allow Owner to determine the best means of achieving a reasonably consolidated proceeding (not necessarily a totally consolidated proceeding) that will minimize duplicative processes and minimize the risk of inconsistent results.

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Addendum A to Drafting Instructions for GMH A133/A201 (09-18-26)

§ 6.1.6 Liquidated damages, if any:
The Construction Manager understands and acknowledges that any delay in completion of the Work or any phase of the Work beyond those durations specified will materially affect the Owner by causing, among other things, loss of revenues, great inconvenience, increased administrative expenses, and other tangible losses and damages. Accordingly, Owner and Construction Manager agree that if Substantial Completion is not achieved by the Substantial Completion Date, unless any such delay is the result of an event for which Construction Manager is expressly entitled to an extension of the Contract Time under this Agreement, Construction Manager shall pay the Owner liquidated damages, in the following amounts:

$_____ per day for each and every day of delay the first thirty (30) days beyond the Substantial Completion Date;
$_____ per day for the second thirty (30) days; and
$_____ per day for each and every day of delay thereafter.

Owner and Contractor agree that these amounts constitute a reasonable and conservative forecast of the actual delay damages Owner would suffer as a result of any such delay, and that they do not constitute a penalty.

§ 15.1.6 Waiver of Claims for Consequential Damages
The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract, except (i) to the extent of proceeds actually recovered by the insured under the insurance provided by or on behalf of the party responsible for the damage, or (ii) the liquidated damages payable by the Contractor to the Owner pursuant to the Contract Documents, or (iii) to the extent any third-party claim underlying a Claim for indemnity under the Contract asserts, is based upon, seeks to recover, or includes consequential damages of any kind. This mutual waiver includes

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business opportunity 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 compensation of personnel stationed there, for loss and increased cost of financing, loss of business, business opportunity and reputation, and for loss of profit, including anticipated profit arising directly from the Work that is not actually performed.

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 assessment, deduction or award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.