

# **Additions and Deletions Report for** **AIA<sup>®</sup> Document A201<sup>™</sup> – 2007**

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

...

The Contract Documents form the ~~Contract for Construction. Contract.~~ 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 a Modification, which is a formal written amendment signed by both parties that expressly modifies the Contract or a Change Order as defined herein. Except as expressly stated herein, the Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect between any persons or entities other than the Owner and the Contractor or a cause of action in favor of any third party against either the Owner or the Contractor. The Owner shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties. the Contract and have a direct contractual right against parties bound by the Contract to enforce obligations under the Contract intended for its benefit.

...

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

...

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

...

The Specifications are that portion of the Contract Documents consisting of the written requirements for administration, materials, equipment, systems, standards and workmanship for the Work, and performance of related services. Scope paragraphs in the Specifications are brief abstracts that do not itemize or otherwise limit the scope of work discussed in such section.

...

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



Architect's consultants, or other design professionals, to describe and define the Work. Instruments of Service include studies, surveys, models, sketches, drawings, specifications and other similar materials.

...

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

#### **§ 1.1.9 CONTRACTOR PARTIES**

The "Contractor Parties" are the Contractor, its Subcontractors, Sub-subcontractors and Suppliers (each as defined in Article 5 below), and anyone directly or indirectly employed, retained or contracted by any of them or anyone for whose acts they are responsible or liable.

#### **§ 1.1.10 RELATED PARTY**

A "Related Party" is (1) any parent company, subsidiary, affiliate, division or any other entity or enterprise having any common ownership or management with the Contractor, (2) any entity or enterprise in which the Contractor, or any director, stockholder, officer or management employee of the Contractor, or any of their immediate family members, owns any interest in excess of five percent (5%) in the aggregate or (3) any person, entity or enterprise that in any way, directly or indirectly through an immediate family member, may control or manage the business or affairs of the Contractor.

#### **§ 1.1.11 LAWS**

The terms "Law" and "Laws" mean all laws, statutes, codes, ordinances, rules, regulations, standards, and lawful orders and any other requirements of public authorities and other organizations applicable to the Contractor Parties, the Work and the Project, including the laws of the State of Tennessee and the charter, code and regulations of the Metropolitan Government of Nashville and Davidson County.

#### **§ 1.1.12 STIPULATED SUM GMP CONTRACT**

If the Agreement provides that the Contract Sum is guaranteed not to exceed a Guaranteed Maximum Price (or "GMP"), the Agreement is referred to herein as a "GMP Contract." However, if the Agreement provides that the Contract Sum is a stipulated sum, the Agreement is referred to herein as a "Stipulated Sum Contract" and the term "Guaranteed Maximum Price" as used herein shall mean "Contract Sum."

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

...

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

§ 1.2.4 In the event of an inconsistency in the Contract, the Agreement takes precedence over all other Contract Documents except Modifications, the General Conditions take precedence over all other Contract Documents except the Agreement, and the sections of Division 1 of the Specifications take precedence over all other sections of the Specifications.

§ 1.2.5 In the event of a discrepancy, omission or conflict within or between any of the Contract Documents regarding the Work, the Contractor shall report the discrepancy, omission or conflict to the Architect and Owner, and the provision or interpretation that results in the greatest quantity, highest quality and highest level of safety shall prevail unless otherwise directed by Owner in writing.

...

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

...  
In the interest of ~~brevity~~ 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. Headings, captions and section titles in the Contract are made for convenience and general reference only and shall not be construed to describe, define or limit the scope or intent of provisions. Further, the Owner and the Contractor hereby acknowledge and agree that any ambiguities herein shall not be construed against either the Owner or the Contractor based on one or the other being the drafting party.

...  
~~§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Owner, Architect or their consultants own the Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not~~ None of the Contractor Parties shall own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' copyrights or other reserved rights.

~~§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers~~ Suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution performance of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not None of the Contractor Parties shall use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. Owner.

## ~~§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM~~ **TRANSMISSION OF DATA**

~~§ 1.6.1 The Contractor shall have access to the Project's virtual plan room for the purpose of downloading and accessing the Instruments of Service, including the Drawings, Specifications and other documents that might illustrate, describe and define the Work. The Contractor shall keep the passwords and access information confidential and follow proper protocols governing such transmissions. The Contractor acknowledges that discrepancies could exist between documents that are sealed and scanned and documents transmitted in other digital formats.~~

~~§ 1.6.2 The Contractor shall have access to a project management website for submitting, maintaining and storing reports, requests, submittals and other documents. The Contractor shall keep the passwords and access information confidential, timely upload requested information and documentation and follow proper protocols governing such transmissions.~~

~~If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.~~ § 1.6.3 If building information modeling (or "BIM") is to be used in connection with the Project, Contractor shall obtain and maintain the appropriate software licenses and comply with the Owner's current BIM standards and guidelines. Any BIM information generated by the Contractor or any of the Contractor Parties shall be deemed to be works for hire and shall be the sole property of the Owner for its use as it deems appropriate.

## **PAGE 4**

The Owner is the entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative (the "Owner's Representative") who shall have the authority expressly provided herein and represent the Owner with respect to all communications and

notice. The Owner's Representative does not have the authority to approve or sign a Change Order or other Modification. Only the persons who sign the Agreement on behalf of the Owner, and others so designated in the Agreement, have the authority to sign a Change Order or other Modification on behalf of the Owner.

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

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

~~§ 2.2.1~~ Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor. No information or services required or furnished by the Owner shall relieve or release, and nothing in this Section 2.2 shall be construed to relieve or release, the Contractor from its review and inspection obligations pursuant to Section 3.2.

...

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

~~§ 2.2.4~~ The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable ~~promptness~~ promptness so as not to delay the progress of the Work. The Owner shall also furnish any other information or services under the Owner's control and ~~relevant~~ necessary to the Contractor's performance of the Work with reasonable ~~promptness~~ promptness, so as not to delay the progress of the Work, after receiving the Contractor's written request for such information or services. The Contractor shall exercise reasonable care to verify and confirm the accuracy of any information furnished by the Owner pursuant to Section 2.2 within twenty-one (21) days of receipt, and promptly notify Owner and Architect in writing of any inaccuracies. The Owner shall address such inaccuracies upon written notice. If the Contractor fails to exercise such reasonable care, the Contractor shall be responsible for costs and damages that would have been avoided had the Contractor performed its obligations.

~~§ 2.2.5~~ Unless otherwise provided in the Contract Documents, the ~~Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.~~ Contractor shall have access to electronic versions of the Drawings, Specifications and other Instruments of Service required for the performance of the Work via Project's virtual plan room.

## PAGE 5

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or ~~repeatedly~~ otherwise fails to timely carry out Work in accordance with the Contract Documents, ~~the Owner may~~ the Owner may, without prejudice to other remedies the Owner has under the Contract, at law or in equity, issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on

the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. entity.

...

~~If~~ In addition to Owner's rights under Article 14 and elsewhere in the Contract Documents, if the Contractor defaults or neglects to timely carry out the Work in accordance with the Contract Documents and fails within a ten-day forty-eight (48) hour period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable has under the Contract, at law or in equity, correct such deficiencies by whatever reasonable method the Owner determines. In such case, the cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. additional services of the Architect, consultants and vendors deemed necessary by Owner to address such deficiencies, shall be deducted from the amounts owed the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. Owner upon demand.

...

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

...

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

**§ 3.1.4** In addition to any other representations and warranties contained in the Contract Documents and imposed by Law, and as an inducement for the Owner to enter the Contract, the Contractor represents, warrants and agrees that:

- .1 the Contractor is financially solvent and able to pay all debts as they mature, and it possesses sufficient working capital to complete the Work and pay all costs associated therewith and timely and fully perform all obligations in the Contract Documents;
- .2 the Contractor is able to provide the services, plant, tools, materials, supplies, equipment, labor and other items required to complete the Work and timely and fully perform its obligations in the Contract Documents;
- .3 the Contractor is authorized to do business in Nashville, Tennessee, and it is properly licensed or registered as necessary by or with all governmental and public and quasi-public authorities having jurisdiction; and
- .4 the Contractor possesses a high level of experience, expertise and competence in the business of administration, construction, construction management and superintendence of projects of the size, complexity and nature of this particular Project, and the Contractor will perform the Work with the care, skill and diligence of such a contractor.

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**§ 3.2.1** Execution Signing of the Contract Agreement by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions existing Contract Documents include sufficient



detail for purposes of entering into the Contract and that the Contractor has (1) carefully examined all existing Contract Documents in detail, (2) visited, inspected and become familiar with the Project site, including existing site conditions, utility locations, access to the site, the normal working hours specific to the Project, physical characteristics of the site and surrounding areas, (3) become familiar with local conditions and laws under which the Work is to be performed and performed, (4) carefully reviewed the schedule and considered the Contractor's obligations to correct delays in accordance with Section 3.10.4 and 8.3.1 and (5) correlated personal observations with requirements of the Contract Documents. If the Contractor fails to perform the obligations of this Section 3.2.1, neither the Guaranteed Maximum Price nor the Contract Time will be adjusted for conditions or circumstances that the Contractor would have discovered had the Contractor performed such obligations.

**§ 3.2.2** ~~Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, Work or ordering materials, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, Owner, shall take field measurements of any existing-existing grades, elevations, dimensions, locations and other conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. field verify the locations, character and depth of existing utilities and shall inspect and observe any other relevant conditions at the Project site. The Contractor shall be responsible for ascertaining correct dimensions and materials, shall not ascertain dimensions by scaling drawings, and shall promptly notify the Architect and Owner in writing of any illegibility, omission or inconsistency for clarification. When the Project involves modifications to existing improvements, the Contractor shall be responsible for verifying existing conditions and coordinating such conditions with the requirements of the Contract Documents. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect Documents that could affect constructability, costs or the Contractor's performance. Before proceeding with any portion of the Work affected thereby, the Contractor shall promptly report in writing to the Architect and Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. Contractor. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor experienced with similar projects and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.~~

**§ 3.2.3** ~~The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. standards and Laws, but, in the event a nonconformity with applicable standards or Laws becomes known to the Contractor, the Contractor shall promptly report such nonconformity in writing to the Architect and Owner and not proceed with that portion of the Work until so directed by the Architect or Owner. The Contractor shall similarly report any specified materials, systems, procedures or methods that the Contractor considers improper, inadequate, obsolete or unsuitable for purposes intended.~~

**§ 3.2.4** ~~If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices-notices, reports or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall must make Claims as provided in Article-Articles 7, 8 and 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such be responsible for costs and damages to the Owner as-that would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities-between the Contract Documents and applicable standards and Laws.~~

...

**§ 3.3.1** ~~The Contractor shall effectively supervise and direct the Work, using the Contractor's best skill-and attention-skill, attention and judgment to further the interests of the Owner. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific~~

~~instructions concerning these matters. Contract.~~ If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed in writing by the Architect and Owner, with specific reference to this Section of the Contract, with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely Contractor shall not be responsible for any loss or damage arising solely from those Owner required means, methods, techniques, sequences or procedures. procedures protested by Contractor.

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

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§ 3.3.4 The Contractor shall review all specified or recommended construction and installation procedures applicable to the Work, including those recommended by manufacturers and suppliers, and shall promptly report to the Architect and Owner any objections the Contractor has to such procedures and advise the Architect and Owner if any procedure deviates from good construction practice or might adversely affect or invalidate any warranty or guarantee.

## § 3.4 LABOR AND MATERIALS ~~LABOR, MATERIALS AND EQUIPMENT~~

§ 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 performance and timely completion~~ of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 ~~Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3-12.8 or 7.4, the~~ The Contractor may make substitutions only with the written consent of the Owner, after evaluation by the Architect-Architect, and in accordance with a Change Order or Construction Change Directive, the procedures for substitutions set forth in the Specifications. Except as specifically stated in the written approval, the approval of a request for substitution shall not modify the requirements of the Contract Documents, including performance criteria and warranty requirements.

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

§ 3.4.4 The Contractor shall work with the Owner and Subcontractors, Sub-subcontractors and Suppliers to maximize tax savings on purchases of equipment, materials and products in accordance with the tax savings procedures set forth in Section 00 73 00.03 of the Specifications, including identifying, documenting, tracking and coordinating purchases to be paid directly by Owner. Other than the direct payment by the Owner, the Contractor Parties shall remain solely responsible and liable for all other aspects of the purchase and installation of such equipment, materials and products, including scheduling, transportation, receiving, unloading, inventorying, inspecting, handling, storing, protecting and testing. Amounts owed to Subcontractors shall be reduced, deductive subcontract change orders shall be entered and, upon or before Substantial Completion, the Guaranteed Maximum Price shall be reduced by Change Order to account for all Owner direct payments for equipment, materials and products and for realized tax savings.

§ 3.4.5 As indicated in the Contract Documents, the Work may include the installation of certain equipment, materials and products to be furnished by the Owner. Unless otherwise specifically provided, the Contractor shall be responsible for scheduling, receiving, unloading, inventorying, inspecting, handling, storing, protecting, installing and testing such equipment, materials and products as may be further described in the Contract Documents. All of the required notices, reports and documentation must be timely and in sufficient detail. All costs to replace or repair

Owner furnished equipment, materials or products that are damaged or lost after receipt by the Contractor and all damages, charges or expenses incurred by the Owner due to the Contractor's failure to timely follow these receiving procedures shall be deducted from the amounts owed the Contractor. Nothing herein shall be construed to negate or limit the applicability of the provisions of Section 11.3 or the coverage referred to therein.

...

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

§ 3.5.1 In addition to any special or other warranties required by the Contract Documents, the Contractor warrants to the Owner that materials and equipment provided under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials and equipment not conforming to these requirements, including substitutions not properly approved in writing in accordance with the Contract Documents, shall be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage, provided such is not caused by one of the Contractor Parties. If required by the Owner or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 The Contractor shall assign to Owner, or otherwise assure that the Owner has the full benefit of, all warranties and guarantees of manufacturers, vendors, Subcontractors, Sub-subcontractors, Suppliers and any others applicable to the Work, and the Contractor shall perform the Work in a manner that does not adversely affect or invalidate any such warranties or guarantees.

§ 3.5.3 Vendor and manufacturer warranties and guarantees required by the Contract Documents commence upon the date of Substantial Completion. If any warranties or guarantees obtained from vendors or manufacturers will expire prior to a required warranty or guarantee period because certain equipment or improvements are installed prior to Substantial Completion, the Contractor shall pay to extend such warranties or guarantees to satisfy the requirements of the Contract Documents. The Contractor shall remain responsible for fulfilling the requirements of the required vendor and manufacturer warranties and guarantees even if the Contractor fails to obtain such extensions.

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The Owner is a nonprofit entity entitled to special tax benefits. The Contractor shall cooperate with Owner to reduce taxes and maximize tax savings on the Project, including compliance with the Owner's tax savings procedures in accordance with Section 3.4.4 and Section 00 73 00.03 of the Specifications. The Contractor shall otherwise pay all sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, as of the date of the Agreement, whether or not yet effective or merely scheduled to go into effect. The initial Guaranteed Maximum Price includes all applicable taxes, including those that might ultimately be avoided through the Owner's tax savings procedures.

...

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

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, reviews, authorizations, approvals and inspections by government agencies or other authorities having jurisdiction over the Project that are necessary for proper performance and completion of the Work and legally required at the time bids are received or negotiations concluded. The initial Guaranteed Maximum

Price is formally agreed upon in writing, including temporary and permanent permits, road work and right-of-way permits, occupancy permits, fire safety approvals, utility permits, grading permits, and structural, foundation, mechanical, electrical, plumbing and other trade permits, and inspections, fees and approvals related thereto. Without limitation, the Contractor shall be responsible for paying all review and inspection fees and charges, providing any deposits, bonding or other security required by the authorities and coordinating all submittals, resubmittals and responses. The Owner shall be responsible for capacity and impact fees and charges.

**§ 3.7.2** The Contractor Parties shall comply with and give notices required by Law, including performance of the Work in compliance with the applicable laws, statutes, ordinances, standards, codes, rules and regulations, and lawful orders of the Equal Employment Opportunity Commission, the Tennessee Occupational Safety and Health Administration, the Tennessee Department of Environment and Conservation and other public authorities applicable to performance of the Work. To the full extent permitted by Law, the Contractor shall indemnify and hold harmless the Owner from and against any and all claims, damages, losses, costs, fines, penalties and expenses, including attorney, expert and consultant fees and expenses, arising out of or resulting from any failure of the Contractor Parties to comply with or give notices required by Law.

**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, Law, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs-costs, damages, losses and expenses, including attorney, expert and consultant fees and expenses, attributable to correction.

**§ 3.7.4 Concealed or Unknown Conditions.** If the Contractor encounters conditions at the Project site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide written notice to the Owner and the Architect before conditions are disturbed and in no event later than 21-2 days after first observance of the conditions. However, if the Contractor is delayed or suspends any operations based on such concealed or unforeseen conditions or the Contractor encounters any utilities at unknown locations, the Contractor shall provide such written notice to the Architect and Owner immediately and provide immediate written notice of any unknown utility locations to Facilities Information Services. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. the Contractor may request an equitable adjustment in the Guaranteed Maximum Price or Contract Time, or both, in accordance with Section 8.3 and the Change Order procedures set forth in Article 7. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If either party the Contractor disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15. the Contractor must proceed with its Claim in accordance with Articles 7, 8 and 15. Nothing herein shall be construed to negate the Contractor's inspection and verification obligations pursuant to Sections 2.2.4 and 3.2, including the field verification of utilities, or the Contractor's responsibility for costs and damages to the Owner arising out of the Contractor's failure to perform such obligations.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Architect in writing. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum-Guaranteed Maximum Price and Contract Time arising from the existence of such remains or features may be made as provided in Article-Articles 7, 8 and 15.

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**§ 3.8.1** The Contractor shall include in the Contract Sum-Guaranteed Maximum Price includes all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or



entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection. Documents, including any specific contingency allowances and the General Contingency Allowance if such allowance is specified in the Agreement. All allowances shall be included and separately itemized in the Schedule of Values.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2. The General Contingency Allowance, if any, is for general unspecified purposes limited only as set forth herein. Conversely, specific contingency allowances are only for the particular items and purposes originally anticipated and described in the Contract Documents, such as scope gaps in a particular line item of the Schedule of Values or specific portions of the Work that cannot be defined until a later date. All allowances, including any General Contingency Allowance and all specific contingency allowances, are limited to costs actually incurred by the Contractor that are includable in the Cost of the Work as defined in Article 16 but were not otherwise specifically provided for in the calculation of the Guaranteed Maximum Price and are not the proper basis for a Change Order.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness. The use of a General Contingency Allowance or a specific contingency allowance must be requested by the Contractor and approved by the Owner in writing. Any Application for Payment that allocates costs to a contingency allowance line item of the Schedule of Values must be accompanied by a written request in accordance with Section 7.4.2 signed by the Owner's Representative specifically approving such allocation or use. The written request must provide adequate detail of the costs and expenses and describe the facts and circumstances that warrant the use of the allowance. In addition to prior written approval, expenses allocated to an allowance must be properly documented and approved for payment in accordance with the standard Application for Payment procedures.

§ 3.8.4 Whenever expenses covered by an allowance will exceed the amount of the allowance due to changes in the Work, the Contractor must, prior to incurring such costs, request a Change Order increasing the amount of the allowance and the Guaranteed Maximum Price in accordance with the procedures set forth in Article 7. Expenses incurred for items covered by an allowance that exceed the amount of the allowance shall be the responsibility of the Contractor and not included in the Cost of the Work or Contract Sum unless the excess expenses are caused by a change in the Work for which the Owner is responsible and approved in accordance with Article 7.

§ 3.8.5 Prior to final payment, the unused portions of the allowances shall be returned via a Change Order reducing the Guaranteed Maximum Price by the difference between the amounts of all the allowances and the amounts properly allocated to such allowances in accordance with this Sections 3.8 and 7.4.

§ 3.8.6 If the Agreement is a GMP Contract, when the amount of any subcontract or purchase order is less than the amount anticipated and allocated to such line item(s) in the Schedule of Values or within the Guaranteed Maximum Price, the Contractor shall submit a written request in accordance with Section 7.4.2 and reallocate such difference (or "buyout savings") to the General Contingency Allowance or a specific contingency allowance with the Schedule of Values adjusted accordingly in accordance with Section 9.2.

§ 3.8.7 If the Agreement contains unit pricing, such pricing includes all materials, equipment, labor, delivery, installation, overhead, profit and all other costs or expenses in connection with, or incidental to, the performance of the unit of work to which the pricing applies except as otherwise specifically provided. If a portion of the Contract Sum is based on unit pricing, the Guaranteed Maximum Price includes an allowance based on an estimate of such unit pricing work.

### § 3.9 SUPERINTENDENTSUPERINTENDENT, PROJECT MANAGERS, KEY EMPLOYEES AND STAFFING

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants with experience with projects similar to the Project who shall be in attendance at the Project site during performance of the Work. The

superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

**§ 3.9.2** ~~The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day~~ Contractor shall furnish in writing for approval by the Owner the names and qualifications of the proposed project managers, superintendents, key employees and consultants for the Project. Except as otherwise provided in the Agreement, failure of the Owner or Architect to reply within a reasonable period shall constitute notice of no reasonable objection. At a minimum, proposed superintendents and project managers must:

- .1 have recent experience with similar types of construction;
- .2 be competent and capable in reading and understanding the Contract Documents; and
- .3 be capable of effectively communicating in the necessary language(s) with personnel and the personnel of Subcontractors, Sub-subcontractors and Supplier.

**§ 3.9.3** ~~The Contractor shall not employ a proposed superintendent and assign to the Project any proposed project manager, superintendent, key employee or consultant to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's~~ replace any project manager, superintendent, key employee or consultant working on the Project, or reassign such personnel to other projects in a manner that affects their ability to perform their duties on the Project, without substantial justification and the Owner's prior written consent, which shall not unreasonably be withheld or delayed. In the event that any employee, agent or consultant of any of the Contractor Parties fails to properly perform or otherwise hinders the Project's progress, the Contractor shall replace such person or entity as reasonably requested by the Owner in writing. In the event the Contractor removes personnel or staffs the Project with fewer or less costly employees than proposed and approved in accordance with Section 16.4.5, the Guaranteed Maximum Price shall be adjusted accordingly.

**§ 3.9.4** The Contractor Parties shall, at their own expense, perform local, state and federal background and reference checks, including criminal background checks, on all employees to be assigned to the Project, for every county of residence of prospective employees for the past ten (10) years. Unless Owner specifically approves, no employee with a conviction involving violent crime, theft, possession or receipt of stolen property, sexual offense or illegal sale, use or possession of drugs within the past ten (10) years can be assigned to the Project. Owner reserves the right to remove any employee of the Contractor Parties from the Project if arrested, charged or convicted of any such crimes or if the employee conceals such information. Further, the Contractor Parties shall validate social security identification numbers and not assign any undocumented persons to the Project.

### **§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES CONTRACTOR'S SCHEDULES**

**§ 3.10.1** ~~The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule 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.~~ Contractor shall maintain a critical path construction schedule for the Work that complies with all scheduling requirements set forth in the Specifications. The schedule must:

- .1 provide for the expeditious and practicable performance of the Work in accordance with the time limits stated and schedules included in the Contract Documents;
- .2 be comprehensive and related to the entire Project;
- .3 provide a detailed graphic representation of all activities, events and sequencing that will occur during the performance of the Work in a precedence-style critical path method format satisfactory to the Owner and Architect;
- .4 identify each phase of construction and occupancy;
- .5 illustrate each phase of each trade or category of the Work;
- .6 provide separate representations for each major area, floor, portion or section of the Project;
- .7 incorporate the limitations of existing conditions and work by separate contractors and Owner;
- .8 incorporate delivery dates and installation periods for Owner furnished equipment and products;
- .9 incorporate reasonable review periods for submittals and re-submittals; and

.10 identify dates that are critical to ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval schedule(s) for the approval of the Architect and Owner, which shall not unreasonably be delayed or withheld, that complies with all scheduling requirements set forth in the Specifications. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect, Architect, Owner and others reasonable time to review submittals, submittals and resubmittals. If the Contractor fails to submit a comply with an approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum - Guaranteed Maximum Price or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect. On a monthly basis, the Contractor shall issue, for the Owner's approval, an updated critical path construction schedule and submittal schedule(s) in a format that illustrates completed and projected progression of the Work for the relevant time periods. The monthly schedules shall be issued as of the end of each calendar month. In no event, however, shall such revisions or updates be construed as adjustments to the Guaranteed Maximum Price or Contract Time unless such adjustments are incorporated pursuant to a Change Order. These progress schedules shall be available and promptly posted in the Contractor's meeting rooms and offices at the Project site and promptly distributed to the Owner, the Architect and the Contractor Parties whom must comply with such schedules. The submittal of the monthly progress schedules is a condition precedent to the Owner's obligation to make progress payments and the failure to submit these schedules timely shall cause a delay in the processing of monthly progress payments. In addition, the Contractor shall maintain, and update at least weekly, a two week "look-ahead" schedule.

§ 3.10.4 The Contractor shall perform the Work in general accordance with the most recent schedules approved by the Owner. In the event the Contractor or Owner determine that the performance of the Work has not progressed or reached a level of completion required under the Contractor's schedule to achieve a deadline stated in the Contract Documents, the Contractor shall propose a plan of specific actions that will expedite the progress and correct the delay (a "Schedule Correction Plan"). Upon approval by the Owner, the Contractor shall implement the Schedule Correction Plan. The Owner's right to require such measures is for the purpose of ensuring the Contractor's compliance with the construction schedule. Contractor shall not be entitled to an adjustment in the Guaranteed Maximum Price with respect to additional costs incurred due to the Schedule Correction Plan except as provided under Section 8.3. In the event the Owner deems it necessary to supplement the Contractor's efforts to correct delays caused by one or more of the Contractor Parties, the Contractor shall be responsible to the Owner for the costs incurred in accordance with Section 2.4.

### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE PROJECT MEETINGS AND REPORTS

§ 3.11.1 The Contractor shall coordinate and manage project meetings and otherwise comply with any meeting requirements described in the Specifications. The Contractor shall be responsible for scheduling, preparing, maintaining and distributing written agendas, coordinating and keeping attendance, taking, maintaining and distributing meeting minutes and action item lists and presiding over all such meetings. The agendas, minutes and other documents associated with each meeting shall be timely distributed to all invitees. The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.11.2 The Contractor shall prepare and maintain daily, weekly and monthly reports as may be further described in the Specifications. The weekly and monthly reports shall be promptly uploaded to the project management website and promptly sent electronically to the Architect, the Owner's Representative and any others requested by the Owner. An updated Project Issues Log maintained in accordance with Section 7.4 shall be attached to each weekly and monthly report. Submitting the monthly report is a condition precedent to the Owner's obligation to make progress payments, and the failure to submit monthly reports timely shall cause a delay in the processing of monthly progress payments.

**§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES**  
**SHOP DRAWINGS, PRODUCT DATA, SAMPLES AND COORDINATION DRAWINGS**

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

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**§ 3.12.5** ~~The Contractor shall~~ As may be further described in the Specifications regarding submittal procedures, the Contractor shall obtain, review for compliance with the Contract Documents, approve and submit to the ~~Architect~~ Architect, and others if required by the Contract Documents, Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect ~~or, in the absence of an approved submittal schedule, and Owner~~ 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~~. Separate Contractors.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Contractor shall be responsible for identifying deviations between such submittals and the requirements of the Work and of the Contract Documents. If the Contractor fails to perform its obligations under Section 3.12, the Contractor shall pay for any additional services of the Architect required at the Architect's standard hourly rates in effect at the time, at no expense to the Owner.

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

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by ~~the Architect's~~ any approval of Shop Drawings, Product Data, Samples or similar ~~submittals~~ submittals, unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and ~~(1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. the change has been approved in accordance with Article 7.~~ 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~~ any approval thereof.

...

**§ 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 obligations or responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of ~~applicable law~~ any Laws. 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 the~~ performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed or registered design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design ~~professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy.~~ professionals. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. ~~The~~ Except as specifically provided 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 notify the Owner and Architect promptly in writing upon its discovery of any inadequacy in such criteria.

§ 3.12.11 The Contractor shall prepare and issue coordination drawings locating conduit, piping, ductwork and other items to avoid conflicts and obstructions, preserve head room, keep openings and other passageways clear, overcome interference with structural conditions, and coordinate between the trades. Coordination drawings shall include mechanical, electrical, plumbing, telecommunications, data, fire protection and all other building systems. The Contractor shall be responsible for proper installation and coordination of the systems and equipment in the space available.

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~~The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.~~ § 3.13.1 The Contractor shall confine operations at the site to areas within the construction limits set by the Owner and permitted by Law and the Contract Documents, and shall not unreasonably encumber the site with materials or equipment. All personnel of the Contractor Parties must comply with the Owner's work rules and standard practices governing employee behavior while at the Project site or otherwise on or adjacent to Owner property.

§ 3.13.2 The Contractor shall coordinate the Work with the Owner and conduct the Work in a manner that eliminates or minimizes any adverse impact on the Owner's ongoing operations at or in close proximity to the Project. Existing operating systems, utilities and services, including water, steam, electric, HVAC, sanitary, storm, emergency, telecommunications, data, etc., must remain operational throughout the performance of the Work except as specifically provided in the Contract Documents. If an interruption of such systems, utilities or services is necessary, the interruption must be coordinated and scheduled with the Owner and the Contractor is solely responsible for compliance with the Owner's standard protocols. The Owner shall have the right to direct a postponement or rescheduling of any portion of the Work that interferes with the Owner's ongoing operations.

§ 3.13.3 In addition to maintaining existing operating systems, utilities and services and compliance with scheduling restrictions, the Contractor shall maintain noise separation for the construction area and separation of dust and demolition items from areas in and around the Project site that remain operational.

...

~~§ 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.~~ Separate Contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a ~~separate contractor~~ Separate Contractor except with written consent of the Owner and of such ~~separate contractor~~ Separate Contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a ~~separate contractor~~ Separate Contractor the Contractor's consent to cutting or otherwise altering the Work.

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

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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~~ harmless from loss and expense (including attorney, expert and consultant fees and expenses) on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, ~~the Contractor shall~~

be responsible for such loss unless such information is promptly furnished to the Architect; it shall not proceed with the infringement and promptly notify the Owner and Architect of such belief in writing. If the Contractor fails to provide such notice and proceeds with the infringement, the Contractor shall be responsible for any and all resulting loss and expense (including attorney, expert, and consultant fees and expenses).

...

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

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

**§ 3.18.3** If any defense or indemnity obligation of the Contractor under this Section 3.18, or any other defense or indemnity obligation in favor of any of the Indemnified Parties required by or contained elsewhere in the Contract, is held to be unenforceable, Contractor agrees to defend, indemnify and hold harmless such persons or entities to the full extent permitted by Law. Further, the liability of the Contractor arising out of its defense and indemnity obligations under the Contract shall survive completion, expiration or termination of the Contract, shall not be limited or diminished in any way by insurance coverage, and shall not be construed to negate, abridge or diminish other rights or obligations of indemnity that would otherwise exist in favor of the Indemnified Parties.

### **§ 3.19 RECORD DOCUMENTS AND SAMPLES AT THE SITE**

The Contractor shall maintain at the Project site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate as-built conditions, field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These record documents shall be available onsite to the Owner and Architect at all times while the Work is in progress, shall be updated at least monthly for review and comment at monthly meetings 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. The record documents for underground utilities shall be submitted to the Architect within thirty (30) days of completion of such utility work, and submittal of all other record documents to the Architect is a condition precedent to final payment.

### **§ 3.20 PROJECT CLOSEOUT/TURNOVER MEETING**

The Contractor shall conduct a closeout/turnover meeting with the Owner's plant operations staff, the Owner's Representative and the Architect to be held within ten (10) days prior to the proposed Substantial Completion date. At this meeting, the Contractor shall review and present the prepared Operation and Maintenance Manual and all applicable asset spreadsheet information, testing and balancing reports, internal commissioning reports, warranties, current BIM models, and other documents required by the Specifications and other Contract Documents. The

Owner's commissioning agent, if any, shall present its findings, if complete, and the parties shall plan and discuss the proposed Date of Substantial Completion, submittal of the record documents and as-builts and other closeout/handover requirements, procedures and issues.

### **§ 3.21 POST COMPLETION INSPECTION**

The Contractor shall schedule and conduct an inspection of the Project, or portion thereof if delivered in phases, approximately eleven (11) months, and no later than twelve (12) months, following the Date of Substantial Completion. The inspection shall be conducted with the Owner and Architect for the purpose of complying with and identifying obligations under Section 12.2 during the one-period for correction of the Work.

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

**§ 4.1.2** ~~Duties, Unless requested by the Owner in writing, and consented to by the Architect, the 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. cannot be restricted, modified or extended.~~ Consent shall not be unreasonably withheld.

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

...

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

**§ 4.2.2** ~~The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with Project site at various times as agreed with the Owner to observe the progress and quality of the portion of the Work completed, Work, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.~~

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

...

~~Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications between any of the Owner, Architect and~~

Contractor relating to the performance or administration of the Contract shall be made or confirmed in writing, with copies to the Architect and Owner. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner. The Contractor Parties shall be through the Contractor unless otherwise provided in the Contract Documents or authorized by the Contractor. Communications by and with Separate Contractors shall be through the Owner. All communications related to a change in the work or a Modification must be documented in writing as required by the Contract Documents.

§ 4.2.5 Based on the Architect's evaluations of the Work as provided in Section 4.2.2, and the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to ~~the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.~~ any of the Contractor Parties.

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

§ 4.2.8 The Architect will ~~prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4.~~ review and take the appropriate action on Change Orders, Potential Change Orders and other requests that require the Architect's action as provided in Article 7. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

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

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

§ 4.2.11 The Architect will ~~interpret~~ interpret, ~~report on~~ report on and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable ~~promptness.~~ promptness so as not to delay the Project.



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

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

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable ~~promptness~~ promptness so as not to delay the Project. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

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§ 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 with labor at the Project site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a ~~separate contractor or subcontractors of a separate contractor.~~ Separate Contractor.

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

§ 5.1.3 A Supplier is a person or entity, other than a Subcontractor in accordance with Section 5.1.1, that has a direct contract with the Contractor to provide a portion of the Work or otherwise provide materials, equipment, tools, construction equipment, machinery, water, heat, utilities, transportation or any other items, facilities or services for the Project. The term "Supplier" is referred to throughout the Contract Documents as if singular in number and means a Supplier or an authorized representative of the Supplier.

§ 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, If the Agreement is a Stipulated Sum Contract, the Contractor, as soon as practicable and no later than thirty (30) days prior to commencement of the Work, shall furnish in writing to the Owner through and the Architect the names of persons or entities (including those who are to furnish provide materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 the Work, including subcontractors, sub-subcontractors, suppliers, vendors and manufacturers. The Contractor shall also solicit and consider bids from any other persons or entities specified by the Owner. With respect to each potential subcontractor, the Contractor shall provide (a) contact information; (b) a description of the scope of work; (c) an itemization of the labor and material costs; (d) stipulated labor rates, unit pricing, overhead and profit for changes in the Work and (e) a cost comparison of any and all competing bids. The Owner or Architect may reply within fourteen (14) days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Owner or Architect requires additional time or information for review. Failure of the Owner or Architect to reply within the 14 day period shall constitute notice of no reasonable objection.~~ object within the 14-day period shall not constitute any type of waiver of any requirements of the Contract Documents.

§ 5.2.2 ~~The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.~~ If the Agreement is a GMP Contract, the Contractor, as soon as practicable and no later than thirty (30) days prior to commencement of the Work, shall obtain bids from persons and entities (including those who are to provide materials or equipment fabricated to a special design) for each portion of the Work, including subcontractors, sub-subcontractors, suppliers, vendors and manufacturers, and submit such bids to the Owner and the Architect along with an analysis of such bids and recommendations. Unless otherwise approved by the Owner, the Contractor shall obtain competitive bids from at least three (3) qualified

bidder with respect to each portion of the Work and solicit and consider bids from persons or entities specified by the Owner. With respect to each potential subcontractor, the Contractor shall provide (a) contact information; (b) a description of the scope of work; (c) an itemization of the labor and material costs; (d) stipulated labor rates, unit pricing, overhead and profit for changes in the Work and (e) a cost comparison of all competing bids. Before submittal to the Owner and the Architect, the Contractor shall review the bids in detail and verify that each bid complies in format and detail to the requirements of the Contract Documents. The Owner shall then determine, with the advice of the Contractor and the Architect, the bids to be accepted by the Contractor. The acceptance or approval by the Owner of a bid from a Subcontractor or Supplier shall not constitute any type of waiver of any requirements of the Contract Documents. If requested by the Owner, potential bidders for principal or critical portions of the Work must be pre-approved by the Owner and invitations to bid shall be submitted to the Owner and the Architect for review and approval prior to being issued to potential bidders.

§ 5.2.3 If the Owner or Architect has reasonable objection to or declines to select a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum person or entity had submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, was reasonably qualified in accordance with Section 5.2.5 and was capable of performing its portion of the Work, an appropriate Change Order adjusting the Guaranteed Maximum Price by the difference between the bid proposed and the bid ultimately selected shall be warranted if the bid proposed was specifically relied upon in the determination of the Guaranteed Maximum Price. However, no increase in the Guaranteed Maximum Price or Contract Time shall be allowed for such change-difference unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not contract with a person or entity who does not meet the qualifications set forth below in Section 5.2.5 or to whom the Owner has made an objection. The Contractor shall not be required to contract with a person or entity to whom the Contractor has made reasonable objection. The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution, unless the Owner approves in advance in writing.

§ 5.2.5 Prior to submitting or proposing a person or entity to the Owner and Architect for approval, the Contractor shall obtain, and furnish if requested, documentation that such person or entity (a) is financially solvent and able to pay all debts as they mature, and possesses sufficient working capital to complete its portion of the Work and pay all costs associated therewith; (b) is able to provide the services, plant, tools, materials, supplies, equipment, labor and other items required to complete its portion of the Work and timely and fully perform its obligations; (c) is authorized to do business in Nashville, Tennessee, and properly licensed or registered as necessary by or with all governmental and public and quasi-public authorities having jurisdiction; (d) possesses a high level of experience, expertise and competence with projects of the size, complexity and nature of this particular Project; and (e) meets any other qualifications set forth in the Contract Documents. Prior to submitting a bid, each bidder shall review in detail the Contract Documents applicable to its proposed portion of the Work and shall be given an opportunity to inspect the Project site and meet with the Architect and applicable engineers.

§ 5.2.6 The Contractor shall disclose in writing if any proposed subcontractor, sub-subcontractor, supplier or vendor is a Related Party and provide full disclosure of all details regarding the nature of the relationship at the time of such proposal. The Contractor may perform trade work with the Contractor's own forces or through a Related Party only if specifically approved in writing by the Owner after receipt of full written disclosure of the parties' relationship, the circumstances warranting the self-performance, a full breakdown of the proposed pricing and the results of competitive bidding. The competitive bidding shall include written bid proposals from at least two (2) potential subcontractors preapproved by Owner, the Owner shall receive and open the proposals and the Contractor shall submit its written bid proposal at least twenty-four (24) hours before the bid deadline. Any agreement between the Contractor and a Related Party must be in writing and in accordance with the same terms and conditions as any other Subcontractor, Sub-subcontractor or Supplier. With respect to trade work performed by the Contractor's own forces, the details of such arrangement must be specified in the Agreement or incorporated into the Contract by Modification, and if performed on the basis of cost plus a fee, the cost must be subject to the "Cost of the Work" definition set forth in Article 16, specified labor and labor burden rates and a guaranteed maximum cost.

§ 5.2.7 No contract shall be awarded to a Subcontractor or Supplier on the basis of cost plus a fee without the prior written approval of the Owner. If an agreement with a Subcontract is awarded on a cost plus a fee basis, the reimbursable costs must be preapproved by the Owner and consistent with the limitations in Article 16, the agreement must include a guaranteed maximum price and the agreement must grant the Contractor and Owner the same accounting and audit rights and obligations with respect to the Subcontractor as the Owner has with respect to the Contractor under the Contract.

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~~By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.~~ § 5.3.1 By written agreement, the Contractor shall require each Subcontractor and Supplier, to the extent of the Work to be performed by the Subcontractor or Supplier, 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 or Supplier's Work, that the Contractor, by the Contract Documents, assumes toward the Owner. Each Subcontract and Supplier agreement shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor or Supplier so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor or Supplier, unless specifically provided otherwise in writing, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. The Contractor shall require each Subcontractor to enter into similar agreements with its suppliers and Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor and Supplier, prior to bidding and the signing of the subcontract or supplier agreement, copies of the Contract Documents to which the Subcontractor or Supplier will be bound. The Contractor shall require that Subcontractors similarly make copies of applicable portions of such documents available to their respective proposed suppliers and Sub-subcontractors.

§ 5.3.2 All agreements with Subcontractors and Suppliers shall be in writing, shall conform to and incorporate all of the applicable provisions of the Contract Documents, including the Owner's payment obligations and rights, shall include provisions that allow the Owner to suspend or terminate the Work pursuant to Article 14 and shall specifically provide that Owner is an intended third-party beneficiary of such agreement without Owner liability to the Subcontractor or Supplier for any benefits conferred. If requested by the Owner, Contractor shall furnish copies of agreements with Subcontractors or Suppliers within five (5) days of any such request.

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~~§ 5.4.1 Each subcontract agreement~~ § 5.4.1 Each subcontract agreement with a Subcontractor or Supplier for a portion of the Work is hereby assigned by the Contractor to the Owner, provided that

- ~~.1~~ .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor-Subcontractor, Supplier and Contractor in writing; and

...

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

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension. Such assignment to the Owner under this Section 5.4 does not relieve the Contractor of its duties, liabilities, obligations or responsibilities under the assigned agreement or the Contract Documents, nor shall any such assignment be deemed a waiver by the Owner of any action or claim that the Owner could assert against the Contractor.

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

...

## § 6.1

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

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with ~~other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation.~~ portions of the Project or construction or operations on the Project. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor ~~shall~~ must make such Claim as provided in ~~Article~~ Articles 7, 8 and 15.

§ 6.1.2 ~~When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.~~ A Separate Contractor is a person or entity, other than the Contractor, a Subcontractor, Sub-subcontractor or Supplier, that has a direct contract with the Owner or a Separate Contractor to perform work on portions of the Project or construction or operations on the Project site.

§ 6.1.3 ~~The Owner-Contractor shall provide for coordination of the Work with the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.~~ Separate Contractor. The Contractor shall make revisions to its construction schedules deemed necessary and approved by Owner to accommodate for such activities. After a joint review and mutual agreement among Contractor, Separate Contractors and Owner, the construction schedules shall be used by the Contractor, the Separate Contractors and the Owner to coordinate all activities.

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

§ 6.2.1 The Contractor shall afford the Owner and ~~separate contractors~~ 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~~ performance or results upon construction or operations by the Owner or a ~~separate contractor,~~ Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect and Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper ~~execution~~ performance and results. Failure of the



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

~~§ 6.2.3~~ The Contractor shall reimburse the Owner for costs the Owner ~~incurs that are payable to a separate contractor because of the Contractor's~~ incurs, including those payable to Separate Contractors, because of any of the Contractor Parties' delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate contractor's Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction, provided such delay, activity, damage or defect is not caused in part by any of the Contractor Parties and a Claim is asserted in accordance with Articles 7, 8 and 15.

~~§ 6.2.4~~ The Contractor shall promptly remedy damage the Contractor ~~wrongfully causes~~ Parties cause to completed or partially completed construction or to property of the Owner or separate contractors Separate Contractors as provided in Section 10.2.5.

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

If a dispute arises among the Contractor, ~~separate contractors~~ 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~~ allocate the cost among those responsible, and the portion allocated to the Contractor shall be deducted from the amounts owed the Contractor.

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~~§ 7.1.1~~ Changes in the Work may be accomplished after ~~execution~~ the signing of the Contract, and without invalidating the Contract, by Change Order, ~~Construction Change Directive or order for a minor change in the Work,~~ Order subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. The Guaranteed Maximum Price and Contract Time can only be adjusted by a Change Order.

~~§ 7.1.2~~ A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a ~~Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.~~ The Owner may order modifications, additions, deletions and other changes in the Work, with the Guaranteed Maximum Price and Contract Time being adjusted in accordance with this Article 7. However, no changes in the Work shall be incorporated into the Work until approved by the Owner in writing in accordance with the procedures set forth in this Article 7.

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

...

~~§ 7.2.1~~ A Change Order is a written instrument prepared by the ~~Architect~~ Contractor and signed by the Owner, Contractor and Architect ~~stating their agreement upon all that~~ incorporates into the Contract Documents, by reference and attachment, one or more Potential Change Orders issued and approved in writing in accordance with Section 7.3. Each Change Order is a complete statement of the agreement upon each of the following:

- .1 The ~~change~~ change(s) in the Work;
- .2 The amount of the adjustment, if any, in the ~~Contract Sum;~~ Guaranteed Maximum Price; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 The Contractor shall not be entitled to any increase in the Guaranteed Maximum Price or extension of the Contract Time for furnishing labor, materials, equipment, services or other items that are not required by the Contract Documents as amended by Change Orders or Modifications.

§ 7.2.3 A Change Order signed by the Owner and Contractor constitutes a final settlement of all matters relating to the changes in the Work that are the subject of the Change Order, including all direct and indirect costs associated with such change and any and all adjustments to the Guaranteed Maximum Price and Contract Time unless specifically noted otherwise in the Change Order.

§ 7.2.4 The Contractor shall endeavor to minimize the number of Change Orders by combining multiple Potential Change Orders and by limiting the frequency as needed for timely payment of Subcontractors and Suppliers.

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES/POTENTIAL CHANGE ORDERS

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a Potential Change Order (also known in the industry as a change order request) is a written instrument prepared by the Contractor for written approval by the Owner and Architect, regarding a potential change in the Work prior to any agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly. Guaranteed Maximum Price or Contract Time, or both. A properly prepared, approved and signed Potential Change Order is necessary for each change in the Work prior to incorporation into the Contract Documents via Change Order. Each Potential Change Order must be a complete statement of the proposed:

- .1 Change in the Work;
- .2 Amount of adjustment, if any, in the Guaranteed Maximum Price; and
- .3 Extent of the adjustment, if any, in the Contract Time.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order. Whenever the Contractor or Architect becomes aware of circumstances or conditions that will change or may lead to a change in the Work or for any reason warrant adjustments in the Guaranteed Maximum Price or Contract Time, the Contractor or Architect shall promptly notify the Owner in writing of such circumstances or conditions in accordance with Section 7.4.2 with an approximate estimate of the changes in cost and schedule attributable to the potential change in the Work. If the Owner agrees that consideration of a Potential Change Order is warranted, the Contractor shall promptly prepare and submit a Potential Change Order to the Architect and Owner specifying the potential change in the Work, the basis for the request and the proposed adjustments. The Contractor must include all available documentation supporting the reasons for the request and any proposed adjustments in accordance with Sections 7.3 and 8.3.

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

- .1 Mutual acceptance of a lump sum based on a detailed estimate in accordance with Section 7.3.7 that is properly itemized and supported by sufficient substantiating data to permit evaluation;

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- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; parties; or

...

§ 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. The Architect shall review each Potential Change Order and, if reasonably necessary or requested by the Owner, promptly prepare the drawings, specifications and other documents required to properly price, implement and document the potential change in the Work. If such documents are prepared or the Architect identifies any deficiencies in the Contractor's submittal, the Contractor shall promptly revise the Potential Change Order accordingly. If the Architect determines that the Potential Change

Order is complete and in accordance with the requirements of the Contract, the Architect shall sign the Potential Change Order and send the same, with all documentation, to the Owner for review and consideration.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Owner's written approval of a Potential Change Order, 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 approved change in the Work. If prior to the written approval of the Potential Change Order by the Architect or Owner, the Owner's Representative specifically orders the Contractor in writing to proceed with the proposed change in the Work to prevent delays in the Work or address an emergency, the Contractor shall promptly proceed with such change in the Work in accordance with the directives set forth in the written order.

§ 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 Potential Change Order submitted by the Contractor and approved in writing by the Owner indicates the parties' agreement therewith and constitutes a settlement of all matters relating to the change in the Work that is the subject of the Potential Change Order, including all direct and indirect costs associated with such change, any and all adjustment in Guaranteed Maximum Price and Contract Time, and the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order. Potential Change Order shall be effective immediately and the Contractor shall prepare a Change Order, if applicable, incorporating the change in the Work into the Contract Documents for the signatures of the Architect, Contractor and Owner.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, Unless the Contractor and Owner otherwise agree, adjustments to the Guaranteed Maximum Price shall be determined on the basis of reasonable costs incurred and saved by those performing the portions of the Work affected by the change, plus or minus an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall for each as set forth in Section 7.3.9. The Contractor and each Subcontractor and Sub-subcontractor shall furnish an itemized estimate and 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 and detail as the Owner prescribe, an itemized accounting of actual costs incurred and saved together with appropriate supporting data. Such estimates and accountings shall separately itemize overhead and profit, each trade and service, labor, materials, equipment and all other significant portions of the Work and provide detail with respect to quantities, labor hours and rates, taxes and insurance. If the Agreement is a GMP Contract, costs for the purposes of this Section 7.3.7 with respect to the Contractor shall be limited to those includable in the Cost of the Work in accordance with Article 16; otherwise, costs and rates for the purposes of this Section 7.3.7 shall be limited to the following: subject to Section 7.3.9 and limited to the following costs that are also directly attributable to the change:

.1 Costs of labor, including only hourly wages, social security, old age and unemployment insurance, fringe benefits required by written agreement or custom, Law, and workers' compensation insurance;

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.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others; tools;

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; taxes; and

.5 Additional costs of supervision and field office personnel directly attributable to the change. Costs of supervision and field office personnel.

§ 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. Guaranteed Maximum Price shall be determined on the basis of reasonable costs incurred and saved by those performing those portions of the Work affected by the change, including an amount for overhead and profit for each entity as set forth in Section 7.3.9. When both additions and credits covering related Work or substitutions are involved in a change, the

~~allowance amount~~ for overhead and profit shall be ~~figured~~adjusted on the basis of net cost decrease or increase, if any, with respect to that change.

~~§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15. For purposes of determining adjustments to the Guaranteed Maximum Price for changes in the Work, adjustments shall be subject to any rates and pricing set forth in the agreements with the Subcontractors, but in no event shall combined overhead and profit rates exceed:~~

- ~~.1 Ten percent (10%) for Subcontractors or Sub-subcontractors with respect to work performed by their own forces;~~
- ~~.2 Five percent (5%) for Subcontractors or Sub-subcontractors with respect to work performed by their Sub-subcontractors; or~~
- ~~.3 Five percent (5%) for the Contractor with respect to work performed by its own forces or its Subcontractors or Sub-subcontractors.~~

~~If the Agreement is a GMP Contract, however, the amount allowed for overhead for the Contractor shall be the same percentage or ratio as the Overhead Fee in the Agreement and the amount allowed for profit shall be the same percentage or ratio as the Contractor's Fee in the Agreement but no more than five percent (5%).~~

~~§ 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. If the Owner's Representative specifically orders the Contractor in writing to proceed with work the Contractor considers a change in the Work prior to the Owner's approval of a Potential Change Order for such change, the Contractor shall (1) immediately confirm such order in writing to the Architect and Owner with a description of the change in the Work, (2) proceed in accordance with the directives set forth in the written order from the Owner's Representative and (3) keep and maintain detailed records of time, materials and costs of each of the Contractor Parties with respect to the change in the Work. The Contractor shall promptly prepare and submit a Potential Change Order for the change in the Work in accordance with this Section 7.3.~~

~~§ 7.3.11 To the extent the Owner and Contractor cannot reach agreement with respect to a pending Potential Change Order or any other request for an adjustment in the Guaranteed Maximum Price or Contract Time, Claims must be made in accordance with the applicable provisions of Article 15.~~

#### ~~§ 7.4 MINOR CHANGES IN THE WORK~~PROJECT ISSUES LOG

~~§ 7.4.1 The Contractor shall maintain and keep current a log that identifies and tracks the status, costs and time impacts of all issues that require Owner notice, approval or attention (the "Project Issues Log"), which shall include all known changes, conditions, events or other issues that might:~~

- ~~The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.~~
- ~~.1 Result in a change in the Work, including alternates, substitutions, adjustments to the construction schedule, Change Orders, Potential Change Orders and changes that might not require adjustment(s) to the Contract Sum, Guaranteed Maximum Price or Contract Time;~~
  - ~~.2 Warrant a Schedule Correction Plan;~~
  - ~~.3 Result in the use of a general or specific contingency allowance;~~
  - ~~.4 Result in an early release of a portion of retainage;~~
  - ~~.5 Warrant an adjustment in the Schedule of Values;~~
  - ~~.6 Impact the costs and expenses incurred by the Contractor, including discrepancies in scopes of work, potential disputes with Subcontractors or Suppliers, etc.;~~
  - ~~.7 Require the Owner's written approval in accordance with Article 16; or~~



.8 Cause delays or otherwise impact the schedule or the timing of the Work.

§ 7.4.2 For each item added to the Project Issues Log, including items that will not require adjustment(s) to the Contract Sum, Guaranteed Maximum Price or Contract Time, the Contractor shall promptly prepare and submit to the Owner and Architect a written notice or request, in a form satisfactory to the Owner, based on the best available information at the time and updated as reasonably necessary to keep the Owner and Architect well informed with respect to status and potential costs and delays. At a minimum, each notice or request must:

- .1 Describe the potential, proposed or approved changes, conditions, event or issue;
- .2 Itemize all costs and expenses that have been or might be incurred or saved as a result of the issue in a manner consistent with the estimates and accounting described in Section 7.3.7;
- .3 Reference any associated Change Orders and Potential Change Orders; and
- .4 Indicate whether the issue involves (a) a change in the Work, (b) an adjustment to the Contract Sum, Guaranteed Maximum Price or Contract Time, (c) the use of a general or specific contingency allowance, (d) an adjustment to the Schedule of Values, (e) an adjustment to the construction schedule or a Schedule Correction Plan, (f) the written approval of the Owner to include a certain expense in the Cost of the Work or (g) the early release of a portion of the retainage.

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§ 8.1.2 The date of commencement Date of Commencement of the Work is the date established in the Agreement of the Agreement, unless otherwise stipulated in the Agreement or in a Notice to Proceed from the Owner. The Date of Commencement as used herein is not defined by the date the Contractor actually commences the Work.

...

§ 8.2.1 ~~Time limits~~ The Contract Time and other specific time limits, deadlines and milestone dates stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms of the Contract, and the Contractor's failure to comply with any of these time limits shall constitute a material breach of the Contract. By signing the Agreement, the Contractor confirms that it has become familiar with any scheduling limitations that may apply to the Work and that the Contract Time is a reasonable period for performing the Work.

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

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract ~~Time~~ Time, and final completion within time, if specified.

§ 8.2.4 The Contractor shall not commence operations on the Project site prior to obtaining the necessary authorizations, licenses and permits pursuant to Section 3.7 and providing copies of such to the Owner and the Architect. The Contractor shall notify the Owner in writing not less than five (5) days before commencing operations on the Project site to allow for timely notices.

...

§ 8.3.1 If the Contractor is delayed ~~at any time~~ in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a ~~separate contractor employed by the Owner~~, ~~Separate Contractor~~; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, Work in accordance with Article 7; or by fire, unavoidable casualties or other causes beyond ~~the Contractor's control~~; ~~the control of the Contractor or other Contractor Parties~~; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. ~~Owner~~; and provided such delay is not caused in part by any of the Contractor Parties, the Guaranteed Maximum Price shall be adjusted in accordance with Article 7 to incorporate the additional costs necessary to correct such delay under a Schedule Correction Plan implemented in accordance with Section 3.10.4. Adjustments in the Guaranteed Maximum Price shall not be granted for labor disputes or delays in deliveries. The Contractor shall not be entitled to an extension of

the Contract Time unless the Work is delayed as described above and such delay cannot possibly be corrected by a plan of specific corrective actions in accordance with Section 3.10.4.

§ 8.3.2 Claims relating to time shall-Whenever the Contractor becomes aware of circumstances or conditions that might warrant a Schedule Correction Plan, an adjustment in the Guaranteed Maximum Price or an extension of the Contract Time, the Contractor shall promptly notify the Owner in accordance with Section 7.4 and proceed in accordance with Section 7.3. Delays caused by concealed or unknown conditions shall also be subject to the provisions of Section 3.7.4. To the extent the Contractor and the Owner cannot agree with respect to an adjustment in the Guaranteed Maximum Price or an extension of the Contract Time, Claims relating to time must 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. Additional costs for Owner provided furniture and equipment, including storage, double handling, re-shipping, etc., and rental expenses for temporary replacement facilities incurred by the Owner because of a failure to obtain Substantial Completion within the Contract Time shall be considered direct damages.

§ 8.3.4 The Contractor shall not be entitled to an extension of the Contract Time for a delay caused by weather conditions unless such delay cannot possibly be corrected by a plan of specific corrective actions in accordance with Section 3.10.4. Adjustments to the Guaranteed Maximum Price or Contract Time in accordance with Section 8.3.1 to correct for delays caused by weather shall be limited to the actual delays in the critical path of the Contractor's construction schedule and such conditions that are more severe than could have been reasonably anticipated in accordance with the records of the National Weather Service.

#### **§ 8.4 WORKING HOURS AND RESTRICTIONS**

§ 8.4.1 No portion of the Work shall be performed at the Project site outside the normal working hours specific to the Project except as provided in the Contract Documents or as specifically approved by the Owner in writing. Notwithstanding the foregoing, the Owner shall have the right to require that certain activities or portions of Work be performed outside normal working hours or restricted to certain hours to accommodate the ongoing operations of the Owner. The Contractor shall be responsible for identifying all legal and facility specific limitations and incorporating such limitations into the Contractor's construction schedule, including limited pedestrian or vehicle access, noise restrictions, partial occupation and use of adjacent structures. No construction activity shall take place during commencement activities, which are in May each year.

§ 8.4.2 Before scheduling or performing any portion of the Work at the Project site outside normal working hours, including any measures proposed to correct delays in accordance with Section 3.10.4, the Contractor shall submit a written request and plan to the Owner with specific detail on the proposed activities, times and dates. The Contractor's activities at the Project site outside normal working hours shall be limited to those specifically approved by the Owner in writing. Neither approvals nor denials of requests to perform activities outside normal working hours shall warrant or be construed as adjustments to the Guaranteed Maximum Price or Contract Time, and additional costs incurred by the Contractor due to the performance of activities outside normal working hours shall be the responsibility of the Contractor unless otherwise specifically stated and approved.

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The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. The Guaranteed Maximum Price includes the allowances set forth in the Contract Documents and shall be adjusted accordingly prior to Final Payment pursuant to Section 3.8.

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Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. § 9.2.1 As soon as practicable and no later than thirty (30) days prior to commencement of the Work, the Contractor shall submit for the Owner's approval a schedule of values allocating

the entire Guaranteed Maximum Price to the various portions of the Work (the "Schedule of Values"). The Schedule of Values shall be in the form of AIA Document G703™-1992, Continuation Sheet, and prepared in such detail and supported by such data to substantiate its accuracy as the Architect and the Owner require. The Schedule of Values, unless objected to by the Owner or the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.2.2 The Schedule of Values shall include separate line items for each Subcontractor and Supplier with values equal to the actual amounts owed for the particular portion of the Work to such Subcontractors and Suppliers under their agreements with the Contractor. General conditions costs, the General Contingency Allowance, specific contingency allowances and all other allowances for particular trades and unknown conditions must also be itemized separately. If the Agreement is a GMP Contract, the Contractor's Fee, Overhead Fee, staffing costs and each of the Direct Reimbursable Costs shall also be separate line items. The Schedule of Values must also include an additional column for the values initially allocated and approved by Owner, which values shall not change in subsequent schedules.

§ 9.2.3 All cost allocations to general or specific contingency allowance line items within the Schedule of Values must have prior written approval in accordance with Section 3.8.3, and the written request signed by the Owner's Representative must be submitted with the Application for Payment.

§ 9.2.4 The Schedule of Values shall be updated as necessary to incorporate Change Orders that have been signed by all parties in accordance with Article 7. Such Change Orders shall be itemized separately unless otherwise directed by the Owner. The Schedule of Values shall also be updated as necessary to incorporate changes in the allocation of the Guaranteed Maximum Price due to the use of allowances approved in accordance with Section 3.8.3 or due to differences between the estimated and actual expenditures (or "buyout savings") in accordance with Section 3.8.6. All modifications to the allocation of the Guaranteed Maximum Price within the Schedule of Values must be specifically approved in writing by the Owner's Representative in accordance with Section 7.4.2 and such approval must be submitted with the Application for Payment.

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~~§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to~~  
Promptly after the last day of each month, the Contractor shall submit concurrently to the Owner and the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, most recently approved Schedule of Values for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, shall be submitted as requested by the Owner's Representative, shall be in the form of AIA Document G702™-1992, Application and Certificate for Payment, notarized and submitted with the documentation required by the Contract Documents, Owner or Architect to support the Contractor's right to payment, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

Suppliers, and shall reflect adjustments for retainage.

~~§ 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.~~  
Applications for Payment shall include monthly reports, updated logs and updated progress schedules in accordance with Sections 3.10 and 3.11, a written itemization of the taxes saved and amounts paid directly by Owner for equipment, materials and products in accordance with Section 3.4.4, an updated cash flow schedule for the remainder of the Project, an updated retainage account statement and summary, and a notarized affidavit from the Contractor listing the payees, dates and amounts of all payments made and all payments owed to Subcontractors and Suppliers for the Project to date. The Owner's receipt of such affidavits, schedules, reports and other documents are conditions precedent to the Owner's obligation to make the progress payments to the Contractor.

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

of that portion of the Work that has actually been completed and confirmed by the Architect. Applications for Payment that indicate a percentage of completion for any portion of the Work in excess of one hundred percent (100%) will be rejected. If expenses actually incurred for any line item in the Schedule of Values exceed the last value approved for such line item, the Contractor shall request an adjustment to the Schedule of Values in accordance with Section 7.4 and submit the approved request with the Application for Payment.

§ 9.3.1.3 If the Agreement is a GMP Contract, and unless otherwise provided in the Agreement, Applications for Payment shall also include a detailed job cost report generated by software approved by the Owner and supporting documentation, such as copies of payroll records with hours detail, employee time sheets, cash ledgers, evidence of payments, receipts, bills, invoices, Subcontractor pay applications and other documentation the Owner or Architect may request.

§ 9.3.1.4 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or Supplier within seven (7) days after receipt of payment from the Owner in accordance with Section 9.6.2.

§ 9.3.2 Unless otherwise provided in the ~~Contract Documents, Agreement,~~ payments shall be made on account of materials and equipment delivered and suitably stored at the Project site for subsequent incorporation in the Work. If approved in advance by the ~~Owner, Owner and properly documented,~~ payment may similarly be made for materials and equipment suitably stored off the Project site at ~~a~~ an insured location agreed upon in writing. Payment for materials and equipment stored on or off the Project 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 Project site for such materials and equipment stored off the Project site.

§ 9.3.3 ~~The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.~~ If the Agreement is a Stipulated Sum Contract, the amount of each progress payment shall be, subject to other provisions of the Contract Documents, computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the Schedule of Values;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored in accordance with Section 9.3.2;
- .3 Subtract the aggregate of previous payments made by the Owner;
- .4 Subtract amounts, if any, withheld or nullified in accordance with Section 9.5; and
- .5 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less amounts withheld pursuant to Sections 9.8.5 and 9.8.6.

§ 9.3.4 If the Agreement is a GMP Contract, the amount of each progress payment shall be, subject to other provisions of the Contract Documents, computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work and includable in the Cost of the Work under Section 16.2, as determined by multiplying the percentage of completion of such portion of the Work by its monetary value in the Schedule of Values;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment purchased and delivered and suitably stored in accordance with Section 9.3.2, and includable in the Cost of the Work under Section 16.3;
- .3 Add the Staffing Costs includable in the Cost of the Work under Section 16.4;
- .4 Add the Direct Reimbursable Costs includable in the Cost of the Work under Section 16.6;
- .5 Add the appropriate portion of the Overhead Fee, based on the amounts included above in this Section 9.3.4;
- .6 Add the appropriate portion of the Contractor's Fee, based on the amounts included above in this Section 9.3.4;



- .7 Subtract the aggregate of previous payments made by the Owner;
- .8 Subtract amounts, if any, withheld or nullified in accordance with Section 9.5;
- .9 Subtract amounts, if any, to account for shortfalls or errors subsequently discovered between previous progress payments and the documentation substantiating the Cost of the Work; and
- .10 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less amounts withheld pursuant to Sections 9.8.5 and 9.8.6.

**§ 9.3.5** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests and encumbrances in favor of or through 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.

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

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

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

...

- .2 third party claims ~~filed~~ asserted or reasonable evidence indicating probable ~~filing~~ assertion of such ~~claims~~ claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or ~~for labor, materials or equipment~~ Suppliers, or to furnish satisfactory evidence of payment;



- ~~.4~~ reasonable evidence that the Work cannot be completed for the unpaid balance of the ~~Contract Sum; Guaranteed Maximum Price;~~
- ~~.5~~ damage to the Owner or a ~~separate contractor;~~ 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 of the Contractor to comply with any Laws; or
- ~~.7~~ ~~repeated~~ .8 failure to carry out the Work in accordance ~~with~~ with, or any other failure to comply ~~with~~ with, the Contract Documents.

**§ 9.5.2** When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld. Notwithstanding certification of payment by the Architect, the Owner may withhold payment for any of the reasons set forth in Sections 9.5.1 or 9.5.4 until such reasons are removed.

**§ 9.5.3** If the Architect withholds certification for payment under Section ~~9.5.1.3,~~ 9.5.1.3 or the Contractor is otherwise in default as described in such section, the Owner may, at its sole option, make direct payments to the unpaid Subcontractors, Sub-subcontractors or Suppliers and deduct such payments from the Contract Sum. In addition, any time the Owner reasonably believes it is necessary to protect the Owner from loss for which the Contractor is responsible, the Owner may, at its sole option, issue joint checks to the Contractor and to any ~~Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment unpaid~~ Subcontractor, Sub-subcontractor or Suppliers for Work properly performed or material or equipment suitably delivered. If the Owner makes such payments by direct payment or joint check, the Owner shall notify the Architect and the Contractor, and the Architect will reflect such payment on the next Certificate for Payment. No payment or joint check issued hereunder, or anything contained in this Section 9.5.3, shall be construed to create an obligation of Owner to any Subcontractor, Sub-subcontractor or Supplier.

**§ 9.5.4** The Contractor's obligations pursuant to the Contract Documents to timely submit specific schedules, certificates of insurance, monthly reports, information and other documentation are conditions precedent to the Owner's obligations to make payments to the Contractor, and the Architect shall withhold certifications for payment if the Contractor fails to meet such obligations.

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**§ 9.6.1** ~~After Provided the Owner's Representative has approved the Application for Payment, the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. Payment and the Owner does not withhold payment, or a portion thereof, pursuant to Section 9.5, the Owner shall make payment to the Contractor in the amount certified by the Certificate for Payment within forty-five (45) days from the submittal of a proper and complete Application for Payment.~~

**§ 9.6.2** The Contractor shall pay each ~~Subcontractor~~ Subcontractor, no later than seven (7) days after receipt of payment from the ~~Owner~~ Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the ~~Work.~~ Work, less retainage withheld in accordance with Section 9.6.9. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its material and equipment suppliers and Sub-subcontractors in a similar manner. Unless otherwise approved by the Owner in writing, the Contractor shall not release retainage to Subcontractors or make advance payments to Subcontractors or Suppliers for materials or equipment that have not been delivered and suitably stored at the Project site.

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

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

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

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

§ 9.6.8 Before each progress payment to a Subcontractor or Supplier with contracts for the Project totaling in excess of Twenty-Five Thousand Dollars (\$25,000), the Contractor must obtain a progress release and affidavit in the form attached hereto as Exhibit A, properly completed and signed by the Subcontractor or Supplier. The Contractor must maintain these progress releases and submit them to the Owner upon Substantial Completion, and at any other time demanded by the Owner. Before the final payment to such Subcontractors and Suppliers, the Contractor must obtain a final release and affidavit in the form attached hereto as Exhibit B, properly completed and signed by the Subcontractor or Supplier. These final releases must be submitted to the Owner with the final Application for Payment in accordance with Section 9.10.2.

§ 9.6.9 Unless otherwise approved by the Owner in writing, the Contractor shall withhold retainage of five percent (5.0%) from all payments to Subcontractors and deposit such retainage into a separate, interest bearing escrow account in accordance with Section 66-34-104 of Tennessee Code Annotated. The Contractor shall also deposit into the escrow account five percent (5.0%) of all amounts paid to the Contractor by the Owner for self-performance under Section 5.2.6. The Contractor shall establish the escrow account with a financial institution and under an escrow agreement approved by the Owner in writing, and the escrow agreement must require two signatures of the Owner for any disbursement. With each Application for Payment, the Contractor shall submit an updated retainage summary and an account statement evidencing the proper balance and payments to the account.

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~~If~~ Subject to the Architect's and Owner's rights to withhold certification and payment as set forth in 9.5, if the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven Payment within twenty-one (21) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven (7) days after the date required in accordance with Section 9.6.1 the amount certified by the Architect and approved by the Owner's Representative, then the Contractor may, upon thirty (30) additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents. Upon such payment, the Contractor shall promptly resume the Work and submit a Potential Change Order for an adjustment to the Guaranteed Maximum Price for the costs incurred due to the shut-down, delay and start-up and the costs to be incurred to implement a Schedule Correction Plan.

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§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is substantially complete or sufficiently complete in accordance with the Contract Documents so that the Owner can legally and reasonably occupy or utilize the Work for its intended use. The Work or designated portion thereof is not substantially complete until (a) all mechanical, electrical, plumbing, heating, air conditioning and other systems are

fully tested and operational as designed and specified, (b) all required inspections by public authorities have been completed and all permits, approvals and certificates required for use and occupancy of the improvements have been issued and (c) all items on the comprehensive list prepared in accordance with Section 9.8.2 can be completed or corrected within thirty (30) days.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, in accordance with Section 9.8.1 and all conditions specifically set forth in the Specifications, the Contractor shall prepare and submit to the Owner and the Architect a comprehensive list of all unfinished items to be completed and all known defective or deficient items corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. In addition to the list, the Contractor must also submit to the Architect and the Owner a Change Order adjusting the Guaranteed Maximum Price to deduct the unused portions of any contingency and other allowances in accordance with Section 3.8.5 and all permits, approvals, certificates, manuals, testing results, reports, progress releases and other documentation required prior to or upon Substantial Completion by the Specifications or other Contract Documents.

**§ 9.8.3** Upon receipt of the Contractor's list, the Owner and the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which that is not sufficiently complete in accordance with Section 9.8.1 and the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner or the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion to determine Substantial Completion. If the Contractor requests the inspection and it is determined that Substantial Completion has not been achieved, the Contractor shall pay for any additional services of the Architect therefore required at the Architect's standard hourly rates in effect at the time, at no expense to the Owner.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, determined substantially complete in accordance with Section 9.8.1, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties Special warranties with specific durations required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Contract Documents or Certificate of Substantial Completion.

**§ 9.8.5** ~~The~~ Upon the Owner Representative's written approval, the Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of Unless otherwise provided in the Contract Documents, the Contractor may request and the Owner shall release the retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or thereof, less such amounts necessary to protect the Owner with respect to unsettled Claims and those portions of the Work that remain incomplete or are otherwise not in accordance with the requirements of the Contract Documents.

**§ 9.8.6** The Contractor's obligations pursuant to the Specifications and other Contract Documents to submit specific permits, approvals, certificates, manuals, testing results, reports, progress releases and other documentation relative to the Owner's use and occupancy of the improvements prior to or upon Substantial Completion are conditions precedent to the Owner's obligations to make payments to the Contractor upon Substantial Completion, and the Architect shall withhold certifications for payment if the Contractor fails to meet such obligations.

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**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments,

retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of special warranties required by or contained in the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Owner and the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Contractor, Owner and Architect will promptly perform a walk through and make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, including all conditions for final payment, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. ~~The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.~~ Architect shall not issue the final Certificate for Payment until the conditions precedent listed in Section 9.10.2 and, if applicable, 9.10.3 have been fulfilled. If the Contractor requests the final inspection and it is determined that final completion has not been achieved, the Contractor shall pay for any additional services of the Architect therefore required at the Architect's standard hourly rates in effect at the time, at no expense to the Owner.

§ 9.10.2 ~~Neither~~ In addition to all other conditions for final acceptance and final payment or release of any remaining retainage contained within the Specifications or other Contract Documents or by Law, neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for (a) a final payment affidavit from the Contractor that payrolls, bills and invoices for labor, 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) Work, have been paid or otherwise satisfied, (2) and that itemizes all payees, dates and amounts of all payments made and all payments owed to Subcontractors and Suppliers for the Project, (b) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) (c) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data (d) consent of surety, if any, to final payment, (e) assignment to the Owner of, and delivery of all information regarding, all warranties and guarantees relating to the Work, (f) all required approvals by public authorities, including certificates of use and occupancy, (g) any other items or documents required of the Contractor by the Specifications, other Contract Documents or the Owner's project closeout/handover procedures, such as record documents, maintenance manuals, BIM models, system studies, equipment manuals, bonds, etc., (h) final releases and affidavits from each Subcontractor and Supplier required under Section 9.6.8, and (i) if requested by the Owner, other documentation establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be in such form and substance as necessary under Law or otherwise designated by the Owner. If a Subcontractor or Supplier refuses to furnish a release or waiver required by the Owner, the Contractor may furnish Contractor, at the Owner's option, shall furnish and record a bond satisfactory to the Owner to indemnify the Owner against such claim and lien. If such claim or lien remains unsatisfied after payments are made, the Contractor shall refund or otherwise pay to the Owner all money that the Owner may be compelled to pay in discharging such is compelled to pay in discharging, or in defense against, such claim or lien, including all costs and reasonable attorneys' fees.



~~§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims. If the Agreement is a GMP Contract, the Contractor must submit a final accounting with its final Application for Payment, which must at least include (a) the final job cost detail report with all supporting documentation, (b) a complete and final Project Issues Log with all Change Orders, Potential Change Orders and written notices and requests and (c) final employee payroll records for the Project. The Owner or its auditors shall have thirty (30) days from receipt to review and report on the Contractor's final accounting to the Architect and Contractor in writing. Within seven (7) days of receipt of such report, provided all other conditions for final payment have been met, the Architect shall either issue the final Certificate for Payment based on the Cost of the Work accepted in such report as substantiated by the Contractor's final accounting or notify the Contractor and Owner in writing of its reasons for withholding the certificate as provided in Section 9.5. If the Cost of the Work accepted in the report is less than the amount claimed by the Contractor, the Contractor may initiate a Claim in accordance with Article 15.1 within twenty-one (21) days after the issuance of the final certificate, otherwise such Claim shall be deemed waived. Pending final resolution of any disputed amounts, the Owner shall pay the Contractor any undisputed amounts certified by the Architect.~~

~~§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from~~  
~~.1 — liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;~~  
~~.2 — failure of the Work to comply with the requirements of the Contract Documents; or~~  
~~.3 — terms of special warranties required by the Contract Documents. Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when (a) the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 and to satisfy other requirements that extend beyond final payment, (b) if the Agreement is a GMP Contract, the Owner has accepted the Contractor's final accounting for the Cost of the Work, (c) the Contractor has submitted a final Application for Payment with all documentation required by Section 9.10.2 and (d) a final Certificate for Payment has been issued by the Architect, certifying for payment the entire unpaid balance of the Contract Sum.~~

~~§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment. If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of any of the Contractor Parties or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.~~

~~§ 9.10.6 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from~~  
~~.1 — liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;~~  
~~.2 — defects, deficiencies or any other failure of the Work to comply with the requirements of the Contract Documents; or~~  
~~.3 — terms of warranties or guarantees required by the Contract Documents.~~

~~§ 9.10.7 Acceptance of final payment by the Contractor, a Subcontractor, a Sub-subcontractor or Supplier shall constitute a waiver of all claims arising out of Project by that payee except those previously made in writing and identified by that payee as remaining unsettled at the time of its receipt of such payment.~~

~~§ 9.10.8 Final completion of the Project, which includes the completion and correction of all items on the comprehensive list referred to in Section 9.8.2 and the Contractor's performance of all other obligations to be~~



performed prior to final payment, shall be achieved no later than thirty (30) days following the date of Substantial Completion, unless otherwise provided in the Agreement.

#### **§ 9.11 ACCOUNTING AND AUDITS**

§ 9.11.1 The Contractor shall keep full and detailed records and accounts of all costs related to the Project and exercise such controls as necessary for proper financial management under the Contract and to substantiate costs. The accounting and control systems shall be in accordance with industry standards and generally accepted accounting principles and satisfactory to the Owner. Documenting and substantiating costs and preparing and submitting accurate Applications for Payment shall be the responsibility of the Contractor, and the review and approval of any Application for Payment by the Owner or Architect shall not be found to be a waiver or acceptance of any failure of an Application for Payment to comply with the requirements of the Contract Documents.

§ 9.11.2 The Contractor shall maintain, preserve and make available upon reasonable notice for audit, copying and examination by Owner and its auditors, for at least three (3) years after final payment, all documents, records and accounts related to the Project, including all books, correspondence, e-mail, reports, logs, notes, diaries, time sheets, testing and inspection results, instructions, schedules, drawings, receipts, vouchers, checks, back charges, cash and trade discounts, rebates, releases, affidavits, waivers, requests for proposal, Supplier and service contracts, subcontracts, proposals and bids from all bidders, bidding documents and analysis, estimates and takeoff sheets, purchase orders, delivery tickets and documentation, storage receipts and documentation, leases, contracts, commitments, bonds, security, guarantees, vouchers, receivables, memoranda, written policies and procedures, labor burden documentation, payroll tax records and receipts, labor benefit records and allocations, overhead documentation, documentation supporting accounting entries and all other information related to performance under the Contract ("Records"). In addition to access to Records, the Owner and its auditors shall be granted access to the Contractor's facilities, access to all current and former employees to discuss matters pertinent to the Contract, and access to adequate work space to conduct the audits, interviews and examinations. If requested by the Owner, the Contractor shall furnish any Records related to the Project in a useable electronic format. Under the Contractor's agreements with Subcontractors and Sub-subcontractors, such persons and entities shall also be subject to an Owner audit under this Section 9.11 to verify the accuracy of records, information and representations made to the Contractor and the Owner and to confirm compliance with the Contract Documents.

§ 9.11.3 In the event any such audit reveals that the Contractor was paid more than the amount it was entitled to under the Contract, Contractor shall reimburse Owner for any such improper payments within thirty (30) days of written demand. In the event the audit reveals that the Contractor was paid in excess of one-quarter percent (0.25%) more than the amount it was entitled to under the Contract or it reveals that improper payments were the result of intentionally false or misleading statements in Applications for Payment, the Contractor shall also reimburse Owner for all costs and expenses incurred to perform the audit. All costs and payments, including stipulated sum contracts and change orders, shall be subject to audit and review for compliance with contractual requirements and verification of representations. Any disputes between the Owner and Contractor regarding the results or performance of an audit pursuant to this Section 9.11 shall be resolved in accordance with Article 15.

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The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. Contract, and be responsible for compliance with any additional safety requirements set forth in the Specifications.

...

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

§ 10.2.2 The Contractor shall comply with and give notices required by ~~applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities~~ Law bearing on safety of persons or property or their protection from damage, injury or loss. The Contractor also shall promptly notify the Owner and the Architect in writing of any damage, injury or loss to the persons or property related to the project.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, providing safe and accessible alternate pedestrian routes, security fencing and screening around the site and equipment, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall be solely responsible for the adequacy of such safeguards and precautionary measures.

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

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

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

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

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~~If either party~~ the Contractor suffers injury or damage to person or property because of an act or omission of the ~~other party~~ Owner, or of others for whose acts ~~such party~~ the Owner is legally responsible, written notice of such injury or damage, whether or not insured, shall ~~be given to the other party within a reasonable time not exceeding 21 days after discovery.~~ promptly be given to the Owner in accordance with Articles 7, 8 and 15. The notice shall provide sufficient detail to enable the ~~other party~~ Owner to investigate the matter.

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§ 10.3.1 The Contractor ~~is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately~~ Parties shall comply with all Laws, standards and handling criteria regarding hazardous substances, wastes and materials, including asbestos-containing materials, lead-based paints, mold, radon, and polychlorinated biphenyl (PCB), (hereinafter, "Hazardous Materials") in performing the Work. Unless specifically consented to by the Owner in writing or specifically required by the Contract Documents, no underground or above-ground storage tanks or drums shall be placed on the Project site and no Hazardous Materials shall be brought onto the Project site, handled on the Project site or otherwise incorporated into the Work by any of the Contractor Parties. If the Contractor Parties encounter any material or substance that could be a Hazardous Material, the Contractor shall immediately (a) stop Work in the affected area and (b) report

the condition to the Owner and Architect in ~~writing~~ writing and consult and cooperate with the Owner with respect to the Owner's investigation and response and (c) take all reasonable precautions to prevent or contain the movement, spread or disturbance of the suspected Hazardous Materials and to protect all persons and property.

§ 10.3.2 Upon receipt of the Contractor's written ~~notice~~, notice of the presence of potential Hazardous Materials, the Owner shall obtain the services of ~~a licensed laboratory~~ an environmental consulting firm or asbestos abatement or lead-based paint contractor, as appropriate, to verify the presence or absence of the material or substance reported by the Contractor and, in the event ~~such material or substance is found to be present~~, to cause it to be rendered harmless. ~~Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased~~ any Hazardous Materials are found to be present, to investigate, document and remediate the condition as required by Law. Upon receipt of a written opinion from such consulting firm or contractor that Work in an area can safely and legally resume based on its investigation and, if necessary, remediation, abatement, containment and governmental approvals, Work in the affected area shall resume. Provided the Contractor did not breach this Section 10.3, and the Contractor so requests in writing, to the extent attributable to the presence of potential Hazardous Materials, the Guaranteed Maximum Price shall be increased in accordance with the provisions of Articles 7 and 8 in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up and start-up and the reasonable additional costs to be incurred to implement a Schedule Correction Plan.

§ 10.3.3 To the ~~fullest full~~ full extent permitted by ~~law~~, Law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, ~~Architect, Architect's consultants~~ and agents and employees of ~~any either~~ of them from and against claims, damages, losses and expenses, including ~~but not limited to attorneys' fees, attorney, expert and consultant fees and expenses~~, arising out of or resulting from performance of the Work in the affected area if in fact ~~the material or substance~~ a material or substance identified by the Contractor in accordance with this Section 10.3 presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, and Owner fails to comply with its obligations under Section 10.3.2, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent and provided that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity, not due to any fault or negligence of, or breach of this Section 10.3 by, any of the Contractor Parties.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the Project site unless such materials or substances are ~~required by the Contract Documents~~. ~~The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances, specifically consented to by the Owner in writing or required by the Contract Documents, and the Contractor complies with all of its obligations under this Section 10.3.~~

§ 10.3.5 ~~The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. To the full extent permitted by Law, the Contractor shall indemnify and hold harmless the Owner, and its agents, consultants and employees, from and against any and all claims, damages, losses, costs and expenses, including attorney, expert and consultant fees and expenses, arising out of or resulting from (1) any Hazardous Materials brought to the Project site and negligently handled by one of the Contractor Parties, or (2) the failure of any of the Contractor Parties to comply with the requirements of this Section 10.3.~~

§ 10.3.6 If, without negligence or a breach of this Section 10.3 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~~ any Hazardous Material not brought onto the Project site by a Contractor Party, and solely by reason of performing Work as

required by the Contract Documents, the Owner shall indemnify the Contractor for all reasonable cost and expense thereby incurred. This indemnity shall not be valid unless the Contractor has given prompt written notice of such potential claim to the Owner and has given the Owner a reasonable opportunity to assume the defense and handling of such potential claim.

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In an emergency affecting safety of persons or property, the Contractor shall promptly act, at the Contractor's reasonable discretion, to prevent threatened damage, injury or ~~loss~~-loss and shall notify the Owner and Architect as soon as reasonable possible. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7, in accordance with Articles 7, 8 and 15.

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

...

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

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

.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section ~~3.18~~-3.18 and other indemnity obligations under the Contract Documents.

§ 11.1.2 The insurance required by Section ~~11.1.1~~ shall be written for ~~not less than limits of liability specified in the Contract Documents~~ 11.1 shall be written with limits of liability applicable to the Project that are no less than the limits of the Contractor's existing general liability policy and no less than the minimum limits specified below or required by law, whichever coverage is greater. ~~Coverages, whether written on an occurrence or claims made basis,~~ broader and greater. Such coverages shall be in form and substance reasonably satisfactory to the Owner and with an insurance company currently rated A-VIII or better by A.M. Best Company. Such coverages shall be written on an occurrence basis, except for any Professional Liability or Pollution Liability coverages, which shall be written on a claims-made basis. Such coverages shall provide all major divisions of coverage in conformance with the standard terms, conditions and coverages of the Insurance Service Office (ISO) and National Council on Compensation Insurance (NCCI) policies, forms and endorsements. Such Coverages shall be maintained without interruption from the ~~date of commencement~~ Date of Commencement of the Work until the date of final payment and termination of payment, and, with respect to any coverage required to be maintained after final payment, ~~and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents~~ including the Contractor's products and completed operations coverage and any Professional Liability, Contractor's Professional Liability and Pollution Liability coverages, until at least five (5) years after final completion of the Work or for such longer period if so specified in the Contract Documents.

.1 Commercial General Liability:

- (a) \$2,000,000 General – aggregate – per project
- (b) \$2,000,000 Products and Completed Operations – aggregate
- (c) \$1,000,000 Personal and Advertising Injury – per occurrence
- (d) \$1,000,000 Bodily Injury and Property Damage – per occurrence
- (e) \$50,000 Damage to Premises – per occurrence
- (f) \$5,000 Medical Expenses – per person



- .2 Automobile Liability (including owned, non-owned and hired motor vehicles):  
  - \$1,000,000 Combined Single Limit – per accident
- .3 Worker’s Compensation and Employer’s Liability:
  - (a) State and Federal (as applicable): Statutory Limit
  - (b) Employer’s Liability (without restriction to Worker’s Compensation coverage):
    - (i) \$500,000 per occurrence for bodily injury by accident
    - (ii) \$500,000 policy limit by disease
    - (iii) \$500,000 per employee for bodily injury by disease
- .4 Umbrella/Excess Liability: see Section 11.1.8.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with in the general form of ACORD 25-S supplemented with AIA Document G715, or one or more other forms acceptable to the Owner, shall be submitted to the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days’ prior written notice has been given to the Owner. Such certificates shall specify the Owner as a Certificate Holder, shall be signed by an authorized representative or agent of the insurer and shall provide evidence of all coverages required by this Section 11.1, including evidence of and the amount of any deductibles and self-insured retentions. Any endorsement to a policy, whether specifically required by this Section 11.1 or not, shall be attached to that policy’s certificate. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, the Contractor’s coverage for products and completed operations and any Professional Liability, Contractor’s Professional Liability and Pollution Liability coverages, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning Certificate Holders must receive written notice at least thirty (30) days prior to cancellation or expiration of the stated coverage and written notice of and information concerning any reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness, a general aggregate, or both, within ten (10) days of knowledge. If requested by the Owner, the Contractor shall provide certified copies of all insurance policies applicable to the Work.

§ 11.1.4 The Contractor shall cause the commercial liability—Commercial General Liability, Automobile Liability, Umbrella/Excess Liability and any Pollution Liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect’s consultants as additional insureds—the Owner as an additional insured, on a primary and noncontributory basis, for claims caused in whole or in part by the Contractor’s negligent acts or omissions during the Contractor’s operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor’s negligent acts or omissions during the Contractor’s completed operations, providing full coverage up to the monetary limits of the policies during the Contractor’s operations and during the Contractor’s completed operations. The Contractor shall require each of the Subcontractors to obtain the same endorsements on the Subcontractor’s policies in favor of the Owner.

§ 11.1.5 The Contractor shall obtain a waiver of subrogation endorsement to each insurance policy required by this Section 11.1, including Worker’s Compensation and Employer’s Liability, that waives the insurer’s right to subrogate a claim against the Owner. The Contractor shall require each of the Subcontractors to obtain the same endorsements on the Subcontractor’s policies in favor of the Owner.

§ 11.1.6 If any provision of the Contract Documents requires any of the Contractor Parties to provide professional services, including any architectural, engineering, design, construction management, surveying or other professional service, such party must obtain Professional Liability (errors and omissions) coverage with limits of liability applicable to such party’s portion of the Work that are no less than (a) the limits of such party’s existing professional liability policy, (b) \$1,000,000 per claim and \$2,000,000 in the aggregate, (c) \$3,000,000 per claim and \$5,000,000 in the aggregate if the construction cost of such party’s portion of the Work is expected to be greater than \$8,000,000 and (d) \$5,000,000 per claim and \$7,000,000 in the aggregate if the construction cost of such party’s portion of the Work is expected to be greater than \$50,000,000. Unless otherwise provided in the Agreement, the Contractor shall also obtain and maintain Contractor’s Professional Liability (errors and omissions) coverage applicable to the Project with limits of liability of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate. Unless otherwise provided in the Agreement, the Contractor shall also obtain and maintain Pollution Liability coverage applicable to the Project with limits of liability of not less than \$1,000,000.



§ 11.1.7 The Commercial General Liability insurance required by this Section 11.1 shall at a minimum include the following coverages: Premises – Operations (including Explosion, Collapse and Underground Hazards (XCU) coverage); Independent Contractors Protective; Products and Completed Operations; Broad Form Property Damage, including coverage of the work performed by subcontractors; Personal and Advertising Injury without the Employment Exclusion; and Blanket Contractual Liability that would apply to and secure the Contractor's indemnity obligations contained in Section 3.18 and elsewhere in the Contract Documents.

§ 11.1.8 The Umbrella/Excess Liability insurance required by this Section 11.1 shall provide following form coverage in excess of the underlying Commercial General Liability, Completed Operations and Worker's Compensation and Employer's Liability policies. If the Guaranteed Maximum Price is \$10,000,000 or less, this coverage shall have limits of liability of not less than \$5,000,000 per occurrence and in the aggregate; if the Guaranteed Maximum Price is between \$10,000,000 and \$25,000,000, this coverage shall have limits of liability of not less than \$10,000,000 per occurrence and in the aggregate; if the Guaranteed Maximum Price is between \$25,000,000 and \$50,000,000, this coverage shall have limits of liability of not less than \$25,000,000 per occurrence and in the aggregate; and if the Guaranteed Maximum Price is \$50,000,000 or greater, this coverage shall have limits of liability of not less than \$25,000,000 or forty percent (40%) of the Guaranteed Maximum Price per occurrence and in the aggregate.

§ 11.1.9 Unless otherwise agreed in writing, and in addition to any other coverages required by the Contract Documents, the Contractor shall require all Subcontractors to obtain, confirm and maintain during the Work Commercial General Liability, Automobile Liability, Worker's Compensation and Employer's Liability and Umbrella/Excess Liability insurance policies providing coverages applicable to the Project as broad as the coverages required of the Contractor except with monetary limits of liability proportional to the amount of the Subcontractor's portion of the Work. Each Subcontractor must furnish its certificates of insurance prior to entering the Project site.

§ 11.1.10 It is expressly agreed that the Contractor hereby waives any claim for damage or loss to its equipment against the Owner, and the Contractor shall require each of its Subcontractors to waive the same. Any insurance policy covering the Contractor's or its Subcontractors' equipment against loss by physical damage shall include an endorsement that waives the insurer's right to subrogate a claim against the Owner.

§ 11.1.11 The Contractor and, as applicable, the Subcontractors shall bear all risks and be responsible for any uninsured loss due to policy deductibles, self-insured retentions, exclusions, limitations inadequacy or absence of coverage.

§ 11.1.12 In no event shall any failure by the Owner to promptly enforce the provisions of Section 11.1 be construed as a waiver by the Owner of the Contractor's obligation to obtain, maintain or require the insurance specified by this Section 11.1 and the Agreement. If the Contractor fails to purchase or maintain or require to be purchased and maintained the insurance specified in this Section 11.1 and the Agreement, the Owner may, but shall not be obligated to, purchase equivalent insurance coverages on the Contractor's behalf, and Owner shall be entitled to be reimbursed for any premiums paid therefor in the manner set forth in Section 2.4.

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

...

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

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

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

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

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such ~~deductibles~~-deductibles, except to the extent the losses are caused by one of the Contractor Parties.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the ~~site~~-Project site in accordance with the requirements of the Contract Documents, and also portions of the Work in transit.

...

### **§ 11.3.2 BOILER AND MACHINERY INSURANCE WAIVERS OF SUBROGATION**

~~The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds. Unless such waiver adversely affects any insurance coverage or proceeds thereof, the Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Separate Contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for loss caused by fire or other perils to be insured against in accordance with this Section 11.3 to the extent and only in the amount of the property insurance proceeds received for those losses, except such rights as they have to such proceeds. The Owner or Contractor, as appropriate, shall require of the Separate Contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.~~

### **§ 11.3.3 LOSS OF USE INSURANCE**

~~The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused. A loss insured under the property insurance required under this Section 11.3 shall be adjusted by the Owner and made payable to the Owner for the insureds, as their interests may appear. The Contractor shall pay Subcontractors their just shares of any insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.~~

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such

insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order after an insured loss no agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor as a Change in the Work in accordance with Article 7.

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

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

#### § 11.3.7 WAIVERS OF SUBROGATION

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

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

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

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

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

§ 11.4.2 The Contractor shall furnish to the Owner a copy of each Contractor, Subcontractor and Sub-subcontractor bond applicable to the Work prior to the commencement of any portion of the Work covered by such bond, and this obligation shall be a condition precedent to the Owner's obligation to make progress payments. Upon the request of any other person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract,~~any bond covering payment obligations, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.~~such bond or hereby authorizes a copy to be furnished by the Owner or the Architect.

§ 11.4.3 All bonds required under Section 11.4 shall (a) clearly display the surety's address and the bond number on the front of the bond, (b) meet all applicable statutory requirements, (c) be issued by a surety lawfully authorized to do business in Tennessee, listed in the Federal Register and currently rated B+ or better by A.M. Best Company, (d) include certified and current copies of the powers of attorney and (e) be in a form approved and satisfactory to the Owner.

§ 11.4.4 Unless otherwise provided in the Agreement or approved by the Owner in writing, the Contractor shall require bonds from each Subcontractor and Sub-subcontractor with contract(s) in excess of \$250,000 that cover complete and faithful performance of such Subcontractor's or Sub-subcontractor's performance and payment obligations in amounts at least equal to the contract value of such Subcontractor's or Sub-subcontractor's agreement(s). The Contractor may require bonds from other Subcontractors or Sub-subcontractors at its discretion, but such decision will not warrant an increase in the Guaranteed Maximum Price. All bonds provided by Subcontractors and Sub-subcontractors shall include the Owner as a named obligee.

§ 11.4.5 When specifically approved by the Owner in writing, the Contractor may enroll certain Subcontractors into its subcontractor default insurance program in lieu of requiring bonding from such Subcontractors, provided such enrollment reduces the Guaranteed Maximum Price. If proposed, the Contractor shall provide to the Owner all information requested regarding the Contractor's subcontractor default insurance program.

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§ 12.1.1 If a portion of the Work is covered contrary to the Owner's or the Architect's request or to requirements specifically expressed in the Contract Documents,~~Documents or prior to any inspection required under Law, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the~~the Owner or the Architect, be uncovered for examination and be replaced without any expense to the Owner and no change in the Contract Sum or Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Owner or the Architect has not specifically requested to examine prior to its being covered, the Owner or the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition expense, without any expense to the Owner and no change in the Contract Sum or Contract Time, unless the deficiency was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.~~Separate Contractor.~~

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The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected or non-conforming Work, including additional testing and inspections, the cost costs of uncovering and replacement, replacement and compensation for the Architect's and the Owner's other consultants' services and expenses made necessary thereby, shall be at the Contractor's expense.~~expense without any expense to the Owner and no change in the Contract Sum or Contract Time.~~



...

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one (1) year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of ~~an applicable special warranty required by any other warranty or guarantee required by or contained in~~ 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 in accordance with Section 12.2.1 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 its discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require ~~correction by the Contractor and to make a claim for breach of warranty~~ such correction by the Contractor under this Section 12.2.2.1, but not any other remedy. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

...

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

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or ~~separate contractors~~ Separate Contractors caused by the ~~Contractor's~~ correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

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

...

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~~ Guaranteed Maximum Price will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been ~~made~~ made, and, if final payment has been made, the Contractor shall refund the amount of such adjustment to the Owner promptly upon request.

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### § 13.1 GOVERNING LAW AND VENUE

The Contract shall be governed by the law of ~~the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern~~ Section 15.4, Tennessee, and the venue for any formal action initiated in connection with the Contract shall be in Nashville, Davidson County, Tennessee.

...

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



...

§ 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. Except as provided in the Contract Documents, the rights and remedies provided under the Contract shall be in addition to the rights and remedies otherwise available at law or in equity.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as ~~may be specifically agreed~~ specifically agreed in the Contract Documents or otherwise in writing. Further, no failure to enforce any term or provision of the Contract Documents shall constitute a waiver of any subsequent obligation to comply with such term or provision or a waiver of any other term or provision of the Contract Documents or any performance required under the Contract, except as specifically agreed in the Contract Documents or otherwise in writing.

...

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable ~~laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities, standards and Laws.~~ Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity ~~acceptable to~~ selected by the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. With respect to any testing or inspections paid for directly by the Owner pursuant to the Contract Documents, the Contractor shall still be responsible for coordinating and arranging for the timely completion of such services. The Contractor shall give the Owner and the Architect timely notice of when and where tests and inspections are to be made so that the Owner and the Architect may be present for such procedures. ~~The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.~~ Reports and results from testing and inspections shall be distributed by the Contractor to the Owner and the Architect.

§ 13.5.2 If at any time before or after final payment, the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, ~~the Architect will, upon written authorization from the Owner,~~ Owner can 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 Owner and the Architect of when and where tests and inspections are to be made so that the Owner and the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such ~~failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.~~ failure, including the costs of additional testing, inspections and repeated procedures, the costs of uncovering, replacement and correction and compensation for the Architect's and the Owner's other consultants' services and expenses, shall be at the Contractor's expense without any cost to the Owner and no change in the Contract Sum or Contract Time.

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

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Payments due and unpaid under the Contract Documents shall bear interest from the date payment is ~~due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.~~ past due at a rate of Two Percent (2.0%) per annum.

The Owner and Contractor shall initiate and commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. Article 15 and within the time periods specified therein and by Law. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

#### **§ 13.8 ENFORCEABILITY**

If a court of competent jurisdiction, or other authority, finds any provision of the Contract to be invalid or unenforceable in whole or in part, such finding shall not affect the validity or enforceability of any other provisions of the Contract or the remainder of the provision in question. In lieu of each provision of the Contract, or part thereof, that is determined to be invalid or unenforceable, there shall be substituted as part of the Contract a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as is possible.

#### **§ 13.9 COUNTERPARTS**

The Agreement and Modifications may be signed in multiple counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.

#### **§ 13.10 CONFIDENTIALITY**

In connection with performance under this Agreement, the Contractor Parties may become aware of certain confidential information, including information regarding the Project, Owner's operations, student information or any other records or business knowledge of the Owner (the "Confidential Information"). This Confidential Information is owned exclusively by the Owner, is used in the operation of its business and is secret, confidential and proprietary to Owner. Each of the Contractor Parties shall maintain the confidentiality of all Confidential Information, including all Project related information except as required by law. Each of the Contractor Parties agrees to (a) use the Confidential Information only as necessary to fulfill its obligations under this Agreement or applicable law and, thus, restrict disclosure only to those persons who need to know for those purposes, (b) use a reasonable standard of care in maintaining the Confidential Information in strict confidence and (c) return or destroy all documents, copies, notes or other materials containing any Confidential Information upon completion of the Work or upon Owner's request. Accordingly, none of the Contractor Parties shall divulge information concerning the Project to anyone (including information in applications for permits, variances and similar items) without the Owner's prior written consent. The Owner reserves the right to release all Project information and to time its release, form and content. The obligations of this Section 13.10 shall survive final completion or termination of the Contract.

#### **§ 13.11 PUBLICITY**

Unless otherwise specifically approved by the Owner in writing, none of the Contractor Parties shall use the Owner's name, logos or trademarks or photographic or artistic representations of the Project in any professional, marketing, advertising or promotional materials or media. The obligations of this Section 13.11 shall survive final completion or termination of the Contract.

#### **§ 13.12 IMMIGRATION AND EQUAL OPPORTUNITY**

The Contractor represents, warrants, and covenants that it is in full compliance with the Immigration Reform and Control Act of 1986, as amended, and will only assign personnel to the Project whose employment eligibility has been verified. Further, Contractor warrants that it is in compliance with all applicable Federal, state, and local laws, as amended, including 41 CFR 60-1.4, CFR 60-250.4, and 41 CFR 60-741.4, with respect to nondiscrimination in employment on the basis of race, religion, color, national origin, or sex, equal opportunity, affirmative action, employment of disabled veterans, and veterans of the Vietnam era, and employment of the handicapped. None of the Contractor Parties shall discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation or national origin.

#### **§ 13.13 MINORITY AND WOMEN OWNED BUSINESSES**

The Contractor, and the other Contractor Parties by contractual obligation, shall actively seek and evaluate Minority and Women Owned Businesses as potential Subcontractors, sub-subcontractors, suppliers, consultants and vendors for the Project. This section does not in any way relieve the Contractor, or any of the Contractor Parties, from their obligations to evaluate the qualifications and suitability of all prospective Subcontractors, sub-subcontractors,

suppliers, consultants and vendors for the Project. Nor does this section in any way relieve the Contractor from the obligations and requirements of Article 5.

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§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of ~~30~~thirty (30) consecutive days through no act or fault of ~~the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, any of the Contractor Parties~~ for any of the following reasons:

...

- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment ~~within the time stated in the Contract Documents; or~~
- ~~.4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1 and has not notified the Contractor of the reasons therefor.~~

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven (7) days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for ~~Work executed, including reasonable overhead and profit, the portion of the Work completed, including the portion of the Contractor's Fee, or reasonable overhead and profit, earned with respect to the portion of the Work completed, and costs incurred by reason of such termination, and damages.~~ termination.

§ 14.1.4 If the Work is stopped for a period of ~~60~~sixty (60) consecutive days through no act or fault of ~~the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor any of the Contractor Parties~~ because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters ~~important~~necessary to the progress of the Work, the Contractor may, upon seven (7) additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

...

§ 14.2.1 The Owner may terminate the ~~Contract~~ Contractor's right to complete the Work under the Contract, in whole or in part, if the Contractor

- ~~.1 repeatedly~~refuses or fails to supply proper supervision or enough properly skilled workers or proper materials; materials, equipment, tools, or construction equipment and machinery;
- ~~.2 fails to make payment to Subcontractors for materials or labor or Suppliers in accordance with the Contract Documents and respective agreements between the Contractor and the Subcontractors; Subcontractors and Suppliers;~~
- ~~.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; disregards or violates any Laws;~~
- ~~.4 fails to timely perform the Work in accordance with Section 3.10;~~
- ~~.5 refuses or fails to promptly correct rejected or non-conforming Work or remedy property damage for which it is responsible;~~
- ~~.6 is adjudged bankrupt, or if Contractor makes a general assignment for the benefit of creditors, or if a receiver is appointed on account of its insolvency; or~~
- ~~.4~~.7 otherwise is guilty of substantial a material breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the ~~Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may~~ Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Owner, terminate the Contractor's right to complete the Contract upon written notice from the Owner to the Contractor and the Contractor's surety, ~~if any, seven days' written notice, terminate employment of the Contractor and may, subject to any if any.~~ However, if the reason for termination can be reasonably cured within seven (7) days, the Contractor shall be given such opportunity by written notice from the Owner of the default prior to termination. Upon such termination, the Owner may, subject to any superior prior rights of the surety:

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§ 14.2.3 When the Owner terminates the Contractor's right to complete the Contract for one or more of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished. Within fourteen (14) days of such termination, the Contractor shall submit to the Owner and the Architect a complete and current accounting of the Contractors' costs, liabilities and obligations related to the Project with supporting documentation, including copies of all agreements and change orders with each Subcontractor and Supplier, copies of all bills, invoices, pay requests, correspondence, and change order requests with respect to each Subcontractor and Supplier and evidence of all payments made by the Contractor to, and lien waivers from, each Subcontractor and Supplier. If requested by the Owner, each Subcontractor and Supplier shall submit a similar accounting with documentation directly to the Owner. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, sign and deliver all such papers and take all such steps, including separate written assignments of such subcontracts and other contractual rights of the Contractor, as the Owner requires for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 14.2.4 If the Agreement is a Stipulated Sum Contract, the Owner shall pay the Contractor only an amount equal to the unpaid balance of the Contract Sum ~~exceeds less the~~ costs of finishing the Work, including compensation for the Architect's and the Owner's other consultants' services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, ~~such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, including fees and expenses of attorneys, experts and consultants and the damages described in Section 8.3.4, but if such costs and damages exceed the unpaid balance, the Contractor shall~~ pay the difference to the Owner upon demand. If the Agreement is a GMP Contract, the Owner shall pay the Contractor only an amount equal to the unpaid balance of the Contract Sum based on the Cost of the Work as of the date of termination, but if such Contract Sum and the costs and damages incurred by the Owner exceed the Guaranteed Maximum Price, the Contractor shall pay the difference to the ~~Owner, Owner upon demand.~~ The amount to be paid to the Contractor or Owner, as ~~the case may be, applicable,~~ shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of ~~the Contract, the Contractor's right to complete the Contract.~~

§ 14.2.5 The Owner shall also owe the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Contract Sum or Cost of the Work under Section 14.2.4.

§ 14.2.6 Termination by the Owner of the Contractor's right to complete the Work under the Contract under this Section 14.2 shall not affect the Owner's rights and remedies under the Contract Documents or at law or equity, and shall not terminate the Contractor's liability under the Contract Documents with respect to any portions of the Work or actions or omissions of any of the Contractor Parties.

§ 14.2.7 If it is determined that termination of the Contractor's right to complete the Work under the Contract under this Section 14.2 was wrongful or otherwise improper, such termination shall be deemed a termination for convenience pursuant to Section 14.4.

...

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



~~§ 14.3.2 The Contract Sum-Guaranteed Maximum Price and Contract Time shall be adjusted for increases in the cost and time caused by additional costs actually incurred and time consumed due to suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent.~~No adjustment shall be made if:

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

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§ 14.4.1 The Owner may, at any time, terminate the Contractor's right to complete the Work under the Contract for the Owner's convenience and without cause.

...

- ~~.3~~ except for Work directed to be performed ~~prior to the effective date of termination stated in the notice, by or on behalf of the Contractor,~~ terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work ~~executed, and completed, and direct~~ costs incurred by reason of such termination, ~~along with reasonable overhead and profit on the Work not executed, but not for costs, overhead or profit on the Work not completed or any other damages that might be alleged by Contractor.~~

...

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

...

Claims by either the Owner or Contractor must be initiated by written notice to the other party ~~and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker.~~ Claims by either party must be initiated within 21 and, if prior to final payment of Contractor, to the Initial Decision Maker. Such notice of a Claim by either party for an adjustment in the construction schedule or Contract Time or for additional costs or compensation, including an increase in the Contract Sum or Guaranteed Maximum Price, must be initiated within twenty-one (21) days after occurrence of the event giving rise to such Claim or within 21 Claim, within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later- or, if a Potential Change Order was submitted with respect to such Claim, within twenty-one (21) days after the Owner rejects the Potential Change Order in writing, whichever is later, or such Claims shall be deemed waived.

...

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. ~~The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.~~

...

If the Contractor wishes to make a Claim for additional costs or compensation, including an increase in the Guaranteed Maximum Price or Contract Sum, written notice as provided ~~herein~~ in this Section 15.1 shall be given



before proceeding to ~~execute~~ perform the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

...

**§ 15.1.5.1** If the Contractor wishes to make a Claim for an increase in the Contract ~~Time, written notice as provided herein~~ Time or an adjustment to the Guaranteed Maximum Price due to a delay in the Work or the implementation of a Schedule Correction Plan, written notice as provided in this Section 15.1 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work, Work and a request for a specified adjustment to the Guaranteed Maximum Price or specific amount of increase in the Contract Time. In the case of a continuing delay, only one Claim within twenty-one (21) days after the Contractor first recognizes the condition giving rise to the Claim is necessary.

**§ 15.1.5.2** If adverse weather conditions are the basis for a Claim for additional time, ~~such Claim shall be documented by the notice of such Claim~~ shall include documentation of data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction, construction in accordance with the requirements of Section 8.3.

### **§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES DUE TO DELAY**

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

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

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

### **§ 15.1.7 MECHANIC'S AND MATERIALMEN'S LIENS**

If any mechanics' or materialmen's liens, or liens of like nature, are at any time asserted or recorded against the Owner or the Project by any of the Contractor Parties or any other person or entity making a claim based on services, labor, materials or equipment provided for the Work, Contractor, at its expense, promptly shall take and diligently prosecute appropriate action to have the same discharged within fifteen (15) days after notice of assertion or filing thereof or such lesser period as shall be necessary to prevent judgment, execution or foreclosure of such lien or any other adverse consequences for Owner. Upon Contractor's failure to do so, Owner, in addition to any other right or remedy that Owner has, may take such action as reasonably necessary to protect Owner's interest, including payment or settlement of the lien and any related legal action, and Contractor shall reimburse Owner, or Owner may deduct from amounts owed Contractor, any amounts and damages paid or incurred by the Owner, including any attorney, expert and consultant fees and expenses, in connection with such lien and legal action. To the full extent permitted by Law, Contractor shall indemnify, hold harmless and, if the Owner elects, defend the Owner from and against any and all claims, damages, losses and expenses, including attorney, expert and consultant fees and expenses, arising out of, in connection with or resulting from claims of nonpayment or liens asserted or recorded by any of the Contractor Parties or any other claims or liens based on services, labor, materials or equipment provided for the Work, provided the Contractor has been paid in accordance with the Agreement with respect to the portion of the Work on which the claim or lien is based.

### **§ 15.1.8 ATTORNEYS' FEES**

In any legal proceeding or arbitration arising out of the Contract or related to the Project, the prevailing party shall be entitled to recover from the non-prevailing parties all costs the prevailing party incurred pursuing and/or defending the underlying claims, including reasonable fees and expenses of attorneys, consultants and experts and fees and costs associated with any related litigation, bankruptcy proceedings or appeals. The prevailing party is the

party that prevails, either affirmatively or via a successful defense, with respect to the claims of greatest value or importance as reasonably determined by the court.

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

§ 15.2.2 The Initial Decision Maker will review Claims and within ten (10) days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

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§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten (10) days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

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

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

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

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

...

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

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

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

## **ARTICLE 16 COST OF THE WORK**

### **§ 16.1 GENERAL**

§ 16.1.1 The term "Cost of the Work" shall mean costs necessarily incurred by the Contractor in the proper performance of the Work that are specifically included as set forth below in Section 16.2 through 16.6. Absent prior written approval of the Owner, such costs shall not exceed standard rates paid in Nashville, Tennessee.

§ 16.1.2 Except for purposes of defining costs and expenses that are includable in the Cost of the Work, Article 16 shall only apply to the Contract if the Agreement is a GMP Contract.

§ 16.1.3 Where any cost is subject to the Owner's prior approval, the Contractor shall obtain such approval in writing prior to incurring the cost and submit such written approval with the applicable Application for Payment; otherwise, such costs are not includable in the Cost of the Work, which means the Contractor will not be entitled to reimbursement for such costs by the Owner. Costs in excess of amounts previously approved are not includable in the Cost of the Work.

### **§ 16.2 SUBCONTRACT AND TRADE COSTS**

§ 16.2.1 Payments made by the Contractor under an agreement with a Subcontractor entered into in accordance with Article 5 and the other requirements of the Contract are includable in the Cost of the Work.

§ 16.2.2 Amounts specified for trade work performed by the Contractor's own forces in accordance with Section 5.2.6 are includable in the Cost of the Work. If performed on the basis of cost plus a fee, the amounts includable in the Cost of the Work are the additional costs incurred by the Contractor in accordance with Section 16.4 to self-perform plus the specified fee, subject to any other specified criteria and the guaranteed maximum cost specified for such self-performance.

### **§ 16.3 MATERIALS AND EQUIPMENT COSTS**

§ 16.3.1 Payments made by the Contractor under an agreement with a Supplier entered into in accordance with Article 5 and the other requirements of the Contract for materials or equipment incorporated into the Work are includable in the Cost of the Work, including those incorporated into the completed portion of the Work, those to be incorporated into the Work if suitably stored at the Project site, and those to be incorporated into the Work if delivered and suitably stored off the Project site with the Owner's prior written approval. These costs may include delivery, transportation and storage and may allow for reasonable waste and spoilage. Unused excess materials 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 Contractor. Any amounts realized from such sales shall be credited against the cost of the materials included in the Cost of the Work.

§ 16.3.2 Payments made by the Contractor under an agreement with a Supplier entered into in accordance with Article 5 and the other requirements of the Contract for materials, supplies, temporary facilities, machinery, equipment, services or other items provided at the Project site and consumed or otherwise necessary in the performance of the Work are includable in the Cost of the Work. These costs may include delivery, transportation, storage, installation, maintenance, dismantling and removal. With respect to items that are not fully consumed or

have value remaining after use for the Project, the fair market value of the item immediately after its use for the Project shall be credited against its cost included in the Cost of the Work.

**§ 16.3.3** Rental charges paid or costs incurred by the Contractor for certain temporary facilities and large machinery and equipment necessary at the Project site are includable in the Cost of the Work, including tower and mobile cranes, vertical hoisting, scaffold, bulldozers, excavators, hoe rams, forklifts, etc., provided such facilities, machinery and equipment and costs are preapproved in accordance with this Section 16.3.3. These costs may include delivery, transportation, installation, minor repairs, insurance, dismantling and removal.

**§ 16.3.3.1** Accompanying the submittal of the Schedule of Values required under Section 9.2.1, the Contractor shall submit for the Owner's written approval a rental equipment schedule itemizing all Section 16.3.3 rental charges and costs anticipated for the Project. With respect to each item, the schedule must provide detail regarding proposed rental rates, current market average rental rates, fair market value, the time period(s) and uses anticipated for the Project and whether owned by the Contractor or a Related Party. Rental rates shall not exceed the AED Green Book rates. With respect to items owned by the Contractor or a Related Party, the rates for the Project shall be a fixed percentage of the AED Green Book rates and total rental cost cannot exceed seventy-five percent (75%) of the item's fair market value as of the date the item was first placed on the Project site. The Owner may require the Contractor to purchase proposed rental items as a Cost of the Work in lieu of renting.

**§ 16.3.3.2** The approved schedule updated to illustrate and itemize actual rentals and rental charges and costs during the applicable pay periods must be submitted with each Application for Payment. For items owned by the Contractor or a Related Party, the costs includable in the Cost of the Work shall be limited by the specified fixed percentage referred to above in Section 16.3.3.1. If a rental agreement includes an option to purchase that is exercised, the equity accrued shall be credited against the total rental cost included in the Cost of the Work.

## **§ 16.4 STAFFING COSTS**

**§ 16.4.1** The costs defined in this Section 16.4 as "Staffing Costs" are includable in the Cost of the Work.

**§ 16.4.2** Base or regular time wages of construction workers directly employed by the Contractor to perform labor for the Work at the Project site or, with the Owner's prior written approval, at off-site locations are Staffing Costs, provided the labor rates are preapproved by the Owner in accordance with Section 16.4.4.

**§ 16.4.3** Wages and salaries of the Contractor's project managers and supervisory and administrative personnel are Staffing Costs, but only for that portion of their time required for the Work and only for the individuals and labor rates preapproved by the Owner in accordance with Section 16.4.5.

**§ 16.4.4** Costs paid or incurred by the Contractor for labor burden, which includes taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and customary benefits such as sick leave, medical and health benefits, holidays, vacations, pensions and retirement plan contributions, are Staffing Costs, provided the labor burden costs are preapproved by the Owner in accordance with Section 16.4.5 and incurred on wages and salaries includable under Sections 16.4.2 or 16.4.3. Pensions and retirement plan contributions included in the Cost of Work cannot exceed five percent (5%) of any individual's wages or salaries, and project specific training cannot be included unless specifically approved by the Owner in advance in writing. Other employment related costs, including bonuses, incentive pay, profit sharing, reimbursables, allowances, severance, training, travel, commuting, relocation, association dues, licensing, drug testing, etc., is not includable in the labor burden or the Cost of Work. Labor burden shall be itemized separately below each individual's base wages or salary in each Application for Payment.

**§ 16.4.5** Accompanying the submittal of the Schedule of Values required under Section 9.2.1, the Contractor shall submit for the Owner's written approval a staffing schedule that specifies hourly labor bill rates based on actual base wages and labor burden costs. The Staffing Costs includable in the Cost of the Work shall be based on actual time incurred and the hourly labor bill rates specified in the approved staffing schedule. Such specified hourly rates and labor burden costs can be adjusted annually for subsequent Applications for Payment based on actual costs incurred and documented by the Contractor in accordance with Sections 16.4.2, 16.4.3 and 16.4.4.

**§ 16.4.5.1** With respect to costs includable under Section 16.4.2, the staffing schedule shall specify hourly rates and labor burden costs for each trade, classification and experience level for both regular time and overtime.



§ 16.4.5.2 With respect to costs includable under Section 16.4.3, the staffing schedule shall identify the project managers, assistant project managers, superintendents, assistant superintendents, project engineers and all other supervisory and administrative personnel proposed for the Project. For each individual identified, such schedule shall specify hourly rates and labor burden costs and provide detail regarding their proposed duties and weekly anticipated time for the Project.

§ 16.4.5.3 With respect to labor burden costs, the staffing schedule shall include a detailed itemization of each component of the labor burden with proper documentation of the anticipated costs, including past invoices for insurance premiums, employee records of accrued benefits and other documentation of payments or incurred costs.

§ 16.4.6 Overtime wages paid to construction workers employed by the Contractor in accordance with Section 16.4.2, and additional labor burden costs actually incurred by the Contractor due to such overtime wages, are Staffing Cost includable in the Cost of the Work, provided the Owner specifically approves the overtime labor and approves the inclusion of the overtime costs in writing in accordance with Section 7.4 prior to the performance of the overtime labor. Overtime is time incurred within the pay period work week in excess of forty (40) hours. Absent special circumstances and specific prior written approval of the Owner in accordance with Section 7.4, overtime compensation paid to the Contractor's project managers and supervisory and administrative personnel is not includable in the Cost of Work. All overtime costs shall be itemized separately below each individual's base wages or salary and labor burden costs in Applications for Payment, and such costs must be supported by proper documentation and time cards, including documentation of employees' time on other projects to the extent included to account for more than forty (40) hours per week.

§ 16.4.7 Reasonable annual increases in the wages and salaries of the employees of the Contractor incurred in accordance with Sections 16.4.2 and 16.4.3 are Staffing Costs includable in the Cost of the Work, provided the increases do not exceed two percent (2%) on an annual basis and the increases are approved in accordance with Section 16.4.4. Raises in wages or salaries that cause such costs to increase by more than two percent (2%) on an annual basis are not includable in the Cost of the Work.

#### **§ 16.5 OVERHEAD COSTS**

§ 16.5.1 The Cost of the Work includes the Overhead Fee specified in the Agreement, which is the Contractor's reimbursement for all "Overhead Costs" as defined in this Section 16.5. The Contractor is not entitled to any other reimbursement or compensation with respect to the Overhead Costs described in this Section 16.5.

§ 16.5.2 Premiums and deductibles paid by the Contractor for insurance required by the Contract or otherwise applicable to the Project are Overhead Costs.

§ 16.5.3 Mobilization and demobilization costs incurred by the Contractor are Overhead Costs, unless otherwise specifically includable under this Article 16.

§ 16.5.4 Payments made and costs incurred by the Contractor for temporary office, access, storage and waste facilities, including trailer rental, installation and removal, temporary roads, temporary ladders and stairs, temporary toilets, parking charges, office furniture, machines, equipment and supplies, are Overhead Costs.

§ 16.5.5 Payments made and costs incurred by the Contractor for site protection and security, including fences, gates, sidewalk barricades, weather protection, tree protection, erosion control and traffic and pedestrian control, are Overhead Costs.

#### **§ 15.4 ARBITRATION**

§ 16.5.6 Payments made and costs incurred by the Contractor for safety protection, equipment and supplies, including safety railings, safety training, drug testing, fire protection, fire extinguishers, barrels, hard hats, vests, glasses, medical protection and supplies and first aid kits, are Overhead Costs.

§ 16.5.7 Payments made and costs incurred by the Contractor to keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract, including costs for staffing, materials, supplies and equipment, are Overhead Costs.



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

§ 16.5.8 Payments made and costs incurred by the Contractor for small machinery, equipment and hand tools provided by the Contractor at the Project site and necessary for the performance of the Work, including costs for delivery, transportation, insurance, and removal, are Overhead Costs. These costs include tools, pickup trucks, bobcats, tractor backhoes and attachments, concrete saws, submersible pumps, space heaters, water pumps, saws, laser levels, survey equipment, pressure washers, air compressors, air guns, welding machines, generators, mowers, trash buggies and similar machinery and equipment.

§ 16.5.9 Payments made and costs incurred by the Contractor for fuel, maintenance, cleaning and repair of machinery and equipment are Overhead Costs.

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

§ 16.5.10 Payments made and costs incurred by the Contractor for photocopies, site signage, printing and document production, including coordination drawing productions, are Overhead Costs.

§ 16.5.11 Payments made and costs incurred by the Contractor for postage and parcel delivery and document transmittal are Overhead Costs.

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

§ 16.5.12 Payments made and costs incurred by the Contractor for telecommunications and information technology are Overhead Costs, including internet, software, telephones, mobile phones, computers, tablets and other electronic devices, photography and other information technology services and equipment.

§ 16.5.13 Payments made and costs incurred by the Contractor for materials testing and laboratories required by the Contract Documents are Overhead Costs.

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

§ 16.5.14 Payments made and costs incurred by the Contractor for surveying are Overhead Costs.

§ 16.5.15 Payments made and costs incurred by the Contractor for scheduling and audit services, including scheduling consultants and accountants, are Overhead Costs.

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

§ 16.5.16 Payments made and costs incurred by the Contractor after final completion of the Project, or the relevant portion thereof if delivered in phases, to comply with post-completion obligations are Overhead Costs.

#### § 16.6 OTHER DIRECT REIMBURSABLE COSTS

~~§ 15.4.4.1~~ Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration

~~permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

§ 16.6.1 In addition to the costs described in Sections above, the costs defined in this Section 16.6 as "Direct Reimbursable Costs" are includable in the Cost of the Work.

§ 16.6.2 Premiums paid by the Contractor for bonds required by the Contract are Direct Reimbursable Costs.

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

§ 16.6.3 Provided the Contractor presents a cost comparison and the Owner specifically approves the costs in writing, premiums paid by the Contractor for subcontractor default insurance are Direct Reimbursable Costs.

§ 16.6.4 Sales, use or other similar taxes imposed by a governmental authority that arise out of the Work and are paid by the Contractor are Direct Reimbursable Costs.

§ 16.6.5 Fees and charges paid by the Contractor to obtain and use utility services necessary to the performance of the Work that are not paid directly by the Owner are Direct Reimbursable Costs.

§ 16.6.6 Payments made and costs incurred by the Contractor for dumpsters and the disposal of waste, including hauling and dump fees, that are not paid directly by the Owner are Direct Reimbursable Costs.

§ 16.6.7 Payments made and costs incurred by the Contractor for special security and site protection, such as watchman and guard service, additional fencing, special screening, etc., if preapproved by the Owner in writing, are Direct Reimbursable Costs.

§ 16.6.8 Payments made by the Contractor for safety certifications of cranes and vertical hoisting are Direct Reimbursable Costs.

§ 16.6.9 Fees, charges and assessments necessarily paid by the Contractor to governmental authorities to obtain the building permit and other required permits and inspections that are the responsibility of the Contractor are Direct Reimbursable Costs.

§ 16.6.10 Royalties and license fees paid by the Contractor for the use of a particular design, process or product required by the Contract Documents are Direct Reimbursable Costs, along with costs incurred by the Contractor to defend suits or claims for infringement of patent rights arising from such requirement of the Contract Documents and payments made by the Contractor in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made by the Contractor with the Owner's written consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Contractor's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 or other provisions of the Contract, they are not includable in the Cost of the Work.

§ 16.6.11 Costs incurred by the Contractor in taking action to prevent threatened damage, injury or loss in accordance with Section 10.4 are Direct Reimbursable Costs.

§ 16.6.12 Costs incurred by the Contractor to repair or correct damaged Work are Direct Reimbursable Costs, but only if such damage was not caused by negligence or failure to fulfill a specific responsibility of the Contractor or any of the Contractor Parties, and only to the extent the cost of repair or correction was not recoverable from insurance, sureties, Subcontractors, Sub-subcontractors, Suppliers, or others and such non-recovery was not caused by a breach of the Contract or a breach of a contract for insurance by the Contractor or any of the Contractor Parties.

§ 16.6.13 Other costs incurred by the Contractor in the performance of the Work may be Direct Reimbursable Costs if, and only to the extent, specifically approved in advance by the Owner in writing in accordance with Section 7.4.

## **§ 16.7 COSTS NOT TO BE REIMBURSED**

**§ 16.7.1** The Cost of the Work does not include (a) salaries and other compensation of the Contractor's personnel, including office based accounting, IT and administrative staff, senior operations and management staff and principals of the Contractor, except as specifically provided in Section 16.4, (b) expenses of the Contractor's principal office and offices other than the office at the Project site, (c) overhead and general expenses, except as included under Section 16.5, (d) payments made or costs incurred for preconstruction phase services, (e) capital expenses, including interest on the Contractor's capital employed for the Work, (f) costs for personal vehicles, travel, relocation or living expenses, (g) costs incurred for technology, including technology for data processing, accounting, payroll management and marketing, (h) costs of testing or compliance measures not specifically required by the Contract Documents, (i) fees and expenses of professional organizations such as ABC, AGC, etc., (j) fees and expenses of obtaining and maintaining licenses required for the Work, (k) costs of recruitment and training of the employees of Contractor and other Contractor Parties, (l) costs of entertainment, marketing and business development, including merchandise and gifts, event tickets, sports, vacations, and meals and meetings, or (m) costs for which any of the Contractor Parties recover under insurance.

**§ 16.7.2** The Cost of the Work does not include costs arising out of or due to the negligence or failure of the Contractor or any of the Contractor Parties to fulfill a specific responsibility of the Contract, including (a) losses incurred from lost, damaged or stolen tools or equipment, (b) fines and penalties assessed by governmental agencies or tribunals, such as OSHA, EPA, etc., (c) overtime costs and other costs incurred to accelerate the Work, (d) costs incurred to fulfill warranty obligations and (e) costs incurred to correct or repair damaged or defective Work.

**§ 16.7.3** The Cost of the Work does not include any costs not specifically and expressly described in Sections 16.2 through 16.6 or any costs that would cause the Guaranteed Maximum Price to be exceeded.

## **§ 16.8 DISCOUNTS, REBATES, REFUNDS AND BUYOUTS**

The Contractor shall not be entitled to retain for its benefit any discounts, rebates or refunds in connection with the Work or arising out of payments included in the Cost of the Work, including annual rebates or rewards based on total purchases of the Contractor, and such discounts, rebates or refunds shall accrue to the benefit of the Owner as a reduction in the Cost of the Work, unless the Contractor has provided the Owner adequate written notice of the potential discount, rebate or refund and the Owner has specifically declined to fulfill the conditions necessary to obtain such discount, rebate or refund. Discounts obtained on early or cash payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included the payee in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make such payments; otherwise, such discounts shall accrue to the Contractor provided the Owner has prior notice of and approves of the payments in writing. Trade discounts, rebates, refunds and amounts received from sales of surplus or salvaged materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that such discounts, rebates, refunds and amounts can be obtained. Savings obtained by the Contractor due to "buying out" agreements with Subcontractors, Suppliers or other vendors at lower prices than those used to determine the Guaranteed Maximum Price shall accrue to the benefit of the Owner in accordance with Section 3.8.6. Otherwise, amounts that accrue to the Owner in accordance with the provisions of this Section shall be credited to the Owner in a reduction of the Cost of the Work.

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