

AECOM
Addendum No. 2

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Addendum No. 2, 3 pages
Specifications, 101 pages
Drawings, 0 pages

AECOM
10 S Jefferson St., Suite 1600
Roanoke, VA 24011

Project: Lexington City Hall Renovation
Lexington, Virginia

Revised Bid February 13, 2025 until 3:00 p.m.
Date: local prevailing time

Addendum Date: 03 February 2025

Project No. 60730109

Addendum No. 2

The following information shall modify the contract documents, and the work shall be accomplished in accordance with such stated modifications. It is suggested that this addendum be stapled to the back of the front cover of the project manual.

GENERAL

Pre-bid Questions and Responses follow:

1. Question: Drawing AS101. Please provide model and manufacturer of flagpole or Basis of Design.
Response: See Addendum No. 2.
2. Question: Drawing AE103: Elevations within room 204 Conference Room refer to AE504. However no B6 or E5 elevations exist on AE504. Is this meant to reference AE402?
Response: See Addendum No. 2.
3. Question: Drawing IN601: There is a reference to RS-1 on IN601 and a specification on AE902. Please denote which windows are to receive roller shades and detail mounting detail.
Response: Per Interior Finish Legend, Location on sheet IN601, "Provide (roller shades) at all exterior windows". See Addendum No. 2.

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4. Question: Drawings AE102/AE402: The dimension of the base cabinets as shown on E6/AE402 will not fit in the space as shown on AE102 in Room 109. Is this instead meant to reference the unidentified millwork in Room 107?
Response: See Addendum No. 2.
5. Question: Section 001116, paragraph 1.6, page 2: What are the liquidated damages per day for the project?
Response: See Addendum No. 2.
6. Question: What is the preferred door hardware keying system?
Response: Medeco.
7. Question: Section 080671, pages 5 and 9. Opening 006A is listed on hardware sets 2.0 & 12.0, which hardware set should be assigned for this opening?
Response: See Addendum No. 2.
8. Question: Section 080671, pages 4 through 12. Openings 006B is not listed on a hardware set, which hardware set should be assigned for this opening?
Response: See Addendum No. 2.

SPECIFICATIONS

Document 006000 Project Forms and Attachments:
Replace with revised Document 006000 Project Forms and Attachments.

Document 001116 Invitation to Bid:
Replace with revised Document 001116 Invitation to Bid.

Section 080671, page 5:
At door hardware set 2.0, change Door 006A to Door 006B.

DRAWINGS

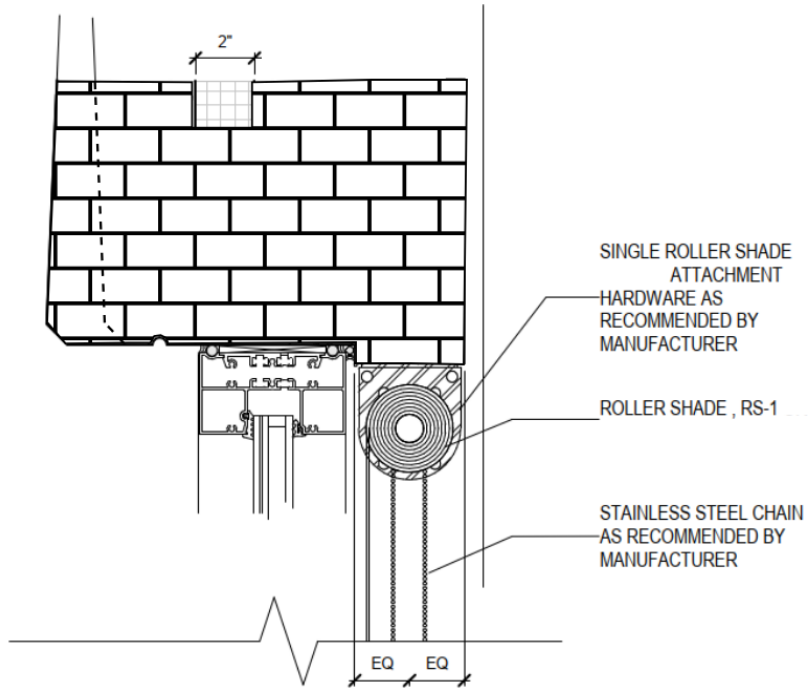
Sheet AS101:
At E2 Flagpole Foundation Detail, add the following note:
Flagpole shall be Federal Flags 30 ft. Commercial Flagpole with External Rope Halyard Rated at 95mph, Black Anodized Finish or equal.

Sheet AE102:
In Room 109, delete interior elevation E6/AE402. In Room 107, add interior elevation E6/AE402 pointing in the west direction at the casework beneath the exterior window.

Sheet AE103:
In Room 204, change the interior elevation sheet reference from AE504 to AE402. In Room 204, change interior elevation E1/AE504 pointing west to interior elevation A6/AE402.

Sheet AE602:

Add the following Typical Roller Shade Mounting Detail:



TYPICAL ROLLER SHADE MOUNTING DETAIL
N.T.S.

Sheet IN601:

At Interior Finish Legend, RS-1 Roller Shade, change specification section to "12 24 13."

End of Addendum

DOCUMENT 001116 - INVITATION TO BID

1.1 PROJECT INFORMATION

- A. Notice to Bidders: Qualified bidders are invited to submit bids for Project as described in this Document according to the Instructions to Bidders.
- B. Project Identification: Lexington City Hall Renovation.
 - 1. Project Location: 300 East Washington Street, Lexington, VA 24450.
- C. Owner: City of Lexington, VA.
 - 1. Owner's Representative: Patrick Madigan
- D. Architect: AECOM.
- E. Project Description: Project consists of renovation and addition to City of Lexington City Hall.
- F. Construction Contract: Bids will be received for the following Work:
 - 1. General Contract (all trades).

1.2 BID SUBMITTAL AND OPENING

- A. Owner will receive sealed bids until the bid time and date at the location indicated below. Owner will consider bids prepared in compliance with the Instructions to Bidders issued by Owner, and delivered as follows:
 - 1. Bid Date: February ~~6~~13, 2025.
 - 2. Bid Time: 3:00 p.m., local time.
 - 3. Location: Lexington Public Works 890 Shop Road, Lexington, VA 24450.
 - 4. Bids will also be received electronically online at <https://www.trascoplanroom.com/projects/797/details/lexington-city-hall-renovation> until 3:00 P.M., local prevailing time, on February ~~6~~13, 2025, and then publicly opened and read aloud virtually. Contact Patrick Madigan for the link to the virtual bid opening.
- B. Bids will be thereafter publicly opened and read aloud.

1.3 BID SECURITY

- A. Bid security shall be submitted with each bid in the amount of 5 percent of the bid amount. No bids may be withdrawn for a period of 60 days after opening of bids. Owner reserves the right to reject any and all bids and to waive informalities and irregularities.

1.4 PREBID MEETING

- A. A prebid meeting for all bidders will be held at City Hall 2nd Floor Conference Room 300 East Washington Street, Lexington, VA 24450 on January 22, 2025 at 10:00 a.m., local time. Prospective bidders are required to attend.
- B. Bidder Questions: Architect will provide responses to bidders' questions received up to 5:00 pm on January 30, 2025. Submit pre-bid questions using the Pre-bid Question Form attached to this section.
- C. Prebid Meeting: See Document 002513 "Prebid Meetings."

1.5 DOCUMENTS

- A. Viewing Procurement and Contracting Documents: Examine online at Trasco's website at www.trascoplanroom.com.

1.6 TIME OF COMPLETION AND LIQUIDATED DAMAGES

- A. Bidders shall begin the Work on receipt of the Notice to Proceed and shall complete the Work within the Contract Time. Work is subject to liquidated damages.

1.7 BIDDER'S QUALIFICATIONS

- A. Bidders must be properly licensed under the laws governing their respective trades and be able to obtain insurance and bonds required for the Work. A Performance Bond in the amount of 100 percent of the contract amount and, a separate Labor and Material Payment Bond in the amount of 100 percent of the contract amount will be required of the successful Bidder. ~~and~~ Insurance in a form acceptable to Owner will be required of the successful Bidder.

END OF DOCUMENT 001116

SECTION 006000 - PROJECT FORMS

1.1 FORM OF AGREEMENT AND GENERAL CONDITIONS

- A. The following form of Owner/Contractor Agreement and form of the General Conditions shall be used for Project:
1. AIA Document A101-2017 "Standard Form of Agreement between Owner and Contractor Where the Basis of Payment is a Stipulated Sum." attached to the end of this section.
 - a. The General Conditions for Project are AIA Document A201-~~2017~~²⁰⁰⁷ "General Conditions of the Contract for Construction." attached to the end of this section.
 - ~~b. Modified project specific AIA Document A101-2017 AIA Document A201-2007 will be issued by addendum.~~
 - b. Supplementary General Conditions attached to the end of this section.
 - c. Owner's General Conditions attached to the end of this section.

1.2 ADMINISTRATIVE FORMS

- A. Administrative Forms: Additional administrative forms are specified in Division 01 General Requirements.
- B. Copies of AIA standard forms may be obtained from the American Institute of Architects; www.aiacontractdocsaicontracts.org; (800) 942-7732.
- C. Preconstruction Forms:
1. Form of Performance Bond and Labor and Material Bond: AIA Document A312-2010 "Performance Bond and Payment Bond."
- D. Information and Modification Forms:
1. Form for Requests for Information (RFIs): AIA Document G716-2004 "Request for Information (RFI)."
 2. Form of Request for Proposal: AIA Document G709-2018 "Proposal Request."
 3. Change Order Form: AIA Document G701-2017 "Change Order."
 4. Form of Architect's Memorandum for Minor Changes in the Work: AIA Document G710-2017 "Architect's Supplemental Instructions."
 5. Form of Change Directive: AIA Document G714-2017 "Construction Change Directive."
- E. Payment Forms:
1. Schedule of Values Form: AIA Document G703-1992 "Continuation Sheet."
 2. Payment Application: AIA Document G702-1992/703-1992 "Application and Certificate for Payment and Continuation Sheet."

3. Form of Contractor's Affidavit: AIA Document G706-1994 "Contractor's Affidavit of Payment of Debts and Claims."
4. Form of Affidavit of Release of Liens: AIA Document G706A-1994 "Contractor's Affidavit of Payment of Release of Liens."
5. Form of Consent of Surety: AIA Document G707-1994 "Consent of Surety to Final Payment."

END OF SECTION 006000

DRAFT AIA® Document A101® - 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

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

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

« » « » City of Lexington
« » 300 East Washington Street
« » Lexington, Virginia 24450
« »

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

« » « »
« »
« »
« »

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

Lexington City Hall Renovation
300 East Washington Street Lexington, Virginia 24450
« »
« »

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

« » « » AECOM
« » 10 S Jefferson Street, Suite 1600
« » Roanoke, Virginia 24011
« »

The Owner and Contractor agree as follows.

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

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

The parties should complete A101®-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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TABLE OF ARTICLES

- 1 THE CONTRACT DOCUMENTS**
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- 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**
- 4 CONTRACT SUM**
- 5 PAYMENTS**
- 6 DISPUTE RESOLUTION**
- 7 TERMINATION OR SUSPENSION**
- 8 MISCELLANEOUS PROVISIONS**
- 9 ENUMERATION OF CONTRACT DOCUMENTS**

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

- « »** The date of this Agreement.
- « »** A date set forth in a notice to proceed issued by the Owner.
- « »** Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)
 « »

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

[« »] Not later than ~~550~~ (Five hundred fifty) calendar days from the date of commencement of the Work.

[« »] By the following date: « »

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be « » (\$ « »), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item	Price

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. (Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance

§ 4.3 Allowances, if any, included in the Contract Sum: (Identify each allowance.)

Item	Price

§ 4.4 Unit prices, if any:

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

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

§ 4.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

« » The parties agree and acknowledge that the liquidated damages specified in Section 14 COMPLETION OF WORK; LIQUIDATED DAMAGES of the Owner's General Conditions are not intended, designed or drafted to penalize the Contractor. Should the Contractor fail to achieve Final Completion of the Project within the Contract Time, the Contractor shall pay to the Owner as liquidated damages Three Hundred and 00/100 Dollars (\$300.00) for each calendar day thereafter until the Project is Finally Complete.

§ 4.6 Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

None.

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

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

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

« »

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the « » day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the « » day of the « » month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than « » (« ») days after the Architect receives the Application for Payment.

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

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

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

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

«→5 percent

§ 5.1.7.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

« »

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

« »

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage upon Substantial Completion.)

« »

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 Except with the Owner’s prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner’s final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect’s final Certificate for Payment, or as follows:

« »

§ 5.3 Interest

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

(Insert rate of interest agreed upon, if any.)

« » % « »

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.

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

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§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

Arbitration pursuant to Section 15.4 of AIA Document A201–2017

Litigation in a court of competent jurisdiction

Other *(Specify)*

Section 21 of the Owner’s General Conditions and Virginia Code § 2.2-4363

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

§ 7.1.1 If the Contract is terminated for the Owner’s convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner’s convenience.)

<< >>

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner’s representative:

(Name, address, email address, and other information)

Patrick Madigan
Director of Public Works
City of Lexington Public Works
890 Shop Road
Lexington, VA 24450

§ 8.3 The Contractor’s representative:

(Name, address, email address, and other information)

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

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

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™ 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

~~§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™ 2017 Exhibit A, and elsewhere in the Contract Documents.~~

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201 2017, may be given in accordance with a building information modeling exhibit, if completed, or as otherwise set forth below:
(If other than in accordance with a building information modeling exhibit, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

<< >>

§ 8.7 Other provisions:

<< >>

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™ 2017, Standard Form of Agreement Between Owner and Contractor
- .2 ~~AIA Document A101™ 2017, Exhibit A, Insurance and Bonds~~
- .3 AIA Document A201™ 2017, General Conditions of the Contract for Construction
- .4 Supplementary General Conditions
- .5 Owner's General Conditions
- ~~.4 Building information modeling exhibit, dated as indicated below:
(Insert the date of the building information modeling exhibit incorporated into this Agreement.)~~

<< >>

.56 Drawings

Number	Title	Date

.67 Specifications

Section	Title	Date	Pages

.78 Addenda, if any:

Number	Date	Pages

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

.89 Other Exhibits:
(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

[] AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this Agreement.)

« »

[] The Sustainability Plan:

Title	Date	Pages
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

[] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

.910 Other documents, if any, listed below:
(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

« »

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

OWNER (Signature)

« »

(Printed name and title)

CONTRACTOR (Signature)

« »

(Printed name and title)

DRAFT AIA® Document A201® - 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

«»Lexington City Hall Renovation
300 East Washington Street
«»Lexington, Virginia 24450

THE OWNER:

(Name, legal status and address)

«»«»City of Lexington
«»300 East Washington Street
Lexington, Virginia 24450

THE ARCHITECT:

(Name, legal status and address)

«»«»AECOM
«»10 S Jefferson Street, Suite 1600
Roanoke, Virginia 24011

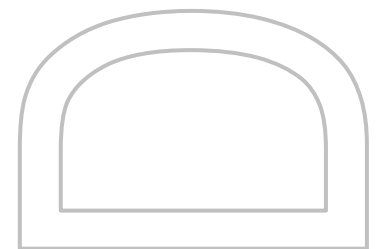
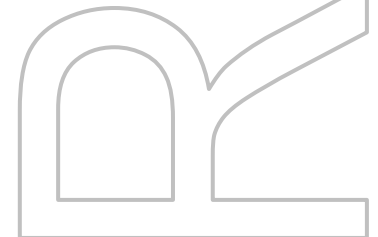
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ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well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

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

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



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TEBRA

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

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

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

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

§ 1.2 Correlation and Intent of the Contract Documents

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

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

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

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

§ 1.3 Capitalization

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

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

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

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

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

§ 1.6 Notice

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

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

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon written protocols governing the transmission and use of, and reliance on, Instruments of Service or any other information or documentation in digital form.

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

~~Any use of, or reliance on, all or a portion of a building information model without agreement to written protocols governing the use of, and reliance on, the information contained in the model shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.~~

ARTICLE 2 OWNER

§ 2.1 General

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

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

§ 2.2 Evidence of the Owner's Financial Arrangements

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

§ 2.2.2 Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

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

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

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

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

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

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

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

§ 2.3.6 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of 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 default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

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

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These

obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

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

§ 3.3 Supervision and Construction Procedures

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

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

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

§ 3.4 Labor and Materials

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

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

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

§ 3.5 Warranty

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

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

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

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

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

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

§ 3.7.4 Concealed or Unknown Conditions

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

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

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 Superintendent

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

§ 3.10 Contractor's Construction and Submittal Schedules

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

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

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

§ 3.11 Documents and Samples at the Site

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

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

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

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

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

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

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional,

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

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

§ 3.13 Use of Site

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

§ 3.14 Cutting and Patching

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

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

§ 3.15 Cleaning Up

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

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

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work,

provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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

ARTICLE 4 ARCHITECT

§ 4.1 General

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

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

§ 4.2 Administration of the Contract

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

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

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

§ 4.2.4 Communications

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

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the

Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

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

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

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

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

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

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

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

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

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

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

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

§ 5.3 Subcontractual Relations

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

§ 5.4 Contingent Assignment of Subcontracts

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

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

§ 6.2 Mutual Responsibility

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

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

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

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

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

§ 6.3 Owner's Right to Clean Up

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

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

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

§ 7.2 Change Orders

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

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

§ 7.3 Construction Change Directives

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

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

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

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

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

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;

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

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

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

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

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

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

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

§ 7.4 Minor Changes in the Work

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

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

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

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

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

§ 8.3 Delays and Extensions of Time

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

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

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.2 Schedule of Values

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

§ 9.3 Applications for Payment

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

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

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

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

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

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

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

§ 9.5 Decisions to Withhold Certification

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the Architect's decision regarding a Certificate for Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

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

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

§ 9.6 Progress Payments

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

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

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

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

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

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

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

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

§ 9.7 Failure of Payment

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

§ 9.8 Substantial Completion

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

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

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

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

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

§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.10 Final Completion and Final Payment

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

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

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

§ 9.10.4 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;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

§ 10.2 Safety of Persons and Property

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

- .1 employees on the Work and other persons who may be affected thereby;

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

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

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

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

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

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

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

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.3 Hazardous Materials and Substances

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

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities

proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

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

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

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

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

§ 10.4 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

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

§ 11.1.2 The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

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

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the

procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

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

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

§ 11.3 Waivers of Subrogation

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

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

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

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

§11.5 Adjustment and Settlement of Insured Loss

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. 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 2.5.

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

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

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

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

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

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 Successors and Assigns

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

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

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and

approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

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

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

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

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

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

§ 13.5 Interest

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

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

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

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

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

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

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

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

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

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

§ 14.3 Suspension by the Owner for Convenience

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

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

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

§ 14.4 Termination by the Owner for Convenience

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

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

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

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

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

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

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

§ 15.1.3 Notice of Claims

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

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

§ 15.1.4 Continuing Contract Performance

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

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

§ 15.1.5 Claims for Additional Cost

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

§ 15.1.6 Claims for Additional Time

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

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

§ 15.1.7 Waiver of Claims for Consequential Damages

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

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

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

§ 15.2 Initial Decision

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

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

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

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

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

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

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

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

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

§ 15.3 Mediation

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

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

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

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

§ 15.4 Arbitration

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

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

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

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

§ 15.4.4 Consolidation or Joinder

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

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

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



**CITY OF LEXINGTON CITY HALL RENOVATION PROJECT
SUPPLEMENTARY GENERAL CONDITIONS**

The following Supplementary General Conditions modify the “General Conditions of the Contract for Construction” AIA Document A201-2017 (“AIA General Conditions”) for the City of Lexington City Hall Renovation Project. Where a portion of the AIA General Conditions is modified or deleted by these Supplementary Conditions, the unaltered portions of the AIA General Conditions shall remain in effect. These Supplementary General Conditions are intended to be read in conjunction with the other Contract Documents for the City of Lexington City Hall Renovation Project.

ARTICLE 1; GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

- a. Delete Subparagraph 1.1.1 and replace it with the following:

§ 1.1.1 THE CONTRACT DOCUMENTS

The terms “Contract” and “Contract Documents” shall mean and include: (i) the Invitation to Bid (“ITB”), the Instructions to Bidders, any subsequently issued Addenda to the ITB; (ii) the completed and signed Bid Form and Bid Bond; (iii) the AIA Document A101-2017 (“Agreement”); (iv) the Owner’s General Conditions; (v) AIA Document A201-2017, General Conditions of the Contract or Construction (“AIA General Conditions”), as amended by these Supplementary General Conditions; (v) the Drawings and Specifications prepared by AECOM (“Architect”) and included with the ITB; (vi) the Performance and Payment Bonds; (vii) any Change Orders or Change Directives; and (viii) any Modifications to the Contract. Anything called for by one of the Contract Documents and not called for by the others shall be of like effect as if required or called for by all Contract Documents. To the extent practicable, the terms and conditions of the Contract Documents will be read consistently with each other. In the case of conflict between the terms and conditions of the Contract Documents, the Order of Precedence of the Contract Documents shall be as follows: (i) the Owner’s General Conditions; (ii) the AIA General Conditions as amended by the Supplementary Conditions; (iii) the Agreement, including any Modifications, Change Orders or Change Directives; (iv) the ITB, the Instructions to Bidders, and any subsequently issued Addenda; (v) the Drawings and Specifications; (vi) the completed and signed Bid Form; and (vii) the Bonds.

- b. Delete Subparagraph 1.1.3 and replace it with the following:

§ 1.1.3 THE WORK

The term “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, supplies, and services reasonably inferable from the Contract Documents as necessary to be provided by the Contractor to fulfill its obligations under the Contract Documents to complete the Project, and all other labor, materials, services, and items required to produce fully connected, complete, code-compliant, operational and functional systems and finishes. The Work may constitute the whole or a part of the Project.

- c. Add the following Subparagraphs 1.1.5.1, 1.1.5.2, 1.1.5.3, and 1.1.5.4 to 1.1.5:

§ 1.1.5.1 Dimensions indicated on the Drawings must be followed. Do not scale Drawings. Conflicts, discrepancies, and omissions shall be resolved prior to ordering or installing materials and equipment.

§ 1.1.5.2 Provide critical clearances, tolerances, and dimensions as indicated. These critical dimensions are not optional. The Architect must be advised immediately if existing conditions do not permit critical dimensions as shown. No consideration will be given any claim based on differences between the actual dimensions and those indicated on the Drawings.

§ 1.1.5.3 Any modifications to the Drawings must be approved by the Architect. The Architect's decision in matters relating to artistic effect and structural integrity will be final if consistent with the intent of the Contract Documents.

§ 1.1.5.4 The Drawings are developed to communicate design intent. Assemblies or components required to achieve this design intent are subject to approval by the Architect.

- d. Delete the second sentence of Subparagraph 1.1.8.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

- a. Add the following language at the end of Subparagraph 1.2.1 after “results”:

and to perform the Work consistent with the provisions of Section 1.1.3 of these AIA General Conditions, as amended above. All Work mentioned or indicated in the Contract Documents shall be performed by or on behalf of Contractor as part of this Contract, unless it is specifically indicated in the Contract Documents that such Work is to be performed by others.

- b. Delete the final sentence of Subparagraph 1.2.1.1 and replace it with the following:

In such case the Contract Documents shall be construed, to the fullest extent permitted by law, in favor of the interpretation that will provide for the more substantial and complete performance of the Work. If there is any conflict between the provisions of the Contract documents and any referenced standard specification, manuals, or codes of technical societies, organizations, or associations, the language of the Contract Documents will take precedence over that of any standard specification, manual, or codes.

- c. Add the following Subparagraphs 1.2.1.2, 1.2.1.3, and 1.2.1.4 to 1.2.1:

§ 1.2.1.2 Wherever in the Contract Documents the words “as approved,” “as directed,” “as required,” “acceptable,” “satisfactory” and other similar words are used with reference to the Work or its performance, and without further qualification, they shall mean as approved, as directed, and as required by the Architect and Owner and acceptable, satisfactory, etc., to the Architect and Owner.

§ 1.2.1.3 In case of conflict in the Contract Documents, the Architect shall interpret or construe the Contract Documents so as to assure the most substantial and complete performance of the Work.

§ 1.2.1.4 The general character of the detailed work is shown on the Drawings, but the Contractor may propose minor modifications on the Shop Drawings or mark-ups. The Contractor shall work out any detail in relation to its location and its connection to other parts of the Work. Where on any drawings a portion of the Work is drawn out and the remainder is indicated in outline, the parts drawn out shall also apply to all other like portions of the Work. Where details or conditions are indicated, such details or conditions shall be continued throughout the courses or parts in which they occur and shall also apply to all other similar parts of the Work unless otherwise indicated or specifically noted.

- d. Add the following Subparagraph 1.2.4 to 1.2:

§ 1.2.4 In the Contract Documents where discrepancies are apparent, detailed information is lacking, or interpretation is not clear, the Contractor shall secure required information from the Architect before proceeding with the Work. Items that are detailed and/or specified but not distinctly located on the Drawings shall be located by the Architect.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

- a. Delete Subparagraph 1.5.1 and replace it with the following:

§ 1.5.1 Owner owns the Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. They may only be used for this Project. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's, Owner's or Architect's consultants' reserved rights.

§ 1.6 NOTICE

- a. Add the following sentence to the end of Subparagraph 1.6.1:

The foregoing notwithstanding, whenever the Contractor is required to notify or give notice to the Owner, all such notices to the Owner shall be provided in writing, shall be delivered to the Owner's Authorized Representative identified in the Contract Documents, and, to be effective, shall be delivered in person, delivered by certified or registered mail, or delivered by courier providing proof of delivery. The intent of the foregoing sentence is to require written notice to Owner at all times and under all circumstances.

ARTICLE 2; OWNER

§ 2.1 GENERAL

- a. Add the following at the end of Subparagraph 2.1.1:

All written communications on the Project shall be directed to and include the Owner and all significant issues with respect to the Work and/or this Contract shall be communicated by Contractor directly to Owner. Contractor acknowledges that neither Architect nor any other consultant to Owner has authority to authorize any increase in the Contract Sum, any

adjustment to the Contract Time, or any additional compensation or payment to Contractor without the prior and written approval of Owner.

- b. Delete Subparagraph 2.1.2 in its entirety.

§ 2.2 EVIDENCE OF THE OWNER'S FINANCIAL ARRANGEMENTS

- a. Delete Section 2.2, including all Subparagraphs, in its entirety.

§ 2.3 INFORMATION AND SERVICES REQUIRED OF THE OWNER

- a. Delete Subparagraph 2.3.1 in its entirety.
- b. On lines 1 and 2 of Subparagraph 2.3.3, delete the words “to whom the Contractor has no reasonable objection and”.
- c. Delete Subparagraphs 2.3.4 and 2.3.5 in their entirety.
- d. Delete Subparagraph 2.3.6 and replace it with the following:

§ 2.3.6 The Contractor will be furnished free of charge 5 copies of Drawings and Project Manuals. Additional sets will be furnished at the cost of reproduction, postage, and handling.

§ 2.4 OWNER'S RIGHT TO STOP WORK

- a. Delete “repeatedly” from the second line of Subparagraph 2.4.

§ 2.5 OWNER'S RIGHT TO CARRY OUT THE WORK

- a. In Subparagraph 2.5, delete everything after the first sentence and replace it with the following:

The Owner will notify the Architect of such action and the amount to be charged to the Contractor and will consider any comments of the Architect. Thereafter, the Architect shall, pursuant to Section 9.5.1, withhold or nullify Certificates for Payment in whole or in part, to the extent necessary to reimburse the Owner for 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. If current and future payment are not sufficient to cover amounts due to the Owner, the Contractor shall pay the difference to the Owner.

ARTICLE 3; CONTRACTOR

§ 3.1 GENERAL

- a. Add the following language at the end of Subparagraph 3.1.1:

Contractor shall not assign or change supervisory personnel or utilize any organizational chain of command to the extent disapproved by Owner. Contractor's Superintendent and Project Manager shall not be discontinued, replaced or re-assigned without the prior written consent of Owner, which such consent shall not be unreasonably withheld.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

- a. Edit Subparagraph 3.2.1 as follows:

On line 2, delete the word “generally.”

Add the following language to the end of the Subparagraph:

Contractor has evaluated and satisfied itself as to the conditions and limitations under which the Work is to be performed including, without limitation (1) the location, condition, layout and physical conditions of the Project site and surrounding area, (2) generally prevailing climatic conditions, (3) availability and cost of materials, tools and equipment, (4) geotechnical data, soil and subsurface conditions, (5) parking, traffic and logistics, and (6) other similar issues. Contractor shall not be entitled to any adjustment in the Contract Time in connection with any failure of Contractor or any Subcontractor to comply with the requirements, or on account of the conditions of this subparagraph 3.2.1.

- b. After Subparagraph 3.2.2, add the following Subparagraphs:

§ 3.2.2.1 Dimensions of the Work shall not be determined by scale or rule. Figured dimensions shall be used at all times.

§ 3.2.2.2 The Contractor shall verify all dimensions by measurement at the job site and shall take any and all other measurements necessary to verify the Drawings and to properly lay out the Work.

§ 3.2.2.3 The Contractor shall study the Contract Documents sufficiently in advance of the actual layout of the Work to allow the Contract Documents to be interpreted or modified by the Architect.

- c. On lines 3 and 4 of Subparagraph 3.2.3, add “and Owner” after “Architect”.

- d. Add the following to the end of Subparagraph 3.2.4 after “public authorities”:

, unless Contractor recognized (or based on the standards of performance ordinarily provided by general contractors working under the same or similar conditions, should have recognized) such error, inconsistency, omission or difference and failed to report it to (and obtain direction from) Owner and Architect prior to proceeding with the affected Work.

- e. Add Subparagraph 3.2.5 as follows:

§ 3.2.5 Owner shall be entitled to reimbursement from Contractor for amounts paid to the Architect for the Architect’s evaluating and responding to Contractor’s requests for information that are not prepared in accordance with the Contract Documents or where the requested information was available to Contractor from a careful study and comparison of the Contract Documents, field conditions other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

- a. Delete “to the Owner” from the first line of Subparagraph 3.3.2.

§ 3.4 LABOR AND MATERIALS

- a. Add the following Subparagraphs 3.4.1.1 and 3.4.1.2 to 3.4.1:

§ 3.4.1.1 The Contractor shall use only new materials for the Work of this Project. Reuse of existing materials or the use of other salvaged materials is acceptable only where specifically noted in the Construction Documents.

§ 3.4.1.2 The Contractor shall provide all special trims, moldings, and special shaped materials which are required for the satisfactory completion of the Work. The Contractor shall provide all necessary fasteners, bracing, and supports required for the stable and secure installation of the Work.

- b. Add Subparagraph 3.4.2.1 as follows:

§ 3.4.2.1 After the Contract has been executed, the Owner and Architect will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in the Contract Documents. By making requests for substitutions, the Contractor:

.1 represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;

.2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;

.3 certifies that the cost data presented is complete and includes all related costs under this Contract except the Architect’s redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and

.4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

The approval of any substitution must be in writing and signed by the Owner’s Authorized Representative.

- c. Add Subparagraph 3.4.2.2 as follows:

§ 3.4.2.2 Owner shall be entitled to reimbursement from Contractor for amounts paid to the Architect for reviewing Contractor’s proposed substitutions and to make agreed-upon changes in the Drawings and Specifications resulting from such substitutions.

§ 3.5 WARRANTY

- a. At the end of Subparagraph 3.5.1, add the following sentence:

All guarantees or warranties of equipment, systems or materials furnished to Contractor or Subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of Owner and are (and shall be) assigned to Owner. These warranties are in addition to, not in lieu of, all other warranties and guarantees contained in or required by the Contract Documents.

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

- a. On line 1 of Subparagraph 3.7.3, delete the words “knowing it to be.”
- b. Delete Subparagraph 3.7.4 and replace it with the following:

§ 3.7.4 Concealed or Unknown Conditions. By executing the Agreement, Contractor represents that it has visited the site where the Work is to be constructed, has examined carefully all the Contract Documents upon which the Contract Sum is based, has reviewed all information, data and documents regarding the conditions at the site made available to Contractor by Owner prior to the execution of the Agreement and has acquainted itself with all other conditions relevant to the Work, including, but not limited to any physical conditions or logistical restraints relating to or affecting the means, methods, staging, layout, delivery or performance of the Work. If the Contractor encounters conditions at the site that are different from those about which Contractor had notice based on the information made available to Contractor by Owner or Architect prior to the execution of the Agreement (including, but not limited to the information set forth in the Contract Documents or in reports, studies or evaluations referenced therein or provided by Owner or Architect to Contractor) and/or based on a reasonably prudent visit to and examination of the site prior to the execution of the Agreement and/or based on facts or circumstances disclosed by the information provided to Contractor by Owner or Architect or other conditions discoverable at the site by Contractor prior to commencement of the Work, such as (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the information provided to Contractor or (2) undisclosed and unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall provide notice to the Owner and the Architect before such conditions are disturbed and in no event later than ten (10) days after first observance of the conditions. The Contractor shall perform no Work involving or affected by such condition until after notifying Owner and receiving specific directions from Owner as to the performance of such Work. The Architect and Owner will then investigate such conditions and, if they differ materially from those about which Contractor had notice based on the information made available to Contractor by Owner or Architect prior to the execution of the Agreement and cause an increase in the Cost of the Work, or a delay in the performance of the Work, Contractor shall be entitled to an increase in the Contract Sum calculated pursuant to the applicable provisions of this Agreement, together with an extension of the Contract Time measured by the number of days or portions thereof, if any, that the Substantial Completion of the Work is actually delayed as a direct result of the existence of the obstruction, difficulty, or condition (provided, however, that if the required extension of time is not granted, Contractor shall be entitled only to the damage remedies set forth herein). If the conditions at the site are not materially different from those about which Contractor had notice based on the information made available to Contractor by Owner prior to the execution of the Agreement or based on a reasonably prudent visit to and examination of the site prior to the execution of the Agreement or based on facts or circumstances disclosed by the information provided to Contractor by Owner or Architect or other conditions discoverable at the site by Contractor prior to commencement of the Work, Owner shall so notify Contractor that there will be no adjustment to the Contract Sum and/or Contract Time, state the reasons therefor, and Contractor may thereafter dispute the determination as provided in the Contract Documents.

§ 3.8 ALLOWANCES

- a. Delete the first sentence of Subparagraph 3.8.1 and replace it with the following:

§ 3.8.1 The Contractor shall include in the Contract Sum only those allowances expressly identified in (and allowed by) the Contract Documents.

- b. In Subparagraph 3.8.3, add “after notice to the Owner and Architect by the Contractor.” at the end of the sentence.

§ 3.9 SUPERINTENDENT

- a. In Subparagraph 3.9.2, delete “as soon as practicable after” and replace it with “within 14 days of the” in the first line.
- b. Delete “and timely” from the second line of Subparagraph 3.9.3.

§ 3.10 CONTRACTOR’S CONSTRUCTION AND SUBMITTAL SCHEDULES

- a. Delete Subparagraph 3.10.1 and replace it with the following:

§ 3.10.1.1 The Contractor must prepare a construction schedule and submit it to the Owner and Architect for their review. The schedule shall not exceed the Contract Time established in the Contract Documents and shall provide for prompt and efficient execution of the Work. The schedule shall show the sequence and interdependence of all activities required for complete performance of the Contractor's Work. The schedule shall provide a graphic representation of all activities and events that will occur in the prosecution of the Work and set forth all critical dates that must be met to ensure timely and orderly completion of the Work within the Contract Time prescribed in the Contract Documents. The Contractor may show early completion of the Work on the schedule, should it so elect, but the Contractor shall have no claim for delay damages or constructive acceleration should any delay, whatever the cause, preclude the Contractor from finishing the Project at any point prior to the completion date set forth in the Contract Documents. Upon receipt, the Owner and Architect shall review the schedule and offer any comments they may have. Such review shall be for information purposes only and shall not constitute endorsement of any errors or omissions that may appear in the schedule or its reasonableness.

§ 3.10.1.2 The Contractor must update the schedule each month to reflect the current status of the Project. The updates shall show percent completion including actual start and finish dates and remaining duration for all current activities. The updated schedule shall be submitted with the Contractor’s Application for Payment. The submittal of the revised schedule shall be a conditional precedent to the Owner’s obligation to pay the Contractor any monies due on the pending Application for Payment.

- b. Delete “general” from the first line of Subparagraph 3.10.3.
- c. Add the following Subparagraphs to Article 3.10:

§ 3.10.4 In the event that the Contractor should ever determine during the course of the Project that its prosecution of the Work has fallen behind the current schedule, it shall

prepare a recovery schedule to permit completion of the Project within the Contract Time. The Contractor shall devote all required labor, materials, and equipment to comply with the recovery schedule, including, if necessary, the employment of additional Subcontractors and/or manpower and the scheduling of additional shifts, overtime, and weekend Work, all at the Contractor's sole expense. TIME IS OF THE ESSENCE.

§ 3.10.5 In the event that the Project is delayed beyond the Contract Time, the Contractor will be obligated to pay the Owner, in addition to any liquidated damages called for in the Contract Documents or any delay damages permitted pursuant thereto, a sum equal to the Owner's obligation to pay the Architect for providing additional Construction Contract Administration services beyond the Contract Time set forth in the Contract Documents.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

- a. Add the following sentences to the end of Subparagraph 3.11:

Among other things, the marked documents shall reflect (i) all deviations from the Drawings made during construction, (ii) details in the Work not previously shown on the Drawings, (iii) changes to existing conditions or existing conditions found to differ from those shown on the Drawings, and (iv) the actual installed position of equipment, controls and other system information required for Owner's use and maintenance of the Work. These shall be delivered to Owner and Architect upon Substantial Completion of the Work (or any termination of this Contract).

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- a. Add the following at the end of Subparagraph 3.12.6:

All copies of Shop Drawings submitted for approval shall bear the following statement: "Checked and certified correct for conformance with the Contract Documents." This statement shall be dated and signed by the Contractor and shall appear on each submittal. One copy of each approved submittal shall be kept at the job site at all times.

- b. On line 1 of Subparagraph 3.12.10, delete the word "not." On line 2 of Subparagraph 3.12.10, replace the word "unless" with the word "when" and delete the word "specifically." On line 3 of Subparagraph 3.12.10, replace the words "or unless" with the words "and when."

- c. Delete the word "specifically" on line 2 of Subparagraph 3.12.10.1, and delete the second sentence of Subparagraph 3.12.10.1.

- d. Add Subparagraph 3.12.11 as follows:

§ 3.12.11 The Architect's review of Contractor's submittals will be limited to examination of an initial submittal and one (1) resubmittal. Owner shall be entitled to obtain reimbursement from Contractor for amounts paid to the Architect for evaluation of any additional resubmittals.

- e. Add Subparagraph 3.12.12 as follows:

§ 3.12.12 The Contractor shall not reproduce all or any portion of the Contract Documents. Unless otherwise directed or specified, three (3) copies of each Shop Drawing shall be submitted with each submittal or re-submittal. Unless otherwise directed or specified, three (3) copies of Product Data shall be submitted with each submittal or re-submittal. Unless otherwise directed or specified, samples shall be submitted in duplicate and shall be properly labeled, bearing the name and quality of material, name of manufacturer, name of Project, name of Contractor, and date of submission.

§ 3.14 CUTTING AND PATCHING

- a. Add the following Subparagraph 3.14.3 to 3.14:

§ 3.14.3 All patching shall be performed by mechanics of the trades dictated by the materials used in the patching operations.

§ 3.15 CLEANING UP

- a. Add the following sentences at the end of Subparagraph 3.15.1:

Contractor must comply with all erosion control, stormwater runoff and dust control ordinances and regulations. Contractor shall remove all spillage and tracking arising from performance of the Work from such areas and shall establish a regular maintenance program to minimize accumulation of dirt and dust upon such areas.

- b. Add the following Subparagraph 3.15.3 to 3.15:

§ 3.15.3 The Contractor must provide an onsite waste receptacle or receptacles of sufficient size and capacity to dispose of waste materials and rubbish that accumulate on the site. These receptacles shall be emptied on a regular basis, as needed. The Contractor shall dispose of all waste materials and rubbish at approved site for waste disposal.

- c. Add the following Subparagraph 3.15.4 to 3.15:

§ 3.15.4 The Contractor must leave the completed Work in conditions for occupancy by the Owner such that no cleaning, waxing, polishing, or other janitorial operations are required.

- d. Add the following Subparagraph 3.15.5 to 3.15:

§ 3.15.5 Contractor shall be solely responsible for protecting and securing materials and equipment stored on the site. Contractor shall require all persons performing work on the Project to comply with any and all policies and rules established by Owner relating to access or behavior on the Project site including any policies or rules regulating parking, access to the building, emergency ingress, egress or parking, noise, smoking, hygiene, food services, visitor privileges, restricted areas and elevator use, and privacy and confidentiality. The duty of Contractor to maintain discipline and good order in compliance with Owner's policies rules and regulations pursuant to the Contract Documents shall apply to Contractor's employees and to Subcontractors, sub-subcontractors, materialmen and suppliers, and their respective employees.

§ 3.18 INDEMNIFICATION

- a. Delete Subparagraph 3.18.1 and replace it with the following:

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, and each of their respective councilmembers, agents, officers, directors, officials, employees, consultants, and contractors of any of them from and against all claims, costs, losses, fines, penalties, expenses, judgments, claims, liabilities and damages (including but not limited to all fees and charges of engineers, architects, attorneys' and other professionals and all court or other dispute resolution costs) arising out of or relating to: (i) the performance of the Work, if and to the fullest extent that any such claim, damage, loss or expense is caused, in whole or in part, by the errors, acts, omissions, breach of contract, or negligence of the Contractor, any Subcontractor or anyone for whose acts any of them may be liable; (ii) any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device, not specified in the Contract Documents (iii) any Work performed by Contractor that is contrary to laws or regulations, including without limitation (a) any violation of or failure to comply with any law, statute, ordinance, rule, regulation, code or requirement of the Work by Contractor, any Subcontractor or any person or entity for whom either is responsible; (b) any means, methods, techniques, procedures or sequences of execution or performance of Work; and/or (c) any failure to secure or pay for any permits, fees, licenses, approvals and inspections Contractor is required to provide by the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by Contractor, any Subcontractor or any person or entity for whom either is responsible; (iv) any claim or action, legal or equitable, brought by other occupants or adjacent landowners against Owner or any other party indemnified hereunder to the full extent caused, in whole or in part, by or based upon Contractor's performance of the Work or failure to perform the Work; (v) any claim, damage, loss or expense attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property, if and to the full extent that any such claim, damage, loss or expense is caused, in whole or in part, by the acts, omissions, breach of contract or negligence of the Contractor, any Subcontractor, or anyone for whose acts any of them may be liable; and (vi) the failure of Contractor to pay any Subcontractor, sub-subcontractor, materialman or supplier as provided in this Contract for Work performed by such person or entity. If any such claim, damage, loss or expense is caused in part by the Owner (or another person or entity for whom Owner is responsible) Contractor shall not be responsible to indemnify Owner for those specific damages, losses or expenses caused by the acts or omissions of Owner (or such other person or entity for whom Owner is responsible) but only to the extent they are so caused by the acts of omissions of Owner or other persons or entities for whom Owner is responsible. The indemnity obligation in this Section shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Section 3.18. This indemnification shall survive acceptance and/or completion of the Work and any termination of this Contract. Nothing herein shall limit Contractor's other indemnification obligations as stated in the Contract Documents.

§ 3.19 DEMOLITION/REMEDICATION

- a. Add new **§ 3.19 DEMOLITION/REMEDICATION** and new Subparagraph 3.19.1 as follows:

§ 3.19.1 If the Work involves demolition and/or remediation or disposal of hazardous materials, then Contractor shall ensure that all required approvals, permits, licenses and surveys have been obtained prior to commencing with the applicable Work and shall handle, transport, remove and dispose of all such items in accordance with all applicable EPA, OSHA and other local, municipal, state or federal requirements (using properly licensed and certified personnel as necessary) and shall maintain (and provide to Owner upon request) all documents, manifests and other information reflecting the use, handling and disposal of such materials in accordance with such laws and requirements. Contractor shall be responsible for, and shall indemnify and hold Owner harmless from, all costs, fines, penalties or damages arising from Contractor's failure to comply with the provisions of this Section 3.19.1.

ARTICLE 4; ARCHITECT

§ 4.1 GENERAL

- a. On line 2 of Subparagraph 4.1.2, delete the word "Contractor,".

§ 4.2 ADMINISTRATION OF THE CONTRACT

- a. On line 2 of Subparagraph 4.2.2, delete the word "generally."
- b. Add new Subparagraph 4.2.2.1 as follows:

§ 4.2.2.1 Owner is entitled to reimbursement from Contractor for amounts paid to the Architect for site visits made necessary by the fault of Contractor or by defects and deficiencies in the Work.

- c. Add new Subparagraph 4.2.4.1 as follows:

§ 4.2.4.1 At the Pre-Construction Conference, the Architect will designate his contact person for the duration of the project. The Contractor shall always communicate in writing with the Architect's designated representative. From time to time, the Architect may designate members of its staff to correspond with the Contractor; in such case, the Contractor shall respond directly with that individual. If the Architect must change its contact person, it will advise the Contractor in writing who the new contact is. The purpose of this requirement is to assist the Contractor in maintaining continuity throughout the life of the project.

- d. On line 1 of Subparagraph 4.2.9, replace the word "determine" with "assist the Owner in determining".
- e. In Subparagraph 4.2.11, revise the first sentence to read as follows: "The Architect will provide Owner with an initial interpretation and decision, subject to final determination by Owner, of matters concerning performance under, and the requirements of, the Contract Documents on written request of either Owner or Contractor."
- f. Delete the last sentence of Subparagraph 4.2.12, which begins with the word "When", and replace it with the following sentence: "In its capacity as interpreter and judge, the Architect shall use its best efforts to secure faithful performance by the Contractor."

- g. In Subparagraph 4.2.13, delete the word “Architect’s” and replace it with the word “Owner’s.”

ARTICLE 5; SUBCONTRACTORS

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

- a. Add the following Subparagraph 5.2.1.1 to 5.2.1:
§ 5.2.1.1 The list of Subcontractors and material suppliers shall be submitted to the Architect not later than 10 calendar days after receipt of Notice to Proceed.
- b. On line 2 of Subparagraph 5.2.2, delete the words “and timely.”

§ 5.3 SUBCONTRACTUAL RELATIONS

- a. Add new Subparagraph 5.3.1 as follows:

§ 5.3.1 The Contractor shall not be released from any part of its liabilities or obligations under the Contract should any Subcontractors or material suppliers fail to perform in a satisfactory manner the Work undertaken by him.

- b. Add new Subparagraph 5.3.2 as follows:

§ 5.3.2 Except as provided in Paragraph 5.4, nothing contained in this Contract shall be construed as creating a contractual relationship between the Owner and any Subcontractor. The Specifications do not control the Contractor in dividing the Work among Subcontractors, nor do they limit the work performed by trade.

- c. Add new Subparagraph 5.3.3 as follows:

§ 5.3.3 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor’s employees, and of all Subcontractors and their employees and Sub-subcontractors. The Contractor shall also be responsible for the coordination of the work of the Subcontractors, Sub-subcontractors, and suppliers.

- d. Add new Subparagraph 5.3.4 as follows:

§ 5.3.4 The Architect will not undertake to settle any differences between or among the Contractor and its Subcontractors, Sub-subcontractors, and suppliers.

- e. Add new Subparagraph 5.3.5 as follows:

§ 5.3.5 The Contractor shall employ specialty subcontractors when required by the Specifications, at no additional expense to the Owner. “Specialty subcontractors” are subcontractors regularly engaged in the manufacture or installation of Contract items. Specialty subcontractors shall select and combine the materials involved and maintain and have available workmen skilled in the specified work. Specialty subcontractors shall be the manufacturer, licensed by the manufacturers as installers, or work under the direct supervision of the manufacturers.

- f. Add new Subparagraph 5.3.6 as follows:

§ 5.3.6 All work shall be performed by workers skilled in the trade to which they are assigned in performance of the Work.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

- a. Revise the last sentence of Subparagraph 5.4.1 to read:

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

- b. Delete Subparagraph 5.4.2 in its entirety.

- c. In Subparagraph 5.4.3, delete the second sentence.

ARTICLE 7; CHANGES IN THE WORK

§ 7.1 GENERAL

- a. Delete Subparagraph 7.1.2 and replace it with the following:

§ 7.1.2 A Change Order shall be based upon agreement among the Owner and Contractor; a Construction Change Directive may be issued by the Owner 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.

- b. Add the following Subparagraphs to 7.1:

§ 7.1.4 "Changes in the Work" of the General Conditions addresses how Change Orders, Change Directives, and Modifications are to be completed. Any change which has been requested by the Owner or the Architect will be issued by a written "Architect's Supplemental Instructions" or "Work Changes Proposal Request". The Architect will issue a written "Architect's Supplemental Instructions" for a minor change that does not affect the Contract Sum or Contract Time (whether issued at the request of the Owner, Architect, or Contractor). If the Contractor believes that additional compensation and/or time is required because of the change, it should not sign this form. Instead, it should immediately notify the Architect in writing of its position and submit a proposal for the changes in the Work. If the above situation occurs, the Architect may, at this time, send the Contractor a "Work Changes Proposal Request".

§ 7.1.5 If the Architect is reasonably certain that his instructions to the Contractor will require additional money and/or time for completion, it will initially send his instructions to the Contractor on the "Work Changes Proposal Request" form. The Contractor's proposal shall state its itemized estimate for any requested additional money (in accordance with § 7.1.7 below) and/or time. This written proposal must precede any Work that may be done by the Contractor as a result of the "Architect's Supplemental Instructions" or "Work Changes Proposal Request". Should the Contractor unilaterally proceed with the Work as requested by these forms without having advised the Architect and Owner in writing of his request for a change in price or time and without having received the Owner's written authorization, it

may be denied such increase. When the Architect receives the Contractor's proposal for a change in contract price and/or extension of time, the Architect will then prepare a written Change Order to cover this increase. The Contractor should not proceed with additional Work until the written Change Order has been approved and signed by the Owner's Authorized Representative.

§ 7.1.6 If a situation occurs which requires additional Work to be performed immediately, the Owner will issue a "Construction Change Directive" in accordance with the General Conditions. The "Construction Change Directive" will be prepared and signed by the Architect and will be effective after it has been signed by the Owner. After it has been executed by the Contractor, a Change Order shall be prepared by the Architect.

§ 7.1.7 For clarity, any change in the Work which will result in an increase or decrease in the Contract Sum or a change in the Contract Time must be approved in writing by the Owner's Authorized Representative.

§ 7.1.8 If changes in the work provide for an adjustment in the Contract Sum, the adjustment (increase or decrease) shall be based on the following, unless otherwise noted:

- .1 Material quantities and unit prices (separated into trades; include sales tax).
- .2 Labor costs (employees hourly pay rate not billing rate).
- .3 Labor burden, applied to labor only, including but not limited to, worker's compensation insurance, applicable payroll taxes, and fringe benefits required by agreement or custom. Contractor shall be required to substantiate the labor burden percentage applied to any change in contract amount. Labor burden percentage shall not exceed 30 percent of Labor costs in any case.
- .4 Construction equipment cost.
- .5 Overhead and profit combined (on claims for net increase only), as defined in Subparagraph 7.3.11.
- .6 Cost of Premiums/Bonds directly related to the change (for General Contractor only). Evidence of additional premium/bond costs shall be submitted with claim.

§ 7.2 CHANGE ORDERS

- a. In Subparagraph 7.2.1, delete "prepared by the Architect and signed by the Owner, Contractor, and Architect" and replace it with "between the Owner and Contractor".

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

- a. In Subparagraph 7.3.1, delete "prepared by the Architect and signed by the Owner and Architect," and replace it with "from the Owner".
- b. In the first sentence of Subparagraph 7.3.4, delete the words "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" and substitute "an allowance for overhead and profit in accordance with Clause 7.3.11.1 through 7.3.11.6 below."
- c. Add the following Subparagraph 7.3.11 to 7.3:

§ 7.3.11 In Subparagraph 7.3.4, the allowance for the combined overhead and profit included in the total cost to the Owner shall not exceed the following:

- .1 For the Contractor, for Work performed by the Contractor's own forces, 20 percent of the cost.
- .2 For the Contractor, for Work performed by the Contractor's Subcontractors, 10 percent of the amount due the Subcontractor.
- .3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, 15 percent of the cost.
- .4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, 10 percent of the amount due the Sub-subcontractor.
- .5 Cost to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.4.
- .6 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by complete itemization of costs including labor, materials, and Subcontracts. Labor and materials shall be itemized in the manner described above. Where major cost items are Subcontracts, they shall be itemized also. In no case will a change involving over \$100 be approved without such itemization.

ARTICLE 8; TIME

§ 8.1 DEFINITIONS

- a. Delete Subparagraph 8.1.2 and replace it with the following:

§ 8.1.2 The Commencement Date for the Work is the date established in the Notice to Proceed. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

§ 8.2 PROGRESS AND COMPLETION

- a. On line 2 of Subparagraph 8.2.2, delete the words "and Owner."

§ 8.3 DELAYS AND EXTENSIONS OF TIME

- a. In Subparagraph 8.3.1, on line 4 delete the words "by delay authorized by the Owner pending mediation and binding dispute resolution;" and, on lines 6 and 7, after the words "Architect may determine," insert the words "with the agreement of the Owner."
- b. In Subparagraph 8.3.2, delete "Article 15" and replace it with "the Contract Documents."
- c. Add the following Subparagraphs 8.3.2.1 and 8.3.2.2 to 8.3.2:

§ 8.3.2.1 Weather will be considered for purposes of ascertaining delays to the extent that actual construction operations are delayed. "Adverse weather" is defined as weather which is more severe than the average weather for the particular time(s) and date(s) in question as compared to the last 5-year average. The "average" shall be based on the "local climatological data" published by the National Oceanic and Atmospheric Administration for the Project area. It shall be the responsibility of the Contractor to furnish all data necessary to support his request.

§ 8.3.2.2 The Architect shall have sole discretion in appraising the request for time extensions and any extensions granted will be prorated to reflect the actual delay caused

by that individual increment of construction relative to the overall progress of the Project. For example, a 3-day extension due to weather, affecting the site work, will be prorated based on the percentage of site work relative to the total Project.

- d. Add the following Subparagraph 8.3.4 to 8.3:

§ 8.3.4 The Contractor shall not be entitled to additional compensation as a result of time extensions approved by the Architect or Owner.

ARTICLE 9; PAYMENTS AND COMPLETION

§ 9.2 SCHEDULE OF VALUES

- a. In Section 9.2, add “or the Owner” after “unless objected to by the Architect” on line 7.

§ 9.3 APPLICATIONS FOR PAYMENT

- a. Add the following sentence at the end of Subparagraph 9.3.1:

The form of Application for Payment shall be a current authorized edition of the AIA Document G 702-1992, Application and Certificate for Payment, supported by a current authorized edition of AIA Document G 703-1992, Continuation Sheet.

- b. Add the following Subparagraph 9.3.1.3 to 9.3.1:

§ 9.3.1.3 Until Substantial Completion, the Owner shall pay 95 percent of the amount due the Contractor on account of progress payments.

- c. Add the following Subparagraphs to 9.3.3:

§ 9.3.3.1 The Contractor shall submit at the prescribed time once a month a minimum of three copies of the Application for Payment. The application forms indicated herein shall be used. The Contractor shall prepare these applications in strict conformance with the Contract Documents. All applications will be completed in their entirety and in a legible manner, including all appropriate signatures. Applications with changes or corrections in handwriting may not be approved and may be rejected by the Architect and the Owner. The applications shall not include any additional Work unless this Work has been included in the Contract by an Owner approved and signed approved Change Orders (including all approving agencies). Should any corrections be necessary as a result of discrepancies from a previous payment, an adequate explanation in writing shall be attached to each Application for Payment.

§ 9.3.3.2 The Architect will work closely with the Contractor and his agents during the first and second Applications for Payment. The Architect will advise the Contractor of any errors in the application. It shall be the responsibility of the Contractor to make any and all corrections.

§ 9.3.3.3 The Contractor shall submit as part of his monthly application for payment a sworn Contractor’s Affidavit of Payment of Debts & Claims (AIA G706) attesting that it has paid all subcontractors and suppliers of labor and materials all sums due to date relative to this particular project in addition to the Payment Application Checklist and any supporting documentation required.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

- a. On line 8 of Subparagraph 9.5.1, delete the words “for which the Contractor is responsible.”
- b. In Subparagraph 9.5.2, delete “Article 15” and replace it with “the Contract Documents.”
- c. Add the following Subparagraph 9.5.5 to Section 9.5:

§ 9.5.5 Notwithstanding any other provision of this Contract, and notwithstanding the issuance of a Certificate for Payment by the Architect, the Owner may decide to deny or withhold payment or, because of subsequently discovered evidence or subsequent observations, may nullify payment previously made, for any of the reasons set forth in Section 9.5.1 above. If Contractor and Owner cannot agree on a revised amount, Owner will make payment for the amount for which Owner agrees. When the reasons for not making payment are removed, payment shall be made for amounts withheld because of them in response to the next filed Application for Payment.

§ 9.6 PROGRESS PAYMENTS

- a. Add the following to the end of the last sentence of Subparagraph 9.6.1: “, if approved by the Owner. Owner will make payments, less 5% retainage, to the Contractor approximately 30 days after the Contractors Application for Payment has been approved by the Architect.”
- b. At the end of Subparagraph 9.6.2, add the following sentence: “Contractor shall additionally comply with each and every requirement of Section 2.2-4354 of the Code of Virginia, 1950, as amended.”

§ 9.7 FAILURE OF PAYMENT

- a. In Subparagraph 9.7, on lines 3 and 4, delete the words “or awarded by binding dispute resolution.” Delete the last sentence in Subparagraph 9.7.

§ 9.8 SUBSTANTIAL COMPLETION

- a. Delete Subparagraph 9.8.1 and replace it with the following:

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is: (i) sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, except and only for minor items that may be completed without disruption or interference to the ability to use the Work; (ii) all required approvals and permits for occupancy, use and completion of the Work (including a temporary or permanent certificate of occupancy) shall have been issued by appropriate governmental authorities; (iii) the Architect has certified that the Work is complete as required by subsection (i) above; and (iv) all operational systems and elements that are part of the Work, including mechanical, electrical and support systems, are functioning as required by the Contract Documents.

- b. Add new Subparagraph 9.8.1.1 as follows:

§ 9.8.1.1 With respect to subsection (ii) in Section 9.8.1 above, if any approval, permit or certificate of occupancy issued as part of Substantial Completion is temporary or conditional, Contractor shall be responsible to perform, subsequent to Substantial Completion and as a condition to Final Completion and Final Payment, all Work required to satisfy the conditions set forth in any such temporary or conditional approval, permit or certificate. In this regard, the Contractor shall not be responsible for assuring the actual issuance of a final approval or certificate by the applicable governmental authority, but shall be responsible for the performance of all Work and any other obligations of Contractor under this Contract or applicable law that are required to satisfy the conditions set forth in the temporary or conditional approval or certificate.

- c. Add new Subparagraph 9.8.1.2 as follows:

§ 9.8.1.2 The Owner's receiving a Certificate of Occupancy for the entire Facility is a condition precedent to Contractor's achieving Substantial Completion.

- d. Add new Subparagraph 9.8.3.1 as follows:

§ 9.8.3.1 The Architect will perform no more than one (1) inspection to determine whether the Work or a designated portion thereof has attained Substantial Completion in accordance with the Contract Documents. Owner is entitled to reimbursement from Contractor for amounts paid to the Architect for any additional inspections.

- e. Add the following sentence to Subparagraph 9.8.5:

The payment shall be sufficient to increase the total payments to 100 percent of the Contract Sum, less such amounts as the Architect shall determine for complete Work and unsettled claims.

- f. Add new Subparagraph 9.8.6 as follows:

§ 9.8.6 When Contractor considers the entire Work ready for its intended use, Contractor shall, in writing to Owner and Architect, certify that the entire Work is substantially complete and request that Architect issue a Certificate of Substantial Completion. Within a reasonable time thereafter, Owner, Contractor, and Architect shall inspect the Work to determine the status of completion.

§ 9.9 PARTIAL OCCUPANCY OR USE

- a. Delete Subparagraph 9.9.1 and replace it with the following:

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when Owner determines it is in the Owner's best interest, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided that if, as a result of Owner's interference with the completion or correction of Work that is Contractor's responsibility, such occupancy or use by the Owner increased the cost of the Work or delayed its Substantial Completion, then Contractor shall be entitled to make a Claim for such costs or delay pursuant and subject to the applicable provisions of the Contract Documents. When the Contractor considers a portion Substantially Complete, the Contractor shall prepare and

submit a list to the Owner and Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld, conditioned, or delayed. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

- a. Add new Subparagraph 9.10.1.1 as follows:

§ 9.10.1.1 The Architect will perform no more than one (1) inspection to determine whether the Work or designated portion thereof has attained Final Completion in accordance with the Contract Documents. Owner is entitled to reimbursement from Contractor for amounts paid to the Architect for any additional inspections.

- b. Delete Subparagraph 9.10.2 and replace it with the following:

§ 9.10.2 As used herein, “Final Completion” shall require final payment and payment of any remaining retained percentage only if: (1) the proper and full completion of all of the Work, including but not limited to satisfactory operation of all equipment and systems and completion or correction of all punch list items, (2) delivery of all maintenance and operations manuals, the as-built drawings required by Section 3.11, and all warranties and guarantees (and assignments thereof) as required by the Contract Documents; (3) delivery of all documentation confirming and conveying any warranties, such as manufacturer’s warranties or specific Subcontractor warranties; (4) issuance of all final and unconditional approvals and certificates required from any authorities with jurisdiction over the Work, including final and unconditional certificates of occupancy (subject only to the provisions of Section 9.8.1.1 above); (5) removal of all rubbish, tools, scaffolding and surplus materials on the site and correction of all property damage that is the responsibility of Contractor pursuant to the Contract Documents; (6) delivery of final as-built survey of the Work as situated on the site; (7) delivery of executed releases (effective upon receipt of final payment) signed by all Subcontractors who may be entitled to a claim against Owner or the Project; (8) delivery of an executed release signed by Contractor discharging and waiving all claims, damages, causes of action, and/or suits which Contractor may have against Owner or Owner’s property relating to the Project or the Work effective upon receipt of the final payment; (9) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner’s property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied; (10) 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; (11) 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; (12) consent of surety, if any, to final payment; and (13), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys’ fees.

- c. Delete Subparagraph 9.10.4 in its entirety.
- d. Add Subparagraph 9.10.6 to 9.10 as follows:

§ 9.10.6 Applications for Final Payment shall be accompanied by executed and notarized copies of AIA Document G706, Contractor's Affidavit of Payment of Debts and Claims, AIA Document G706A, Contractor's Affidavit of Release of Liens, and AIA Document G707, Consent of Surety Company to Final Payment. In addition, Contractor shall furnish separate Releases or Waivers of Liens from each Subcontractor and materials and equipment supplier involved in its portion of the Work.

- e. Add Subparagraph 9.10.7 to 9.10 as follows:

§ 9.10.7 Subsequent to Substantial Completion of the Work and during Owner's initial occupancy and use of the Project, Contractor shall schedule and conduct with Owner and Architect a complete review, commissioning, demonstration, start-up and operational shakedown of all equipment and mechanical and electrical systems installed by Contractor or its Subcontractors on the Project, (including all specific commissioning activities required by the Contract Documents) and shall also review the operation and maintenance of such systems with Owner's maintenance contractors. Subsequent to this review, the Contractor, with reasonable promptness and at no cost to Owner, shall make all adjustments or corrections and shall balance all systems in order to make all equipment and systems perform as required by the Contract Documents based on the actual use and occupancy of the Project by the Owner. If necessary, or requested by the Architect or Owner, Contractor shall require the Subcontractor, supplier or materialmen responsible for any such equipment or system to participate in the review and/or to perform the adjustments, corrections or balancing required.

ARTICLE 10; PROTECTION OF PERSONS AND PROPERTY

§ 10.2 SAFETY OF PERSONS AND PROPERTY

- a. Add the following Subparagraph 10.2.4.1 to 10.2.4:

§ 10.2.4.1 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary, the Contractor shall give the Owner reasonable advance notice.

- b. Add the following Subparagraph 10.2.4.2 to 10.2.4:

§ 10.2.4.2 If the Contract Documents require Contractor to handle materials that under certain circumstances may be designated as hazardous, Contractor shall handle such materials in an appropriate manner.

- c. On line 6 of Subparagraph 10.2.5, insert the word "solely" between "loss is" and "attributable". In line 7, add "in any respect" between "attributable" and "to".
- d. In Subparagraph 10.2.8, change "not exceeding 21 days" to "not exceeding 10 days".

§ 10.3 HAZARDOUS MATERIALS AND SUBSTANCES

- a. In Subparagraph 10.3.2, delete everything between the first and last sentences. At the end of the Subparagraph, add the following sentence: “Notwithstanding the foregoing, Owner shall not be responsible for the costs of remediation of hazards caused by the negligence of Contractor, nor shall Contractor be entitled to adjustments in the Contract Time or the Contract Sum resulting from such hazards caused by the negligence of the Contractor. In such event, Contractor shall bear the expense of cleanup and remediation.”
- b. Delete Subparagraph 10.3.3 in its entirety.
- c. Delete the second sentence of Subparagraph 10.3.4 in its entirety.
- d. Delete Subparagraph 10.3.6 in its entirety.

§ 10.5 ADDITIONAL SAFETY REQUIREMENTS

- a. Add new **§ 10.5 ADDITIONAL SAFETY REQUIREMENTS** and new Subparagraph 10.5.1 as follows:

§ 10.5.1 Contractor shall erect and maintain, as required by existing conditions and progress of the Work, all reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent utilities, and directing necessary plankings, bridges, shoring, bracing, lights and warning signs necessary for the protection of roadways, adjacent property and the public. Contractor shall comply with the requirements of all building codes and other governing regulations and authorities and shall make all required submittals as required hereby. Contractor shall provide and maintain all cranes, hoists and other apparatus used in connection with the Work in strict conformance with the guidelines and regulations of all governing authorities as well as applicable OSHA requirements.

§ 10.6 WATER INTRUSION

- a. Add new **§ 10.6 WATER INTRUSION** and new Subparagraph 10.6.1 as follows:

§ 10.6.1 Contractor acknowledges that the nature of the Work requires appropriate protection and procedures to avoid the intrusion of water in the area where the Work is performed. In this regard, Contractor shall develop and implement appropriate moisture intrusion prevention procedures in connection with the Work, which shall remain in effect until Final Completion. These moisture intrusion procedures shall include measures to prevent and manage the intrusion of water and vapor caused by Contractor’s performance of the Work so that such conditions do not cause mold or other damage to the Work and shall include procedures for responding and remediating actual water intrusion or mold conditions caused by Contractor’s performance of the Work. The moisture intrusion procedures shall require that all window openings be boarded up or otherwise properly closed as appropriate. Contractor shall also employ reasonable methods to discover the presence of leaks caused by performance of the Work. If Contractor discovers water intrusion or mold during construction of the Work, Contractor shall notify Owner in writing of such condition within forty-eight (48) hours of its discovery, shall provide Owner all inspection reports, testing data, photographs, samples or other materials associated with the investigation and remediation of the water intrusion incident or mold condition. Any such conditions encountered shall be remedied

ARTICLE 11; INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S INSURANCE AND BONDS

- a. Add Subparagraph 11.1.1.1 as follows:

§ 11.1.1.1 Notwithstanding the foregoing, the Contractor's insurance obligations are stated in Sections 24 and 25 of the Owner's General Conditions.

- b. Add Subparagraph 11.1.2.1 as follows:

§ 11.1.2.1 Contractor shall furnish bonds covering the faithful performance of the contract and payment of obligations arising thereunder. The cost thereof shall be included in the Contract Sum. The amount of each bond shall be equal to one hundred percent (100%) of the Contract Sum.

§ 11.3 WAIVERS OF SUBROGATION

- a. Subparagraph 11.3.1 is revised to provide that only the Contractor is waiving subrogation rights. As stated in the Owner's General Conditions, the Owner is not waiving subrogation rights.
- b. Subparagraph 11.3.2 is deleted in its entirety.

§ 11.4 LOSS OF USE, BUSINESS INTERRUPTION, AND DELAY IN COMPLETION INSURANCE

- a. The second sentence of Subparagraph 11.4 is deleted.

§ 11.5 ADJUSTMENT AND SETTLEMENT OF INSURED LOSS

- a. Subparagraph 11.5.1 is deleted in its entirety.
- b. Subparagraph 11.5.2 is deleted in its entirety.

ARTICLE 12; UNCOVERING AND CORRECTION OF WORK

- a. Add the following Subparagraph to 12.2:

§ 12.2.6 Any material which has been inspected by the Architect, or the Owner, whether the material has been stored or has been incorporated in the Work of the project, and has been found to be defective and not in compliance with the Contract Documents will be clearly marked. The Contractor will be notified in writing concerning the defective material. The Contractor is expected to remove the defective material from the job site immediately. If the Owner has previously paid for this material, either in materials stored or work in place, such defective material will be credited to the Owner on the Contractor's next application for payment. The Contractor is responsible for carefully checking all materials which have been delivered to the job site which have the appearance of being only slightly damaged should be noted in the Contractor's log book.

ARTICLE 13; MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

- a. Replace Subparagraph 13.1 in its entirety with the following:

§ 13.1 This Contract shall be governed by the law of the Commonwealth of Virginia.

ARTICLE 14; TERMINATION OR SUSPENSION OF THE CONTRACT

- a. Nothing in this Article 14 shall limit Owner's rights to terminate or suspend the Contract as stated in the Owner's General Conditions. Article 14 is deleted to the extent it contradicts those provisions.
- b. Delete Section 14.1, including all Subparagraphs, in its entirety.
- c. Delete "repeatedly" from Subparagraphs 14.2.1.1 and 14.2.1.3.
- d. Revise Subparagraph 14.2.1.4 as follows:

.4 otherwise violates any provision of the Contract Documents; or
- e. Add Subparagraph 14.2.1.5 to 14.2.1, as follows:

.5 is adjudged as bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency.
- f. In Subparagraph 14.2.2, delete "and upon certification by the Architect that sufficient cause exists to justify such action,".
- g. In Subparagraph 14.2.4, delete the last sentence.
- h. Delete Subparagraph 14.3.2 in its entirety.
- i. In Subparagraph 14.4.3, add "and" and delete the semicolon on line 2 and delete everything after "Subcontracts" on line 3.

ARTICLE 15; CLAIMS AND DISPUTES

- a. Contract Disputes will be resolved in accordance with the provisions contained in Section 21 of the Owner's General Conditions and Virginia Code § 2.2-4363. Article 15 is deleted to the extent it contradicts those provisions. References in the Contract Documents to the claim procedure shall be construed as referring to the claims procedure in the Owner's General Conditions.
- b. The parties may mutually agree to use any voluntary alternative means of dispute resolution to resolve the contractual dispute. References to mandatory alternative dispute resolution throughout the Contract Documents are deleted in their entirety.
- c. Subparagraph 15.1.2 is deleted in its entirety.

- d. Subparagraph 15.1.3.1 is revised to conform to the notice of claim provisions in the Owner's General Conditions.
- e. Subparagraph 15.1.4.1 is revised to add "undisputed" before "payments" in line 3.
- f. Subparagraph 15.1.4.2 is deleted in its entirety.
- g. Delete Subparagraph 15.1.7 in its entirety.
- h. Add new Subparagraph 15.2.1.1 as follows:

§ 15.2.1.1 Notwithstanding any other provision of this Contract, Contractor shall not be entitled to make any Claim for any increase in the Contract Sum or for any extension of the Contract Time or for any other costs, expenses, damages or relief of any kind or nature regardless of the asserted cause unless Contractor has given written notice of its intention to file such Claim to Owner in accordance with Section 21 of the Owner's General Conditions. Contractor acknowledges that its failure to notify Owner of any Claim within the time required by the Contract Documents will prejudice Owner's ability to respond to such event, circumstance or occurrence and mitigate the cost and schedule impacts resulting from such event, circumstance or occurrence. The failure to make any Claim in writing and within the time limits established by the Contract Documents (time being of the essence) shall mean that the Claim has been waived by Contractor, and that Contractor shall be precluded from any recovery of any kind in connection with the occurrence or condition giving rise to said Claim and that Contractor shall perform all Work required by or in connection with any such event or condition without any increase in the Contract Sum and/or any other increase in compensation or other damages of any kind or nature. In the case of any continuing cause of delay, only one Claim is necessary.

- i. In Subparagraph 15.2.5, delete the last sentence.
- j. Delete Subparagraph 15.2.6 in its entirety.
- k. Delete Subparagraph 15.2.6.1 in its entirety.
- l. Delete Subparagraph 15.2.8 in its entirety.
- m. Section 15.3 MEDIATION, including all Subparagraphs contained therein, is deleted in its entirety.
- n. Section 15.4 ARBITRATION, including all Subparagraphs contained therein, is deleted in its entirety.

**CITY OF LEXINGTON CITY HALL RENOVATION PROJECT
OWNER'S GENERAL CONDITIONS**

These Owner's General Conditions are intended to be read in conjunction with the other Contract Documents for the City of Lexington City Hall Renovation Project.

1. CONDITION OF PREMISES

1.1 Contractor has evaluated and satisfied itself as to the conditions and limitations under which the Work is to be performed including, without limitation (1) the location, condition, layout and physical conditions of the Project site and surrounding area, (2) generally prevailing climatic conditions, (3) availability and cost of materials, tools and equipment, (4) geotechnical data, soil and subsurface conditions, (5) parking, traffic and logistics, and (6) other similar issues. Contractor shall not be entitled to any adjustment in the Contract Time or Contract Sum in connection with its failure to comply with the requirements of, or on account of the conditions of, this subsection.

2. INDEMNITY PROVISIONS

2.1 Except as prohibited by Section 11-4.1 of the Code of Virginia (1950), as amended, the Contractor shall indemnify and hold harmless Owner and its officers, trustees, directors, employees, agents, consultants, and contractors ("Owner Parties") from and against any and all liability, losses, damages, claims, causes of action, suits of any nature (including suits by Owner against the Contractor), costs, and expenses, including reasonable attorneys' fees and consultants' fees, resulting from or arising out of the Contractor's or its agent's, and/or subcontractor's: (i) errors, acts, or omissions in the furnishing of labor, goods, materials, or services or performing Work under the Contract or any subcontract; (ii) any breaches of the Contract or any subcontract; or (iii) activities or omissions, negligent or otherwise, on the Owner's property. This indemnity provision covers and includes, without limitation, fines and penalties for violations of federal, state or local laws or regulations; personal injury, wrongful death or property damage claims; breach of contract claims; indemnity claims; and other damages, losses and claims of any kind.

2.2 While on the Owner's property and in its performance of this Contract, the Contractor shall not transport, dispose of or release any hazardous substance, material or waste, except as necessary in performance of its Work under this Contract. The Contractor shall comply with all federal, state and local laws, rules, regulations and ordinances controlling air, water, noise, solid wastes and other pollution, and relating to the storage, transport, release or disposal of hazardous materials, substances or waste.

2.3 Regardless of acquiescence by Owner, the Contractor shall indemnify, defend, and hold the Owner Parties harmless from all costs, liabilities, fines or penalties, including attorney's fees, resulting from the Contractor's violation of Section 2.2 and reimburse the Owner for all costs and expenses incurred by the Owner in eliminating or remedying such violations. The Contractor also agrees to indemnify and hold harmless the Owner Parties from any and all costs, expenses, attorney's fees and all penalties or civil judgments obtained against any of the Owner Parties as a result of the Contractor's use or release of any hazardous substance or waste onto the ground, or into the water or air from or upon the Owner's premises.

2.4 The Contractor shall indemnify, defend and save the Owner Parties harmless from liability of any nature or kind, for use of any copyright, composition, secret process, patented or unpatented invention,

goods, materials and/or services or appliances furnished or used in the performance of the Contract, or which the Contractor is not the patentee, assignee, or licensee, to the same extent as provided in the above Section.

2.5 The Contractor hereby waives any and all statutes of limitations and statutes of repose applicable to any controversy or dispute arising out of the preceding Sections (2.1, 2.2, 2.3 and 2.4) and the Contractor further covenants and agrees that it will not raise or plead a statute of limitations or statute of repose defense against the Owner Parties in any action arising out of the Contractor's failure to comply with the preceding sections.

2.6 Nothing herein shall limit Contractor's other indemnification obligations as stated in the other Contract Documents.

3. PERMITS, LICENSES, AND REGULATIONS

3.1 The Contractor shall fully comply with all local, state and federal building and fire codes, ordinances, laws and regulations, including without limitation all applicable sections of the Occupational Safety and Health Act (OSHA), the Virginia Uniform Statewide Building Code and Chapter 11 of Title 54.1 of the Code of Virginia (1950), and obtain all required licenses and permits and pay all charges and expenses connected therewith. Contractor will be responsible for securing all necessary licenses, permits and permissions from the City of Lexington, Virginia and all other federal, state or local government bodies in connection with the Project.

3.2 The Contractor shall be responsible for arranging all inspections by federal, state and local authorities for compliance with all statutory requirements, ordinances and regulations.

4. OWNER AND ARCHITECT

4.1 Owner's Authorized Representative is Director of Public Works Patrick Madigan. Mr. Madigan has the sole responsibility and authority for negotiating, placing, and when necessary modifying each and every Invitation to Bid, Contract, Change Order, Change Directive, Modification, purchase order, or other award issued by Owner with respect to this Project. Any contracts or contract modifications contrary to this provision shall be void and Owner shall not be bound thereby. Mr. Madigan shall be the only agent of Owner with the authority to extend the Contract Time or increase the Contract Sum; provided, that any such changes will only be effective if made by a prior, written amendment to this Contract. No other Owner officer, agent or employee may extend the Contract Time or increase the Contract Sum. Mr. Madigan shall be the only agent of Owner to approve Change Orders or issue Change Directives. Owner's Authorized Representative may be changed at any time upon written notice to Contractor. Owner's Authorized Representative also may be referred to herein as the Contract Administrator.

4.2 The Architect cannot increase the Contract Sum or extend the Contract Time without the prior, written consent of the Owner's Authorized Representative. The Architect's authorized representative is the Initial Decision Maker. The Architect's authorized representative will be identified at the Pre-Construction Conference. The Architect's authorized representative may be changed at any time upon written notice to Contractor.

4.3 Nothing in the Contract Documents shall alter the contractual relationship between the Architect and the Owner.

4.4 All written communications on the Project shall be directed to and include the Owner and all significant issues with respect to the Work and/or this Contract shall be communicated by Contractor directly to Owner in writing. Contractor shall copy the Architect on all such communications.

4.5 The Architect shall act as Owner's representative during the Project. The Architect will make visits to the site and determine if the Work is proceeding in accordance with the Contract Documents.

4.6 The Contractor will be held strictly to the intent of the Contract Documents in regard to the quality of materials, workmanship and execution of the Work.

4.7 The Architect will not be responsible for the construction means, controls, techniques, sequences, procedures, or construction safety.

5. PATENTS

5.1 The Contractor shall protect, indemnify, and hold harmless the Owner Parties from any and all demands for fees, claims, suits, actions or judgments based on the alleged infringement or violation of any patent, invention, article, arrangement or other apparatus that may be used in the performance of the Contract.

6. CONTRACT DOCUMENTS; ORDER OF PRECEDENCE

The terms "Contract" and "Contract Documents" shall mean and include: (i) the Invitation to Bid ("ITB"), the Instructions to Bidders, any subsequently issued Addenda to the ITB; (ii) the completed and signed Bid Form and Bid Bond; (iii) the AIA Document A101-2017 ("Agreement"); (iv) the Owner's General Conditions; (v) AIA Document A201-2017, General Conditions of the Contract or Construction ("AIA General Conditions"), as amended by the Supplementary General Conditions; (vi) the Drawings and Specifications prepared by AECOM ("Architect") and included with the ITB; (vii) the Performance and Payment Bonds; (viii) any Change Orders or Change Directives; and (ix) any Modifications to the Contract. Anything called for by one of the Contract Documents and not called for by the others shall be of like effect as if required or called for by all Contract Documents. To the extent practicable, the terms and conditions of the Contract Documents will be read consistently with each other. In the case of conflict between the terms and conditions of the Contract Documents, the Order of Precedence of the Contract Documents shall be as follows: (i) the Owner's General Conditions; (ii) the AIA General Conditions as amended by the Supplementary General Conditions; (iii) the Agreement, including any Modifications, Change Orders or Change Directives; (iv) the ITB, the Instructions to Bidders, and any subsequently issued Addenda; (v) the Drawings and Specifications; (vi) the completed and signed Bid Form; and (vii) the Bonds.

7. CONTRACT DOCUMENTS AND DRAWINGS

7.1 The general character and scope of the Work are illustrated by the Drawings and Specifications. The Contractor shall verify that all drawings and plans accurately reflect actual conditions. If the Contractor deems additional detail or information to be needed, it will be responsible for obtaining such detail or information. The Contractor shall carry out the Work in accordance with the Drawings and Specifications and any additional detail drawings and instructions.

7.2 Contractor acknowledges that prior to execution of this Agreement, Contractor has met with the Owner and Architect to review the design for the Work and to identify, address and resolve ambiguities,

conflicts, issues and questions, if any, regarding the intended nature and scope of the Work. The description of the Work in further detail by the Architect or the Owner subsequent to the execution of this Agreement, shall entitle the Contractor to an increase in the Contract Sum or an extension of the Contract Time, only to the extent that such later description constitutes a “Material Change” in the Work, which is defined as any one of the following: (i) work of a materially different nature, character, scope or quality (other than refinement), than that set forth in and or reasonably inferable from the Contract Documents listed in this Agreement and/or identified to Contractor in the meetings and discussions involving the Contractor and Owner and/or Architect prior to the execution of this Agreement, as reflected in the meeting minutes or reports provided to or prepared in connection with such meeting; or (ii) a later description of the Work which involves work expressly excluded from the Contract Sum as set forth in the Contract Documents; or (iii) additional work that is required because of a change in applicable laws, codes or regulations enacted after the execution of this Agreement (except those scheduled to go into effect subsequent to the execution of this Agreement about which the Contractor has knowledge). The Contractor shall evaluate and assess the Drawings and Specifications and other descriptions of the Work prepared by the Architect as and when they are issued by the Architect and shall notify the Owner and Architect in writing, within fourteen (14) days of the receipt of the applicable design document if the Contractor believes that such design document includes a Material Change. As promptly as possible thereafter, the Contractor shall also identify to the Owner, in writing, the amount of the increase in the Contract Sum and/or Contract Time that the Contractor claims is needed as a result of the alleged Material Change and shall meet with and assist the Owner and Architect in evaluating the situation.

7.3 The apparent silence of these Specifications and any supplemental specifications as to any detail or the omission from the Specifications of a detailed description concerning any point shall be regarded as meaning that only the best commercial practices of the trade are to prevail and correct type, size and design are to be used. All interpretations of these Specifications shall be made on the basis of this statement.

7.4 The Contractor may be furnished additional instructions and detail drawings, by the Architect, as necessary to carry out the Work required by the Contract Documents. The additional drawings and instructions thus supplied will become a part of the Contract Documents. The Contractor shall carry out the Work in accordance with the additional detail drawings and instructions

7.5 The Contract Documents shall be interpreted and construed to call for finished code-compliant work, tested and ready for operation or use by Owner and its employees, agents, invitees, and licensees.

7.6 The entire Work provided for in the Specifications and other Contract Documents is to be accomplished even though every item and minor detail for the proper installation and successful operation of the entire Project may not be mentioned in the Specifications or shown on the Contract Documents. All work not specifically described in the Contract Documents, yet required to produce a fully functional and properly operating Project, shall be provided by Contractor even though every item or minor detail for the proper installation or successful operation of the entire Work is not mentioned in the Contract Documents.

7.7 All Contract Documents prepared and/or furnished by Contractor or Owner shall be the exclusive property of Owner and shall not be used for any other project(s).

8. PERSONNEL

8.1 The Contractor shall assign to the Work and the Project a Superintendent and a Project Manager who shall be subject to the reasonable approval of the Owner and Architect. Once appointed and

approved, no such individual shall be replaced on the Project or Work without the prior consent of the Owner's Authorized Representative. The Contractor shall notify the Owner, in writing, of any proposed changes in the staffing for the Project or Work, including the reason(s) for proposing such change.

8.2 Only reliable workers shall be employed as laborers. Should any person employed on the Project by the Contractor appear to the Owner to be incompetent or disorderly, such person shall be removed from the Project immediately upon proper notice to the Contractor from the Owner. Such person shall not again be employed for this Contract.

8.3 Contractor shall be responsible for the errors, acts, and omissions of its employees and agents, and the employees and agents of any Subcontractors, while on Owner premises or performing any work associated with the contract. Contractor's personnel will be required to comply with all rules and regulations governing the access to and use of Owner's premises. Contractor shall provide an adequate staff of experienced personnel, capable of and devoted to the successful accomplishment of the work to be performed under the contract. It shall be Contractor's responsibility to see that its employees use any equipment, materials and supplies in a safe and orderly manner and in accordance with the manufacturer's instructions and guidelines and within all local, state and federal regulations. It shall be Contractor's responsibility to ensure its employees and its Subcontractor's employees know and obey all OSHA, VOSA, EPA and other regulatory requirements. Compliance with all regulatory requirements is the sole responsibility of Contractor and/or Subcontractors. The safety of Contractor's and Subcontractor's employees is the exclusive responsibility of Contractor and Subcontractors. Owner reserves the right to request the removal of any of Contractor's employees or agents or any of subcontractor's employees or agents from the construction site at any time for reasonable cause. Contractor or the Subcontractor shall have such employee leave the premises upon receipt of such request.

9. PERFORMANCE

9.1 The Contractor shall be responsible for directing the Work with a high level of competence and efficiency. The Contractor is solely responsible to the Owner for ensuring that the finished Work complies with the Contract Documents. The Contractor shall be solely responsible for health and safety precautions and programs for workers, patrons, pedestrians and others in connection with the Work. No inspection by, knowledge on the part of, or acquiescence by the Owner, Architect, or any other person or entity whatsoever shall relieve the Contractor from its sole responsibility for compliance with the requirements of the Contract or responsibility for health and safety programs and precautions for patrons, pedestrians, workers and others.

9.2 Prior to beginning Work the Contractor shall submit a construction progress schedule showing the order in which the Contractor proposes to carry out the Work, including dates at which the Contractor will start the various parts of the Work and estimated date of completion of each part. The schedule must provide for Substantial Completion and Final Completion no later than the Substantial Completion Date and the Final Completion Date, respectively. The schedule is subject to Owner's review and approval. In the event that the Contractor should ever determine during the course of the Project that its prosecution of the Work has fallen behind the current approved schedule, then it must prepare a recovery schedule to permit completion of the Project within the Contract Time. The Contractor shall devote all required labor, materials, and equipment to comply with the recovery schedule, including, if necessary, the employment of additional Subcontractors and/or manpower and the scheduling of additional shifts, overtime, and weekend Work, all at the Contractor's sole expense. TIME IS OF THE ESSENCE.

9.3 Contractor shall also submit a schedule of payments anticipated to be earned during the course of the Work.

9.4 The Contractor shall be responsible for determining the location of underground utilities. Owner does not make any representation with regard to their location. The Contractor assumes full responsibility for the location of all underground utilities.

9.5 The intent of the Drawings and Specifications is that the Contractor shall furnish all labor, materials, tools, equipment, and services necessary for the proper execution of the Work in accordance with the Contract Documents and all incidental work necessary to complete the Project in an acceptable manner, ready for use, occupancy or operation by the Owner. In case of conflict between Drawings and Specifications, the most stringent shall govern. Figure dimensions on Drawings shall govern over scale dimensions, and detailed Drawings shall govern over general Drawings. Any discrepancies found between the Drawings and Specifications and site conditions or any inconsistencies or ambiguities in the Drawings or Specifications shall be immediately reported to the Architect, in writing, who shall promptly correct such inconsistencies or ambiguities in writing. Work done by the Contractor after his discovery of such discrepancies, inconsistencies, or ambiguities shall be done at the Contractor's risk.

9.6 It is understood that, except as otherwise specifically stated in the Contract Documents, the Contractor shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the Work within the specified time.

9.7 All materials and equipment used in the construction of the Project shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the Contract Documents.

9.8 The Contractor shall provide at its expense the testing and inspection services required by the Contract Documents.

9.9 If the Contract Documents, laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction require any Work to specifically be inspected, tested, or approved by someone other than the Contractor, the Contractor will give the Architect timely notice of readiness.

9.10 Inspections, tests, or approvals by the Architect or others shall not relieve the Contractor from his obligations to perform the Work in accordance with the requirements of the Contract Documents.

9.11 If any Work is covered contrary to the written instructions of the Architect, it must, if requested by the Architect, be uncovered for observation and replaced at the Contractor's expense.

9.12 If the Architect considers it necessary or advisable that covered Work be inspected or tested by others, the Contractor, at the Architect's request, will uncover, expose, or otherwise make available for observation, inspection, or testing as the Architect may require, that portion of the Work in question, furnishing all necessary labor, materials, tools, and equipment. If it is found that such Work is defective, the Contractor will bear all the expenses of such uncovering, exposure, observation, inspection, and testing and of satisfactory reconstruction. If, however, such Work is not found to be defective, the Contractor will be allowed an increase in the Contract Sum or an extension of the Contract Time, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, and reconstruction and an appropriate Change Order shall be issued.

9.13 The Contractor will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor will take all necessary precautions for the safety of, and will protect the persons who may be affected thereby, protect all the Work and all materials or equipment to be incorporated therein, whether in storage on or off the site, and protect other property at the site adjacent thereto, including buildings, trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

9.14 Contractor shall remove and transport any construction waste or debris to a Contractor-provided dumpsite upon removal. No construction waste or debris shall be stockpiled on Owner's premises.

9.15 After the completion of the Project, all property damaged by the Contractor's actions shall be restored to the same condition or better at the time of the Notice to Proceed. Prior to any construction activities, it is the Contractor's responsibility to document any existing damage or substandard conditions.

9.16 The Contractor shall provide adequate protection for all structures at the site. Any damage to Owner owned facilities by the Contractor shall be repaired or replaced at the Contractor's expense and to the complete satisfaction of Owner.

9.17 Contractor shall clean the premises daily, including disposal of all waste. Contractor shall maintain the parking lots and sidewalks around the Project site in a reasonably clean condition and shall comply with all erosion control, stormwater runoff and dust control ordinances and regulations. Contractor shall remove all spillage arising from performance of the Work from such areas and shall establish a regular maintenance program to minimize accumulation of dirt and dust upon such areas.

9.18 On completion of the Work covered by any of the sections of this Project, the Contractor for said section shall clean up the entire premises occupied by his operations, and this area shall be left neat and clean of trash, debris, piles of earth, waste materials or equipment. All surplus materials and equipment, trash, debris, and other foreign matter shall be disposed of as directed by the Architect or Owner. The entire project or sections thereof shall be made ready for the Owner's use, and the Contractor shall assist as may be necessary in placing any equipment furnished under the contract in proper operating condition.

9.19 Materials removed from the site shall be legally disposed of by the Contractor.

10. SUBCONTRACTORS

10.1 The Contractor shall not be released from any part of its liabilities or obligations under the Contract should any Subcontractor fail to perform in a satisfactory manner the work undertaken by him.

10.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, and of all Subcontractors and their employees. The Contractor shall also be responsible for the coordination of the work of the Subcontractors and suppliers.

10.3 Before any portion of the services shall be subcontracted, the Contractor shall furnish Owner the names, qualifications and experience of their proposed Subcontractor. Owner must be afforded the right to refuse any Subcontractor that the Contractor has selected. The Contractor shall remain fully liable and responsible for the work to be done by its Subcontractor(s) and shall assure compliance with all requirements of the Contract.

10.4 The Contractor shall not change any Subcontractor, person or entity previously approved if Owner makes reasonable objection to such change.

10.5 If Owner accepts, or fails to object to, any proposed Subcontractor, person or entity proposed by Contractor, such acceptance or failure to object shall not constitute a guarantee of such Subcontractor's, person's, or entity's performance by Owner, nor shall it alleviate Contractor of responsibility for Subcontractor's actions in performance of the Work.

11. SUBMITTALS AND SHOP DRAWINGS

11.1 Architect's and/or Owner's approval of Submittals and/or Shop Drawings shall not be construed as permitting any departure from Contract requirements, authorizing any increase in the Contract Sum or extension of the Contract Time, or relieving the Contractor of the responsibility for any error in details, dimensions or otherwise that may exist or for any deviation from the requirements of the Contract Documents in the performance of the Work. Submittals and Shop Drawings include: (i) all drawings, diagrams, illustrations, brochures, schedules, shop drawings, documents, samples, and other data required by the Contract Documents which are prepared by or for the Contractor, Subcontractor, or supplier, and submitted by the Contractor to illustrate the material, equipment or layouts, or some other portion of the Work; (ii) fabrication, erection and setting drawings, manufacturers' standard drawings, schedules, descriptive literature, catalogs, brochures, performance and test results or data, and all other descriptive data pertaining to the materials and equipment as required to demonstrate compliance with the Contract requirements; and (iii) other materials related to or concerning Work identified in the Drawings and Specifications.

12. CHANGES IN THE WORK

12.1 A Change Order shall be based upon agreement among the Owner and Contractor; a Change Directive may be issued by the Owner 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.

12.2 Requests for Change Orders shall be evaluated by the Architect; provided, however, the Owner shall make the final determination on all Change Orders and Change Directives. Contractor shall comply with any Change Directives issued by the Owner.

12.3 The Owner may at any time, as the need arises, order changes within the scope of the Work without invalidating the Agreement. If such changes increase or decrease the amount due under the Contract Documents, or in the time required for performance of the Work, an equitable adjustment shall be authorized by Change Order or Change Directive.

12.4 No Change Order, Change Directive, or other Modification to any of the Contract Documents shall waive, modify, release or invalidate any condition or provision of the Contract or obligation of Contractor unless such waiver, modification, release or invalidation is expressly stated in the written Change Order, Change Directive, Modification, or other document modifying the Contract Documents.

12.5 No change increasing the Contract Sum or extending the Contract Time will be made without the prior, written approval of the Owner's Authorized Representative.

13. STOP WORK ORDER

13.1 Should the Contractor fail to follow the Contract Documents or perform the Work, the Contract Administrator may stop the Work at any time. The Contractor shall suspend work upon receiving a written "Stop Work Order" from the Contract Administrator. After the Contractor has received a written "Stop Work Order," the Work and Contract Time shall not again be started until a written "Resume Work Order" is received by the Contractor.

14. COMPLETION OF WORK; LIQUIDATED DAMAGES

14.1 All work shall be completed in accordance with the terms, timeframes and deadlines required by the Contract Documents, unless modified by Change Order or Change Directive. The Contractor will be liable for any and all damages sustained as a result of any breach of the Contract, including abandonment of the Contract and delayed Substantial or Final Completion of the Project. In the event that the Contractor has not Substantially Completed and Finally Completed the Project within the Contract Time, the Owner will assess liquidated damages pursuant to Section 14.3 below and (A) deduct such damage from retainage, Progress Payments, Performance Security or from any obligation then or subsequently due the Contractor or (B) issue a written notice to the Contractor reducing the Contract Sum by the amount of said damages, or both. In addition to liquidated damages for delay, the Contractor will also be liable for any and all actual damages sustained as a result of any breach of the Contract other than by delay, including abandonment of the Contract.

14.2 Should any neglect, unnecessary delay or failure to follow the Contract Documents occur which make it apparent that the Contractor will not complete the Work, the Owner may declare the Contract void and have the Work completed and charge the cost thereof to the Contractor.

14.3 The Owner and Contractor acknowledge and agree that time is of the essence and that the Owner will suffer significant financial loss and other damage if any delays occur in the Substantial Completion and/or Final Completion of the Project, and that the extent of such loss and other damages cannot be readily ascertained as of the date of this Contract. Because the exact amount of the Owner's expenses and damages in the event the Work is not completed within the Contract Time cannot be readily ascertained as of the date of this Agreement, and because both the Owner and Contractor desire certainty with respect to their rights and their obligations in the event the Work is not completed by the Contract Time, the Owner and Contractor agree to the liquidated damage provisions in this Section. The parties acknowledge and agree that the liquidated damages provided in this Section are reasonable in amounts under all relevant circumstances, including the nature, dimension, scope, cost and scale of the Project as a whole. The parties agree and acknowledge that the liquidated damages specified in this section are not intended, designed or drafted to penalize the Contractor. Should the Contractor fail to achieve Final Completion of the Project within the Contract Time, the Contractor shall pay to the Owner as liquidated damages Three Hundred and 00/100 Dollars (\$300.00) for each calendar day thereafter until the Project is Finally Complete. Contractor agrees that the Owner's exercise of its option under this Contract to use and occupy all or any portion of the Work prior to its Substantial Completion or Final Completion shall not toll, waive or diminish in any way the liquidated damages for which Contractor shall be responsible under this Agreement. These liquidated damages provisions are not the Owner's exclusive remedy against the Contractor. The liquidated damages set forth above apply only to damages resulting from the Contractor's failure to achieve Final Completion of the Work within the Contract Time and do not limit or preclude Owner from recovery of any damages of any kind, type or nature to the extent they result from any other breach of contract, negligence or other action or omission of Contractor or its Subcontractors, including, but not limited to, any defective, substandard or deficient Work. The Contractor waives any defenses to

the validity of this liquidated damages provision including, but not limited to, on the grounds that such liquidated damages are void as penalties or are not reasonably related to actual damages.

15. PAYMENT PROVISIONS

15.1. This is a fixed price Contract. No increase in the Contract Sum shall be made except by a written amendment executed by Owner's Authorized Representative and Contractor. The limitation on increases for fixed price contracts contained in Virginia Code § 2.2-4309 applies to this Contract.

15.2. The Contractor represents and warrants that he has visited the site and become familiar with and is satisfied as to the general location and site conditions that may affect cost, progress, performance, furnishing, and completion of the Project. The Contractor represents and warrants that he is familiar with and will comply with all federal, state, and local laws and regulations that may affect cost, progress, performance, furnishing, and completion of the Project. The Contractor shall bear all costs resulting from the amount or character of the work being different, or because the nature of the premises on which the work is done is different from what was expected or on account of the weather, unknown conditions, or other similar or unexpected causes.

15.3 To insure proper performance of the Contract, Owner shall retain five percent (5%) of each progress payment until final acceptance of all Work covered by the Contract. The Contractor may request that this retainage be paid into an escrow account pursuant to Section 2.2-4334 of the Code of Virginia (1950), as amended.

15.4 Requests for progress payments will be submitted to the Architect for review. Owner will make any Architect-approved progress payments, less 5% retainage and any other applicable offsets or deductions, to the Contractor approximately 30 days after the Contractor's Application for Payment has been approved by the Architect.

15.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. This schedule, unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment and may not be revised without the prior written approval of the Owner and Architect. Applications for Payment also shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

15.6 In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contractor.

15.7 The Architect will perform no more than one (1) inspection to determine whether the Work or a designated portion thereof has attained Substantial Completion in accordance with the Contract Documents. Owner is entitled to reimbursement from Contractor for amounts paid to the Architect for any additional inspections.

15.8 The Architect will perform no more than one (1) inspection to determine whether the Work or designated portion thereof has attained Final Completion in accordance with the Contract Documents. Owner is entitled to reimbursement from Contractor for amounts paid to the Architect for any additional inspections.

16. PAYMENTS TO SUBCONTRACTORS

16.1 Contractor shall be liable for the entire amount owed to any Subcontractor with which it subcontracts; provided, Contractor shall not be liable for amounts otherwise reducible due to the Subcontractor's noncompliance with the terms of its subcontract. In the event that Contractor withholds all or a part of the amount promised to the Subcontractor under its subcontract, Contractor shall notify the Subcontractor, in writing, of its intention to withhold all or a part of the payment with the reason for nonpayment. Payment by the Owner to Contractor shall not be a condition precedent to payment to any lower-tier Subcontractor. Further, Contractor shall take one of the two following actions within seven (7) consecutive, calendar days after receiving amounts paid to the Contractor by the Owner for work performed by any Subcontractor under this Contract:

- (i) Pay the Subcontractor for the proportionate share of the total payment received from Owner attributable to the work performed by the Subcontractor under that subcontract; or
- (ii) Notify Owner and Subcontractor, in writing, of the Contractor's intention to withhold all or a part of the Subcontractor's payment and explain the reason for nonpayment.

16.2 Contractor shall pay interest at the rate of one (1) percent per month to the Subcontractor on all amounts owed by the Contractor that remain unpaid after seven (7) consecutive, calendar days following receipt by the Contractor of payment from Owner for work performed by the Subcontractor under that subcontract, except for amounts withheld as allowed in subsection (ii) above.

16.3 Contractor shall insert in each of its subcontracts a provision requiring each Subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier Subcontractor.

16.4 Contractor's obligation to pay an interest charge to a Subcontractor pursuant to this Section shall not be construed to be an obligation of the Owner. This Contract may not be modified for the purpose of providing reimbursement for such interest charge. A cost reimbursement claim may not include any amount for reimbursement for such interest charge.

16.5 The Contractor shall indemnify, defend and hold the Owner Parties harmless for any claims, demands, damages, losses and expenses, including, without limitation, reasonable attorneys' fees, arising out of or resulting from the Contractor failure to pay as provided in the Contract Documents and/or required by applicable law, any Subcontractor or any other person with whom Contractor or any subcontractor has contracted or who is employed directly or indirectly by Contractor or subcontractor provided only that Owner has paid Contractor such amounts as are then actually due under this Contract for Work actually and properly performed as of the date when the claim was asserted. In the event of such claims, Owner may, after providing written notice to the Contractor, withhold from any progress and/or final payment the unpaid sum of money deemed sufficient to pay all lawful claims and associated costs in connection with the Contract.

16.6 The Contractor agrees that neither payment, final or otherwise, partial or entire occupancy of the premises by Owner, nor acceptance of the Work under this Contract shall be an acceptance of any Work which does not conform to the requirements of the Contract, nor shall such acceptance, occupancy, or

payment relieve Contractor of any responsibility for any errors or omissions in connection with the Project, operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, or operate to release Contractor from any obligation under the Contract.

17. GUARANTEES AND WARRANTIES OF WORK

17.1 The Contractor's workmanship and oversight of its Subcontractors shall be of the highest quality found in the construction trade or industry in every respect. All items of Work shall be done by workers skilled in the particular task to which they are assigned. In the acceptance or rejection of Work, no allowance will be made for lack of skill on the part of workers. Poor or inferior workmanship (as determined by the Owner, Architect, or other inspecting authorities) shall be removed and replaced to conform to the highest quality standards of the trades concerned, or otherwise corrected to the satisfaction of the Contract Administrator, the Owner, or other inspecting authority, all at the Contractor's sole expense.

17.2 The Contractor warrants and guarantees the Work against defects or deficiencies in all material and workmanship and shall maintain, repair or replace, at its expense any Work, material or part that is found by the Owner or the Architect to be defective, within a period of one (1) year from the date of final acceptance of the Project.

17.3 The Contractor warrants that, unless otherwise specified, all material and equipment incorporated in the Work under the Contract shall be new, in first class condition, and in strict accordance with the Contract Documents. The Contractor further warrants that all workmanship shall be of the highest quality found in the construction trade or industry and in strict accordance with the Contract Documents and shall be performed by persons highly qualified at their respective trades.

17.4 The Contractor shall review all materials and methods of construction specified or indicated in the Contract Documents, including those recommended by manufacturers, and shall advise the Owner (1) if the specified or indicated material or method deviates from good construction practice, (2) if employing such material or method will violate any warranties, or (3) if the Contractor has any other objection to such material or method. In such event, the Contractor shall propose alternative materials or methods for those which violate the warranties or to which the Contractor takes objection, submitting the names of substitute products and relevant data on which he can issue the specified warranty. Should the Contractor fail to notify the Owner of its objections prior to the execution of the Contract, it will be deemed to have agreed to warrant all work specified or shown.

17.5 Work not conforming to these warranties shall be considered defective.

17.6 These warranties and guarantees of material and workmanship are separate and independent from and in addition to any of the Contractor's other guarantees or obligations that arise out of this Contract or any applicable law. In addition to the foregoing warranties and stipulations, the Contractor shall comply with all other warranties and guarantees noted in any portion of the Contract Documents, the more stringent requirement governing.

17.7 If, within any warranty or guarantee period, defects are noticed by the Owner, which require repairs or changes in connection with the guaranteed Work, those repairs or changes being in the opinion of the Owner rendered necessary as the result of the use of material, equipment, or workmanship which is defective, inferior, or not in accordance with the terms of the Contract, the Contractor shall, promptly upon receipt of notice from the Owner, (such notice being given not more than four (4) weeks after the expiration of any such guarantee period), and without any expense to the Owner:

- a. Place in satisfactory condition in every particular all of such guaranteed work and correct all defects therein; and
- b. Make good all damage to the structure, contents of the structure, site and equipment which in the opinion of the Owner is the result of the use of material, equipment, or workmanship which are inferior, defective, or not in accordance with the terms of the Contract; and
- c. Make good any work or material or the equipment and contents of structures or the site disturbed in fulfilling any such guarantee.

17.8 In any case where in fulfilling the requirements of the Contract or any guarantee embraced in or required thereby, the Contractor disturbs any Work guaranteed under the Contract, it shall restore such Work to a condition satisfactory to the Owner and guarantee such restored Work to the same extent as it was guaranteed under such other Contract.

17.9 If the Contractor, after notice, fails to proceed promptly to comply with the terms of the guarantee, the Owner may have the defects corrected by the Owner or other contractor and the Contractor shall be liable for all costs and expenses incurred in doing so.

17.10 Nothing contained in this Section 17 shall be construed to shorten any applicable statutes of limitation with respect to any obligations which the Contractor has under the Contract Documents or the law of Virginia, including liability for defective Work.

17.11 All guarantees or warranties of equipment, systems or materials furnished to Contractor or Subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of Owner and are (and shall be) assigned to Owner. These warranties are in addition to, not in lieu of, all other warranties and guarantees contained in or required by the Contract Documents.

18. RECORDS AND INSPECTION

18.1 The Contractor shall maintain full and accurate records with respect to all matters covered under this Contract, including, without limitation, accounting records, written policies and procedures, time records, telephone records, and any other supporting evidence used to memorialize, reflect, and substantiate charges or fees related to this Contract. The Contractor's records shall be open to inspection and subject to audit and/or reproduction, during normal working hours, by Owner and its employees, agents or authorized representatives after giving at least three (3) days' notice to Contractor by Owner. Owner shall have access to such records from the effective date of this Contract, for the duration of the Contract, and for five (5) years after the date of final payment by Owner to the Contractor pursuant to this Contract or any renewal or extension of this Contract. Owner's employees, agents or authorized representatives shall have access to the Contractor's facilities, shall have access to all necessary records, and shall be provided adequate and appropriate work space, in order to conduct audits.

19. CORRECTION OF WORK

19.1 The Contractor shall promptly remove from the premises all Work rejected by the Architect for failure to comply with the Contract Documents, whether incorporated in the construction or not, and the Contractor shall promptly replace and re-execute the Work in accordance with the Contract Documents and without expense to the Owner and shall bear the expense of making good all Work of other Contractors destroyed or damaged by such removal or replacement.

19.2 All removal and replacement Work shall be done at the Contractor's expense. If the Contractor does not take action to remove such rejected Work within ten (10) days after receipt of Written Notice, the Owner may remove such Work and store the materials at the expense of the Contractor.

20. ACCEPTANCE OF FINAL PAYMENT AS RELEASE BY CONTRACTOR

20.1 The acceptance by the Contractor of final payment shall be and shall operate as a release to the Owner of all claims and liability to the Contractor other than claims in stated amounts as may be specifically excepted by the Contractor for all things done or furnished in connection with this Work and for every act and neglect of the Owner and others relating to or arising out of this Work. Any payment, however, final or otherwise shall not release the Contractor or its sureties from any obligations under the Contract Documents or the Performance Bond and Labor and Material Payment Bond.

21. CLAIMS; CONTRACT DISPUTES

21.1 Contractual claims by the Contractor, whether for money or other relief, shall be submitted by the Contractor in writing to the Owner no later than sixty (60) days after final payment. However, written notice of the Contractor's intention to file such a claim must be given to the Owner's Authorized Representative within ten (10) calendar days of the occurrence or beginning of the work upon which the claim is based. Such notice shall state that it is a "notice of intent to file a claim" and include a written statement describing the act or omission of Owner or its agents that allegedly caused or may cause damage to Contractor and the nature of the claimed damage. Failure to submit such notice of intent within the time and in the manner required shall be a conclusive waiver of the claim by Contractor. Contractor is not prevented from submitting claims during the pendency of the Work. Proposed or requested Change Orders, demands for money compensation or other relief, and correspondence and emails to Owner or its representatives, which do not comply with the requirements of this Section, shall not be considered claims under this Section. Contractor may not institute legal action prior to receipt of Owner's decision on the claim unless the Owner fails to render such decision within ninety (90) days. The decision of the Owner, when signed by its Authorized Representative, shall be final and conclusive unless the Contractor within six (6) months of the date of the final decision on a claim initiates legal action as provided in Section 2.2-4364 of the Code of Virginia (1950), as amended. Failure of the Owner to render a decision within ninety (90) days shall not result in any other relief or penalty. The sole result of Owner's failure to render a decision within ninety (90) days shall be to extend to the Contractor the right to institute immediate legal action. No administrative appeals procedure (other than the mandatory procedure set forth above in this section) pursuant to Section 2.2-4365 of the Code of Virginia (1950), as amended, has been established for contractual claims under this Contract. This provision supersedes any contrary provision in the AIA General Conditions requiring arbitration or any other non-voluntary alternate dispute resolution.

21.2 If a claim is made during prior to completion of the Work, Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents, except for any amount in dispute.

22. OWNER'S RIGHT TO TERMINATE CONTRACT FOR CAUSE

22.1 If the Contractor should be adjudged bankrupt, or should make a general assignment for the benefit of its creditors, or if a receiver should be appointed on account of its insolvency, the Owner may terminate the Contract. If the Contractor should refuse, or fail, to: supply enough properly skilled workers or proper materials; make prompt payment to subcontractors or suppliers of material or labor; disregard laws, ordinances or the written instructions of the Architect or Owner; or otherwise violate any provision

of the Contract, the Owner may terminate the Contract, upon five (5) calendar days written notice to the Contractor. The provisions of this Section 22.1 shall not limit Owner's right to terminate the Contract under any other provision of the Contract Documents.

22.2 Notice of termination may be served upon the Contractor by mail or any other means at its last known places of business in Virginia or elsewhere, by delivery to any officer or employee wherever he or she may be found, or, if no such officer, employee or place of business is known or can be found by reasonable inquiry within three (3) business days, by posting the notice at the job site. Failure to accept or pick up registered or certified mail addressed to the last known address shall be deemed to be delivery.

22.3 Upon termination of the Contract, the Owner may take possession of the premises and of all materials, tools and appliances thereon and finish the Work by whatever method it may deem expedient. Owner also may call up on the surety under the performance bond to finish the Project. In either case the Contractor shall not be entitled to receive any further payment. If the expense of finishing the Project, including compensation for additional managerial and administrative services, exceeds the unpaid balance of the Contract Sum, the Contractor shall pay the difference to the Owner, together with any other expenses of terminating the Contract and having it completed by others.

22.4 If it should be judicially determined that the Owner improperly terminated this Contract for cause, the termination shall be deemed to be a termination for the convenience of the Owner under Section 23.

22.5 Termination of the Contract under this Section 22 is without prejudice to any other right or remedy of the Owner.

23. TERMINATION BY OWNER FOR CONVENIENCE

23.1 Owner may terminate this Contract at any time without cause, in whole or in part, upon giving the Contractor notice of such termination. Upon such termination, the Contractor shall immediately cease work and remove from the Project site all of its labor forces and such of its materials as Owner elects not to purchase or to assume in the manner hereinafter provided. Upon such termination, the Contractor shall take such steps as Owner may require to assign to the Owner the Contractor's interest in all subcontracts and purchase orders designated by Owner. After all such steps have been take to Owner's satisfaction, the Contractor shall receive as full compensation for termination and assignment the following:

- (a) All amounts then otherwise due under the terms of this Contract prior to the date of termination.
- (b) Amounts due for work performed subsequent to the latest Application for Payment through the date of termination.
- (c) Reasonable compensation for the actual cost of demobilization incurred by the Contractor as a direct result of such termination. The Contractor shall not be entitled to any compensation for lost profits or for any other type of compensation or damage other than those provided by the preceding sentence. Upon payment of the foregoing, Owner shall have no further obligations to Contractor of any nature.

23.2 In no event shall termination for convenience of the Owner terminate the obligation of the Contractor's Surety on its Payment and Performance Bonds.

24. "ALL RISK" BUILDERS RISK INSURANCE

24.1 The Contractor shall provide “all risk” builders risk insurance in an amount equal to one hundred percent (100%) of the cost of the Work (i.e. construction costs, soft costs, and FF&E costs). The loss, if any, is to be made adjustable with and payable to the Owner, in accordance with its interests, as they may appear. The Owner, its officers, employees and its agents, shall be named as an additional insured in any policy of insurance issued. Written evidence of the insurance shall be filed with the Owner no later than thirty (30) days following the award of the Contract. In the event of cancellation of this insurance, not less than thirty (30) days prior written notice must be sent to the Owner. A copy of the policy of insurance shall be given to the Owner upon demand. The Contractor is responsible for providing any desired coverage for Contractor’s or Subcontractors’ buildings, equipment, materials, tools or supplies that are on-site.

25. INSURANCE

25.1 Contractor shall maintain the following insurance with respect to the Work without interruption from commencement through Final Completion and at any time thereafter when Contractor enters the site to perform corrective Work, and during all additional periods specified in this Section:

- (a) Commercial general liability insurance on the current ISO CG 00 01 form or another occurrence form that provides substantially similar coverage (the “*CGL*”) that, without limitation:
 - (i) has limits of not less than \$2,000,000 each occurrence, \$2,000,000 personal and advertising injury, \$4,000,000 general aggregate, and a separate \$4,000,000 products-completed operations aggregate;
 - (ii) covers claims for damages arising from bodily injury (including mental anguish), sickness, disease, or death of any person other than Contractor’s employees, or arising from injury to or destruction of tangible property (including resultant loss of use);
 - (iii) includes coverage for premises, operations, independent contractors, personal and advertising injury, and liability assumed under an insured contract, including the tort liability of another assumed in a business contract;
 - (iv) includes Owner as a named insured (but not the first named insured), during the entire period when Work is performed under the Contract and, with respect to products-completed operations, continuing after Substantial Completion of the Work (or the earlier termination of the Contract) through to the expiration of the statute of repose applicable to the Work;
 - (v) includes the Owner, the funding sources, and each of their constituent partners and members and their respective partners, members, directors, officers, shareholders, employees, affiliates, subsidiaries, agents and representative, as their interests may appear (collectively, and as adjusted from time to time, the “*Additional Insureds*”) as additional insureds, via one or more endorsements (such as a combination of CG 20 10 10 01 and CG 20 37 10 01) that provides coverage for both ongoing and completed operations, does not limit coverage to vicarious liability, and is otherwise reasonably acceptable to Owner;
 - (vi) applies as primary and non-contributing insurance with respect to any other insurance or self-insurance program available to Owner or the Additional Insureds;
 - (vii) if the Additional Insureds are granted additional insured status via a “blanket” additional insured endorsement, does not restrict additional insured status to individuals or entities who have a written contract with the insured;
 - (viii) provides products-completed operations coverage for a period that continues after Substantial Completion of the Work (or the earlier termination of the Contract) through to the expiration of the statute of repose applicable to the Work, and includes the

Additional Insureds as additional insureds under this coverage on a primary and noncontributing basis;

(ix) provides that any general aggregate limit applies separately to the Work on a “per project” basis;

(x) does not limit the scope of coverage for liability arising from “XCU” (explosion, collapse, or underground) hazards;

(xi) allows, but does not obligate, any Additional Insured to pay (if Contractor fails to do so) any amounts (including SIRs and deductibles) that are required to be paid in order for the insurer to provide defense or indemnity to an Additional Insured under the CGL;

(xii) does not count the cost of defense towards the policy’s limits; and

(xiii) includes a standard ISO separation of insureds provision (including with respect to named insureds) or a substantially similar provision ensuring there is no exclusion or limitation of coverage with respect to claims between a named insured and an additional insured.

(b) Business auto insurance to cover liability arising out of the ownership, maintenance, or use of any motor vehicle used in connection with the Work (including owned, hired, and non-owned autos), with a limit of not less than \$1,000,000 each accident. This insurance must provide coverage for upset, overturn, and collision coverage related to pollution events (applying to the vehicle, trailer or other attachments to the vehicle and must extend to cargo/waste carried and to Subcontractors or others providing services to Contractor). Contractor shall cause Owner and the Additional Insureds to be included as additional insureds under this policy if the policy does not automatically grant them additional insured status under a standard “omnibus” clause. Contractor waives all rights against Owner and the Additional Insureds for recovery of damages to the extent those damages are covered under any business auto insurance (and, if applicable, commercial excess or umbrella liability insurance) covering Contractor. If Contractor transports hazardous material from the Project site with its own personnel, Contractor shall maintain a pollution liability coverage endorsement (CA 99 48) and a Motor Carrier Act (MCS-90) endorsement (and otherwise Contractor shall require all Subcontractors responsible for any such hauling to carry this coverage).

(c) Workers compensation and employers’ liability insurance for all persons that perform Work for Contractor. The workers compensation insurance must fulfill all applicable statutory requirements. The employers’ liability insurance must have limits of not less than \$1,000,000 each accident for bodily injury by accident, \$1,000,000 each employee for bodily injury by disease, and \$1,000,000 policy limit for bodily injury by disease. For any borrowed employees that perform Work (including operators of rented equipment, employees from a temporary employment agency, and employees of Contractor’s affiliates), Contractor shall require the primary employer to provide an alternate employer endorsement showing Contractor in the schedule as the alternate employer. Contractor waives all rights against Owner and the other Additional Insureds for recovery of damages covered by any workers compensation or employers’ liability insurance (and, if applicable, commercial excess or umbrella liability insurance) covering Contractor, and shall obtain an endorsement effecting this waiver.

(d) Commercial excess or umbrella liability insurance with respect to Contractor’s CGL, business auto, and employers’ liability insurance, with a limit of not less than \$10,000,000 each occurrence. This insurance must include a “broad as primary endorsement” or a “follow form endorsement”, (ii) include Owner as a named insured, (iii) include the Additional Insureds as additional insureds with respect to Contractor’s CGL and business auto insurance, (iv) provide

that the aggregate limits of liability apply separately with respect to the Work, and (v) be primary and non-contributing insurance with respect to any other insurance or self-insurance program available to Owner or the Additional Insureds. Contractor may satisfy the aggregate primary/excess minimum limits specified in this Exhibit through a combination of primary and excess layers, as long as the requirements of this Exhibit are otherwise satisfied and coverage specified herein with respect to the Owner and the Additional Insureds is not limited, reduced or otherwise adversely affected by such combination.

(e) Contractor's pollution liability insurance covering bodily injury, property damage, or cleanup resulting from pollution conditions including mold or other similar fungi arising out of or exacerbated by the Work with limits of not less than \$5,000,000 per occurrence, \$5,000,000 products-completed operations, and \$5,000,000 general aggregate, with a deductible or self-insured retention of no more than \$100,000. The policy shall be maintained during the entire term of the Work and for a period of at least five (5) years after Substantial Completion or for as long a period as is commercially available, whichever is less. If written on a claims made basis, this insurance policy shall not have a retroactive date or, if a retroactive date is included, such retroactive date shall be prior to the date that Work begins. This insurance must:

- (i) cover the operations of Contractor and its Subcontractors (including haulers) at the Property, at sites used to store materials, at temporary sites used in connection with the Property, in transit, and at owned or non-owned disposal facilities;
- (ii) include the Additional Insureds as additional insureds;
- (iii) cover the abatement and handling of hazardous and contaminated materials, including any pollution condition (including unknown or latent conditions) that occurs above, beneath, or on the ground, inside or outside of structures, or in the atmosphere;
- (iv) include asbestos and lead-based paint within the definition of hazardous and contaminated materials and the coverage under the policy;
- (v) provide coverage and defense for bodily injury, property damage (including loss of use of damaged property or of property that has not been physically injured), mold conditions, transportation of hazardous wastes, liability relating to non-owned disposal sites, cleanup costs, and costs incurred in the investigation, defense, and settlement of claims; and
- (vi) apply to both sudden and non-sudden pollution conditions.

(f) Property insurance covering the full replacement value of job trailers, machinery, tools, equipment (including cranes), and property of a similar nature owned, leased, or borrowed by Contractor and not incorporated into the completed construction of the Work, and Contractor hereby waives (and shall require any third-party owners of this property, including lessors of equipment and any persons from which Contractor borrows items, to waive) all claims against Owner and the Additional Insureds for loss or damage to these items, regardless of the cause. With respect to any cranes used in connection with the Work, Contractor shall obtain, and provide Owner with evidence of prior to commencing any affected Work, upset coverage, boom coverage, and riggers liability coverage with limits and coverages acceptable to Owner.

25.2 Before permitting any Subcontractor to commence Work, Contractor shall by written agreement require the Subcontractor to carry the insurance and make the waivers required of Contractor in Section 25.1 above and shall impose this requirement on all Subcontractors with respect to their Sub-subcontractors. In addition to the foregoing, all Subcontractor insurance shall conform to the following requirements:

- (a) For purposes of Subcontractors' insurance, Owner shall be an Additional Insured (and

must be included as an additional insured under Subcontractors' CGL on a primary and noncontributing basis);

(b) With respect to business auto insurance, Contractor shall require any Subcontractors (including any haulers) that transport hazardous material from the Project site to maintain a pollution liability coverage endorsement (CA 99 48) and a Motor Carrier Act (MCS-90) endorsement.

(c) With respect to commercial excess or umbrella liability insurance, Contractor shall require Subcontractors to carry a limit of not less than \$3,000,000 each occurrence for Major Subcontractors and \$1,000,000 each occurrence for other Subcontractors, except to the extent otherwise agreed by Owner in advance and in writing. "**Major Subcontractors**" are those Subcontractors that (i) have contracts with a value of \$100,000 or more and (ii) perform Work in the following trades: excavation, foundation, concrete, steel, scaffolding, masonry, HVAC, plumbing, windows, electrical, roofing, waterproofing, elevators, carpentry, or drywall.

(d) Contractor's pollution liability insurance is not required of Subcontractors, except Contractor shall require any Subcontractors that perform abatement Work to maintain contractor's pollution liability insurance that (i) has limits of not less than \$2,000,000 per loss and in the aggregate and (ii) otherwise satisfies the requirements of Section 1(f) above.

Contractor shall require all Subcontractors to waive their rights with respect to property insurance, as required in Section 11.3 of the AIA General Conditions, as amended. Contractor shall obtain Owner's prior and written consent before permitting any other deviations from the requirements of this Exhibit with respect to Subcontractors.

25.3 Contractor shall maintain organized records evidencing compliance by all Subcontractors with the requirements of this Section 25.2, with at a minimum (a) a certificate of insurance from each Subcontractor evidencing the insurance required of that party, and (b) a copy of each Subcontractor's (i) additional insured endorsements, and (ii) workers compensation subrogation waiver. Contractor shall obtain the evidence required under the immediately preceding sentence from each Subcontractor before permitting such Subcontractor to commence Work at the Project site. Contractor shall provide records required under this Section to Owner and/or the funding sources upon their request from time to time, shall promptly cause to be revised any errors or omissions in certificates of insurance or other evidence of insurance that are identified by Owner and/or the funding sources, and shall then promptly present Owner and/or the funding sources with the revised certificates of insurance and/or other evidence (as applicable).

25.4 Each insurance policy required of Contractor under this Section (together with the other requirements of this Exhibit, the "**Required Insurance**") must, unless otherwise agreed in advance and in writing by Owner, be issued by reputable insurance carriers authorized to transact that class of insurance in the State(s) in which the Work is performed, having a Best's rating of at least A VIII. If Contractor's CGL or excess or umbrella policies or endorsements limit the additional insureds' coverage to the limits specified in a written agreement, then notwithstanding the minimum limits set forth in Section 25.1 above, the minimum limits required under this Exhibit for such insurance shall be the greater of the limits specified in Section 25.1 or the limits actually carried by Contractor. Contractor shall not permit deductibles or retentions for any Required Insurance policy to exceed \$25,000 (\$100,000 for professional liability insurance), unless otherwise agreed to by Owner in advance and in writing after disclosure, except that the restrictions in this sentence do not apply to Subcontractors' insurance. To the extent first dollar coverage with respect to Required Insurance, including defense of any claim, is not available to Owner or any other Additional Insured because of a SIR, deductible, or any form of self-insurance, Contractor shall itself cause to be satisfied (unless Owner or the Additional Insureds elect to take these actions at Contractor's expense) what would otherwise be the insurer's obligation to provide defense

and/or indemnity until the SIR, deductible, or other condition of the insurer to assuming its defense and/or indemnity obligations has been satisfied.

25.5 Concurrently with the execution of the Contract, Contractor shall provide to Owner and, if separately requested, the funding sources (a) a certificate of insurance evidencing the Required Insurance, (b) if requested, the required additional insured endorsement for Contractor's CGL, and (c) if requested, the required workers compensation subrogation waiver. Contractor shall cause Required Insurance policies to provide that the insurer will notify Owner at least 30 days before the cancellation or non-renewal of, or any material change in, any Required Insurance, and 10 days prior in the case of cancellation due to non-payment. Contractor shall provide an updated certificate of insurance upon Owner's request, and in any case before the expiration or cancellation of the term of any Required Insurance. With respect to the products-completed operations coverage required under Section 25.1, Contractor shall provide a certificate evidencing the continuation of this coverage with its final application for payment and thereafter upon renewal or replacement of this coverage until the expiration of the time provided in Section 25.1. Contractor shall provide copies of Required Insurance policies within 15 days after Owner's request. Owner's failure to require Contractor to provide evidence of Required Insurance, or Owner's acceptance of evidence that indicates insurance that fails to satisfy any requirements of this Schedule, will not constitute a waiver of these requirements.

26. OTHER CONDITIONS

(1) **ANTI-DISCRIMINATION:** During the performance of this Contract the Contractor agrees as follows:

a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, age, physical or mental disability, military status, status as a veteran, marital status, pregnancy, childbirth or related medical conditions (including lactation), sexual orientation, gender identity, or any other basis prohibited by federal or Virginia law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. Contractor agrees to post in conspicuous places, available to employees, notices setting forth the provisions of this nondiscrimination clause.

b. Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.

c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

d. Contractor will include the provisions of the above a, b and c in every subcontractor or purchase order over \$10,000 in connection with this Contract so that the provisions will be binding upon each subcontractor or vendor.

(2) **DRUG-FREE WORKPLACE:** During the performance of this Contract, the Contractor shall (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000 in connection with this Contract, so that the provisions will be binding upon each subcontractor or vendor.

(3) IMMIGRATION REFORM AND CONTROL ACT OF 1986: The Contractor represents and warrants it does not and will not during the performance of this Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986 or any other federal law regarding the employment of illegal aliens or undocumented workers.

(4) FAITH-BASED ORGANIZATIONS: Pursuant to § 2.2-4343.1 of the Virginia Code, Owner advises Contractor that Owner does not discriminate against faith-based organizations.

(5) TRADE SECRETS: This Contract may be subject to Virginia Code § 2.2-4342, as amended, regarding public inspection of records and the procedures a contractor must follow to protect trade secrets and proprietary information.

(6) SUBROGATION: Any and all waivers of subrogation by Owner contained in the Contract Documents, including without limitation the AIA General Conditions, are hereby deleted. Any and all binding arbitration provisions contained in the Contract Documents are hereby deleted.

(7) APPLICABLE LAWS AND COURTS: This Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation between the parties arising under this Contract shall be brought in a court of competent jurisdiction in the Rockbridge County, Virginia. The Contractor shall comply with all applicable federal, state and local laws, codes, rules and regulations, including without limitation the Virginia Public Procurement Act, Virginia Code §§ 2.2-4300 through 2.2-4377.

(8) ETHICS IN PUBLIC CONTRACTING: The Contractor represents and warrants the following: (i) neither it nor any of its employees or agents enters this Contract as a result of any collusion or fraud; (ii) neither it nor any of its employees or agents has been offered or received any kickbacks or inducements in connection with this Contract; and (iii) neither it nor any of its employees or agents has conferred on any person having official responsibility for this transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged. The Contractor shall not offer or give a gratuity of any type to any Owner employee or agent.

(9) DEBARMENT STATUS: The Contractor represents and warrants that it is not currently debarred by the Commonwealth of Virginia from entering into contracts with public bodies for the type of construction and/or services covered by this Contract, nor is it an agent of any person or entity that is currently so debarred.

(10) LICENSE REQUIREMENT; LEGAL COMPLIANCE: The Contractor shall procure at its own expense all necessary licenses or permits to furnish the goods and services required under this Contract and shall conform to all laws, codes, regulations and ordinances applicable to the performance of the Contract, and will pay all applicable federal and state taxes and comply with any law or ordinance. Without limiting the foregoing, the Contractor shall pay any and all sales and use taxes assessed by any governmental authority with respect to the transactions contemplated by this Agreement.

(11) AVAILABILITY OF FUNDS: The Contract shall be deemed in force only to the extent of appropriations available for the purchase of such goods and/or services. Owner's extended obligations on those Contracts that envision extended funding through successive fiscal periods shall be contingent upon actual appropriations for the following years.

(12) **AUDIT:** The Contractor shall retain all books, records, and other documents relative to this Contract for five (5) years after final payment, or until audited by Owner, the Commonwealth of Virginia, or third-party auditors hired by either of them. Owner, the Commonwealth, and/or their respective third party auditors shall have full access to and the right to examine any of said materials during said period.

(13) **NO THIRD-PARTY BENEFICIARIES:** The parties covenant and agree that: (i) no individual or entity shall be considered, deemed or otherwise recognized to be a third-party beneficiary of this Contract; (ii) the provisions of this Contract are not intended to be for the benefit of any individual or entity other than Owner or the Contractor; (iii) no other individual or entity shall obtain any right to make any claim against the Owner or the Contractor under the provisions of this Contract; and (iv) no provision of this Contract shall be construed or interpreted to confer third-party beneficiary status on any individual or entity.

(14) **UNREASONABLE/EXCESSIVE CHARGES:** Charges which appear to be unreasonable or which are in excess of either (i) the Contract Sum or (ii) any increase in the Contract Sum approved in advance in writing by the Contract Administrator will be researched and challenged, and that portion of the invoice held in abeyance until the matter is resolved. Upon determining that invoiced charges are not reasonable or are excessive, Owner shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and/or excessive and the basis for the determination.

(15) **INSPECTIONS:** The Contractor shall be responsible for arranging and obtaining all inspections by federal, state, and/or local authorities that may be necessary during or at the conclusion of the Project.

(16) **FORCE MAJEURE:** Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under the contract due to an event outside the control and not the fault of the affected party (a "Force Majeure Event"). Examples of a Force Majeure Event include, but are not limited to, natural disasters, acts of God, terrorism, war, civil disorder, fire, flood, explosion, riot, labor disputes or strikes (labor disputes with the impacted party's own employees will not be considered a Force Majeure Event and will not suspend performance requirements under the contract), any act or order of any governmental authority, theft, windstorm, water, vandalism, failure of power or utilities, or other similar causes, beyond the control of the parties which delays or prevents the performance of the Contract. It is understood that both parties shall exercise due care and prudence to avoid and/or mitigate the impact of a Force Majeure Event. A Force Majeure Event shall not constitute a breach of contract; provided, that the party impacted by the Force Majeure Event makes reasonable attempts to overcome the impact of the Force Majeure Event and comply with the terms of the Contract. If either party is prevented, wholly or in part, from performing its obligations under this Contract as a result of a Force Majeure Event, then that party shall immediately give notice to the other party of the Force Majeure Event. Upon such notice, all obligations of the affected party under the contract which are reasonably related to the Force Majeure Event shall be suspended until the Force Majeure Event no longer exists. A Force Majeure Event does not cancel obligations for payments due for services actually provided.

(17) **SOVEREIGN IMMUNITY; PUBLIC POLICY:** Nothing contained in the Contract Documents is intended to waive, or shall be construed as a waiver of, the sovereign immunity of Owner.

(18) **INDEPENDENT CONTRACTORS:** The parties hereto are independent contractors and are not agents, partners, or joint venturers. Neither party shall have the ability to bind the other to any

contract with a third party and neither party shall hold itself out to any third party as having the right to bind the other party to any contract.

(19) **SUCCESSORS; ASSIGNS:** The Contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective executors, administrators, heirs, successors-in-title, successors and assigns.

(20) **ASSIGNMENT:** The Contractor shall not assign any of its rights, duties or obligations under the Contract or Contract Documents without the prior written consent of Owner. Owner may assign any of its rights and duties to a third party.

(21) **SEVERABILITY:** Should any provision of this Contract be held unenforceable for any reason, it shall be deemed severed from the Contract, the remainder of which shall remain valid and enforceable.

(22) **NON-WAIVER:** The failure of Owner to insist upon strict performance of any of the terms or provisions of this Contract or to exercise any option, right or remedy contained in this Contract shall not be construed as a waiver or relinquishment for the future of such term, provision, option, right or remedy. The waiver by Owner of a breach of any provision hereof shall not be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

(23) **ATTORNEYS' FEES AND COSTS:** The Contractor shall pay all costs, litigation-related expenses, reasonable attorney's fees and consultants' fees incurred by Owner in the event it, as plaintiff, defendant or otherwise, prevails in whole or in part against the Contractor or any Subcontractor in any judicial or administrative action or suit arising under this Contract or concerning any services or products supplied by Contractor. This provision for attorney's fees, expenses and costs shall be in addition to any other remedies available to Owner under the Contract Documents, at law, or in equity.

(24) **ANTI-KICKBACK PROVISION:** Consultant represents and warrants that this contract has been awarded without collusion or fraud and it has not offered or received any kickbacks or inducements from any other offeror, supplier, or subcontractor in connection with its proposal, and that it has not conferred on any Owner employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

(25) **REGISTRATION:** Pursuant to Virginia Code § 2.2-4311.2, Contractor shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia (1950), as amended, or as otherwise provided by law. Contractor shall not allow its existence to lapse or its certificate of authority to be revoked or cancelled at any time during the term of this contract. Owner may void this Contract if Contractor fails to remain in compliance with the provisions of this section.

(26) **HEADINGS:** The Section titles are inserted herein only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Contract nor in any way affect this Contract.

(27) **ENTIRE AGREEMENT:** The Contract Documents contain the entire understanding of the parties and supersede all prior and contemporaneous negotiations, correspondence, understandings and agreements of the parties relating to the subject matter hereof. No waiver or modification of this

Contract or of any covenant, condition or limitation herein shall be valid against Owner unless in writing and signed by its Authorized Representative. This Contract may not be amended without the specific written consent of both parties. The parties agree that the provisions of this section may not be waived except as herein provided.