

# DRAFT AIA® Document A133™ – 2019

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

AGREEMENT made as of the « » day of « » in the year «2021»  
(In words, indicate day, month, and year.)

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

« [Adventist Health System/Sunbelt, Inc. d/b/a AdventHealth, a Florida not for profit corporation](#)  
[601 East Rollins Street](#)  
[Orlando, FL 32803](#)  
[Attention: Bryan Emde](#)  
[Email: Bryan.Emde@AdventHealth.com](#) »

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

« »  
« »  
« »  
»

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

« »

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

« »

The Owner and Construction Manager agree as follows.

### **ADDITIONS AND DELETIONS:**

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

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

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

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## TABLE OF ARTICLES

1	INITIAL INFORMATION
2	GENERAL PROVISIONS
3	CONSTRUCTION MANAGER'S RESPONSIBILITIES
4	OWNER'S RESPONSIBILITIES
5	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
6	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
7	COST OF THE WORK FOR CONSTRUCTION PHASE
8	DISCOUNTS, REBATES, AND REFUNDS
9	SUBCONTRACTS AND OTHER AGREEMENTS
10	ACCOUNTING RECORDS
11	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
12	DISPUTE RESOLUTION
13	TERMINATION OR SUSPENSION
14	MISCELLANEOUS PROVISIONS
15	SCOPE OF THE AGREEMENT

### EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

### EXHIBIT B INSURANCE AND BONDS

## ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

*(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

*(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)*

« »

§ 1.1.2 The Project's physical characteristics:

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

« »

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

*(Provide total and, if known, a line item breakdown.)*

« »

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

- .1 Design phase milestone dates, if any:

«to be determined by the Owner »

- .2 Construction commencement date:

«to be determined by the Owner »

- .3 Substantial Completion date or dates:

«to be determined by the Owner»

- .4 Other milestone dates:

«to be determined by the Owner»

**§ 1.1.5** The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:

*(Identify any requirements for fast-track scheduling or phased construction.)*

« The Construction Manager shall cooperate with and support the Owner and the Owner's Architect in the performance of preconstruction activities to support the development of the design of the Project, including issuing multiple design and bid packages.»

**§ 1.1.6** The Owner's anticipated Sustainable Objective for the Project:

*(Identify and describe the Owner's Sustainable Objective for the Project, if any.)*

« »

**§ 1.1.6.1** Intentionally deleted.

**§ 1.1.7** Other Project information:

*(Identify special characteristics or needs of the Project not provided elsewhere.)*

« »

**§ 1.1.8** The Owner identifies the following representative in accordance with Section 4.2:

*(List name, address, and other contact information.)*

« Project Manager:

Studio Leader:

Executive Director:

»

**§ 1.1.9** The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:

*(List name, address and other contact information.)*

« »

**§ 1.1.10** The Owner shall retain the following consultants and contractors:

*(List name, legal status, address, and other contact information.)*

**.1 Geotechnical Engineer:**

« »

**.2 Civil Engineer:**

« »

**.3 Other, if any:**

*(List any other consultants retained by the Owner, such as a Project or Program Manager.)*

« »

**§ 1.1.11 The Architect's representative:**

*(List name, address, and other contact information.)*

« »

**§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:**

*(List name, address, and other contact information.)*

« »

**§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:**

*(List any Owner-specific requirements to be included in the staffing plan.)*

« Not used »

**§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:**

*(List any Owner-specific requirements for subcontractor procurement.)*

« See Section 3.1.11.3 and Article 9 »

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

« »

**§ 1.2** The Owner and Construction Manager may rely on the Initial Information. Both Parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall discuss whether and to what extent adjustment of the Project schedule, the Construction Manager's services, and/or the Construction Manager's compensation may be appropriate. The Owner may adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

**§ 1.3** The Construction Manager's representative shall not be changed without ten days' prior notice to the Owner and Owner's written approval of a successor representative. The Owner may from time to time change its designated representative with written notice to the Construction Manager.

**ARTICLE 2 GENERAL PROVISIONS**

**§ 2.1 The Contract Documents**

The Contract Documents consist of this Agreement, AIA Document A201™-2017, General Conditions of the Contract in the modified form as mutually agreed to by the Owner and the Construction Manager, attached hereto and incorporated herein as **Exhibit C ("A201-2017")**, Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents incorporated by reference in and Exhibits to this Agreement (other than the forms included as **Exhibit A** and **Exhibit D**) and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein.

Upon the Parties' execution of a Guaranteed Maximum Price Amendment ("**GMP Amendment**"), the Contract Documents will also include the documents described in Section 3.2.3 and identified in the GMP Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the Parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Construction Manager. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Construction Manager shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. To the extent the Construction Manager has performed work or services for the Project before execution of this Agreement, all rights and liabilities of the Parties for performance of the prior work and services are merged and included within and shall be governed by the terms and conditions of this Agreement. No compensation is due the Construction Manager for any such work or services other than as set forth in this Agreement, notwithstanding anything in the Contract Documents to the contrary.

## **§ 2.2 Relationship of the Parties**

This Agreement is entered into between Construction Manager and Owner contemplating a "Construction Manager-At-Risk" relationship. Notwithstanding anything to the contrary in the Contract Documents, the Construction Manager is fully responsible to the Owner for all duties of the Construction Manager under the Contract Documents, including the construction means, methods, techniques, sequences and procedures in performing the Work, for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract despite the Construction Manager's delegation of the responsibility therefor to any of its Subcontractors. In addition, if the Work required under the Contract Documents requires the Construction Manager to subcontract with any party to provide any professional services constituting the practice of architecture, design, or engineering, the Construction Manager shall be directly responsible to the Owner for any portion of the Work so required. The Construction Manager accepts the relationship of trust and confidence established by this Agreement. The Construction Manager represents it is experienced in conceptual estimating, scheduling and construction means and methods and experience with work of similar scope, size and complexity as the Work of the Project. The Construction Manager covenants with the Owner to cooperate with the Architect and other consultants and contractors, and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, at the times or times set forth in a schedule agreed to by the Owner in writing, or in the absence of such an agreed schedule, with reasonable promptness, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents. The Construction Manager is an independent contractor, and not an agent or employee, of the Owner. Nothing herein shall be construed to make the Construction Manager the agent, servant, or employee of the Owner or create any partnership, joint venture, or other association.

## **§ 2.3 General Conditions**

**§ 2.3.1** For the Preconstruction Phase, the A201™-2017 shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Sections 3.17 and 3.18, Indemnification; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

**§ 2.3.2** For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2017, which document is incorporated herein by reference. The term "Contractor" as used in A201-2017 shall mean the Construction Manager.

## **ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

## **§ 3.1 Preconstruction Phase**

### **§ 3.1.1 Extent of Responsibility**

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

**§ 3.1.2** The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

### **§ 3.1.3 Consultation**

**§ 3.1.3.1** The Construction Manager acknowledges that it is an integral part of the Owner's "Project preconstruction team" and shall assist the Owner in the development and review of the Contract Documents for the coordination, constructability and consistency thereof with the Owner's requirements and shall assist the Owner in the Owner's budget consistent with the Owner's program for the Project. The Construction Manager shall schedule and conduct meetings with the Architect and Owner every two (2) weeks or with such other frequency approved by the Owner in writing to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

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

**§ 3.1.3.3** The Construction Manager shall assist the Owner and Architect in establishing building information modeling and digital data protocols for the Project.

### **§ 3.1.4 Project Schedule**

The Construction Manager shall prepare an "Estimated Project schedule" in consultation with the Owner and the Architect and deliver it to them within 10 days after execution of this Agreement. When Project requirements in Section 4.1.1 have been sufficiently identified, and periodically thereafter, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's written approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; activity sequences and durations of components of the Work; milestone dates for receipt and approval of pertinent information; preparation and processing of submittals, including Shop Drawings, Product Data and Samples; times of commencement and completion required of each Subcontractor; times of commencement and completion required of the Owner and of the Owner's consultants, including the Architect, and Separate Contractors, ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner showing portions of the Project having occupancy priority; and the proposed date of Substantial Completion. If Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect and shall update such schedules to incorporate such revisions as may be agreed to by the Owner.

### § 3.1.5 Phased Construction

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to phased issuance of Drawings and Specifications to facilitate phased construction of the Work, and accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost impacts, cost information, constructability, availability of labor and materials, provisions for temporary facilities, and procurement and construction scheduling issues.

### § 3.1.6 Cost Estimates

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

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

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

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

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

§ 3.1.9 The Construction Manager shall furnish only skilled and properly trained staff for the Project. The key members of Construction Manager's staff ("**Key Personnel**") shall be persons agreed upon by Owner and Construction Manager. Such Key Personnel shall not be changed without the written consent of the Owner, unless such person(s) become unable to perform any required duties due to death, disability or termination of employment with the Construction Manager. If the Key Personnel are no longer capable of performing in this capacity, Owner and Construction Manager shall agree on a mutually acceptable substitute. The Owner reserves the right to require the Construction Manager to change a member of the Key Personnel when the Owner deems such change to be in the Owner's best interests and the Construction Manager shall promptly comply with the Owner's request at no additional cost to the Owner.

§ 3.1.10 Intentionally deleted.

### § 3.1.11 Subcontractors and Suppliers

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

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project. The Construction Manager acknowledges that only Subcontractors and suppliers who have been previously approved in writing by the Owner shall be engaged by the Construction Manager to perform work on or provide materials or equipment for the Project. In that regard, the Construction Manager acknowledges receipt of a written list from the Owner of Subcontractors and suppliers who have been pre-approved by the Owner. However, the Owner's approval of a Subcontractor or supplier is for its own benefit and in no way shall make the Owner responsible for such Subcontractor or supplier or

make the Owner responsible for the means and methods of performing the Work. To the extent there are portions of the Work or materials or equipment required for the Work for which there are no pre-approved Subcontractors or suppliers who are qualified to perform such portions of the Work or to provide such materials or equipment or, to the extent the Construction Manager desires to have the Owner consider approval of a Subcontractor or supplier who is not on the Owner's pre-approved list, the Construction Manager shall furnish to the Owner and Architect for their information a list of possible Subcontractors, including suppliers who the Construction Manager believes may be qualified to furnish materials or equipment, from whom the Construction Manager desires to request proposals. The Architect and/or Owner will promptly reply in writing to the Construction Manager if the Architect or Owner knows of any objection to such Subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed Subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed Subcontractor or supplier.

**§ 3.1.11.3** The processes described in Article 9 shall apply.

#### **§ 3.1.12 Procurement**

The Construction Manager shall prepare, for the Architect's and Owner's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Except as provided in Section 4.1.6 of this Agreement, upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

#### **§ 3.1.13 Compliance with Laws**

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, including requirements of, and conditions of any approvals, or permits given by all public authorities, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities for inclusion in the Contract Documents (collectively, "**Applicable Laws**"). The Construction Manager is not responsible to insure that the Drawings and Specifications conform to the requirements of Applicable Laws; provided, however, the Construction Manager shall promptly notify the Owner should it observe or learn of any noncompliance of the Drawings and Specification with Applicable Laws.

#### **§ 3.1.14 Other Preconstruction Services**

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

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

**§ 3.1.14.1** The Construction Manager shall assist the Owner and Architect in expediting the development of the final Drawings and Specifications by furnishing recommendations to the Owner and Architect for alternatives to construction means and methods of performing the Work as well as substitution of materials or equipment required for the Work. The purpose of value engineering is to assist in achieving all of the Owner's objectives for the Project, including the schedule, the budget, functional performance and aesthetic goals. Factors that the Construction Manager shall consider in making such recommendations include site use, selection of building materials and systems, availability of labor, methods of construction and other similar items benefiting from evaluation prior to the completion of the Drawings and Specifications. Particular attention shall be given to alternatives for materials, equipment and systems, possible economies and identification of options that will maximize the benefits that the Owner will derive from the completion of the Work. When requested by Owner, the Construction Manager: (1) prepare a specific analysis of the cost-effectiveness and performance capabilities of any building system or component under consideration or specified for the Work and provide other relevant information; and (2) make recommendations on field logistics and any other studies that are required to complete the Work successfully. The Construction Manager acknowledges that it will not rely on any value engineering proposals unless approved in writing by the Owner. The Owner is under no obligation to accept any pending or future value engineering proposal submitted by the Construction Manager.

**§ 3.1.14.2** At intervals appropriate to the progress of the Project and established by the Owner or Architect, the Construction Manager shall meet with the Owner and the Architect, and the Owner's and the Architect's other design consultants to coordinate the Contract Documents, including for the purpose of a construction feasibility and coordination analysis, identifying conflicts, missing information or gaps in the planned scope of Work and determining appropriate corrective action to ensure the full scope of intended Work is performed efficiently and economically.

**§ 3.1.14.3** In performing its Preconstruction Phase services, including participating in design reviews and making value engineering suggestions, the Construction Manager shall not be deemed to have assumed any design responsibility of the Architect or of the Owner's other design consultants.»

## **§ 3.2 Guaranteed Maximum Price Proposal**

**§ 3.2.1** After the Construction Manager receives the Drawings and Specifications intended to be the signed and sealed permit set for submission to the building department having jurisdiction, or at such earlier or later point in time as the Owner may direct, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The "**Guaranteed Maximum Price**" or "**GMP**" in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2. The Construction Manager shall deliver to the Owner complete copies of all Subcontractor and supplier bids obtained in accordance with Article 9 for the Owner's review in conjunction with the Guaranteed Maximum Price proposal.

**§ 3.2.1.1** The Owner may elect to issue a written authorization to proceed with certain segments of Work (each a "**Project Segment**") prior to full agreement on the final Guaranteed Maximum Price for the entire Work, in which event each such Project Segment shall be authorized by the Owner pursuant to a separate GMP Amendment (as defined herein). If the Owner so elects in writing, then the Construction Manager shall prepare a separate Guaranteed Maximum Price proposal specific to each Project Segment as requested by the Owner for the Owner's and the Architect's review and the Owner's acceptance. Upon the Owner's approval of the Construction Manager's Guaranteed Maximum Price Proposal for a Project Segment, a separate GMP Amendment setting forth key terms of the Agreement applicable to the specific Project Segment shall be prepared. Subsequent GMP Amendments shall incorporate the amounts of the prior GMP Amendments and any Change Orders executed until the final GMP Amendment is executed. The "Contract Documents" applicable to each Project Segment shall be those described in Section 2.1 and Section 15.2, including the "GMP Amendment" specific to the Project Segment. Terms and provisions of the Contract Documents shall be deemed to refer and shall apply separately to each separate Project Segment if and to the extent (i) the terms are specified in the GMP Amendment form attached hereto as Exhibit A as applying to a particular Project Segment, (ii) the provisions depend for their meaning or application on terms specified in the GMP Amendment, or (iii) the provisions, based on their language, are intended by the Parties to apply to each Project Segment separately. For the avoidance of doubt, it is not the parties' intent that the Project be divided into separate sub-Projects for each Project Segment with each such sub-Project having its own Guaranteed Maximum Price. Rather, it is the parties' intent that the Guaranteed Maximum Prices from each Guaranteed Maximum Price Amendment be aggregated with the others, such that there is one overall Guaranteed Maximum Price for the entire Work for which GMP Amendments have been executed by the parties.

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

**§ 3.2.3** The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following unless otherwise agreed by the Owner in writing:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A list of allowances and a statement of their basis;
- .4 A schedule of alternates and their prices, including the dates by which the alternates must be selected for the specified prices to remain available;

- .5 schedule of unit prices;
- .6 The initial construction schedule referenced in Section 3.3.2.2 below;
- .7 A statement of the proposed Guaranteed Maximum Price, to be prepared using each component of the MasterFormat (CSI) list approved by the Owner, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; the Construction Manager's Fee; and any other items that are included in the Guaranteed Maximum Price, which shall be based on (a) competitive bids obtained in accordance with Article 9, and which shall be used to prepare a schedule of values to be attached as an exhibit to the GMP Amendment and made part of the Contract Documents if agreed by the Owner, as further provided in Section 3.2.10;
- .8 A logistics plan that, among other things, shows the proposed locations for the parking of the Construction Manager's and its Subcontractors' and suppliers' and their respective personnel's vehicles and the storage and staging of materials and equipment to be incorporated into, or used in connection with, the Work;
- .9 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based and the anticipated date of Final Completion (as defined in Section 3.3.1.3); and
- .10 A list of Key Personnel for the Construction Phase of the Project.

**§ 3.2.4** Contingency shall be included only as a single, separate line shown in both the statement of the proposed Guaranteed Maximum Price provided pursuant to preceding Section 3.2.3, and in the schedule of values provided in accordance with Sections 3.2.10 and 11.1.5, shall not exceed the amount agreed upon by the Owner and the Construction Manager set forth in the GMP Amendment, and shall be for the Construction Manager's use to cover unforeseen costs considered reimbursable as the Cost of the Work that result from: (a) errors by the Construction Manager in estimating time or money, (b) items omitted by the Construction Manager in the formulation of the Guaranteed Maximum Price, (c) costs to the extent the sum of the subcontract costs exceed the sum of the subcontract costs in the Guaranteed Maximum Price, and (d) incurred in locating, relocating, protecting, or repairing Underground Facilities (as defined in Section 3.2.2.1 of the A201– 2017) not previously discovered.

Notwithstanding the foregoing, reimbursement from the contingency shall not be made for: (i) any losses or expenses for which the Construction Manager would have been indemnified or compensated by bonds or insurance, but for the failure of the Construction Manager to procure and maintain bonds or insurance in accordance with the requirements of the Contract or the failure of the Construction Manager to comply with the requirements of any sureties or insurance carriers providing coverage for the Project; (ii) costs which arise out of the Construction Manager's negligence, intentional misconduct, or a material breach of this Agreement; (iii) costs which arise out of disputes with employees of the Construction Manager or any Subcontractor or Sub-subcontractor working on the Project or with any union representing such employees; (iv) costs not otherwise subject to inclusion in a cost category of the Guaranteed Maximum Price; (v) liquidated damages; (vi) sums which are otherwise properly chargeable to the contingency to the extent (A) such sums are reasonably chargeable to a Subcontractor or other responsible person or entity, or (B) the Construction Manager failed to notify the Owner or its insurance carrier, if applicable, of the event which results in the claim to the contingency resulting in coverage disclaimer.

**§ 3.2.5** The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both; provided, however, that nothing herein imposes any duty on the Owner to identify any such inconsistencies or inaccuracies or any responsibility for any failure to do so.

**§ 3.2.6** The Construction Manager's Guaranteed Maximum Price proposal shall constitute a "firm offer" by the Construction Manager and available for acceptance by the Owner for the period specified in the proposal but in any event not less than thirty (30) days after receipt by the Owner. If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Owner and Construction Manager shall execute a GMP Amendment the Owner and Construction Manager shall execute the GMP Amendment amending this Agreement, in substantially the form attached hereto as **Exhibit A**, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based. However, for the avoidance of doubt, the Owner may, at its sole discretion and based upon its sole judgment, (a) indicate its acceptance of the Construction Manager's Guaranteed Maximum Price proposal; (b) reject the Construction Manager's Guaranteed Maximum Price proposal; (c) terminate the Project; or

(d) obtain bids from other contractors and proceed to construct the Project using a party or parties other than the Construction Manager. FOR THE AVOIDANCE OF DOUBT, IT IS THE PARTIES' INTENTION THAT THE GMP AMENDMENT SHALL ADD TO AND SUPPLEMENT THE TERMS OF THIS AGREEMENT AND NOT CONTRADICT THEM. THUS, NOTWITHSTANDING ANYTHING HEREIN OR IN THE GMP AMENDMENT TO THE CONTRARY, IN THE EVENT OF A CONFLICT BETWEEN THE TERMS OF THIS AGREEMENT AND THE GMP AMENDMENT, THE TERMS AND CONDITIONS OF THIS AGREEMENT SHALL CONTROL, EXCEPT TERMS AND CONDITIONS OF THE GMP AMENDMENT, IF ANY, THAT: (I) APPEAR IN BOLD AND UNDERLINED FONT, (II) EXPRESSLY STATE THAT THEY AMEND THE TERMS OF THE AGREEMENT, AND (III) ARE SEPARATELY INITIALED BY THE OWNER'S DULY-AUTHORIZED REPRESENTATIVE.

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

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

**§ 3.2.9** The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the GMP Amendment is executed.

**§ 3.2.10** The Construction Manager shall prepare a schedule of values consistent with its statement of the proposed Guaranteed Maximum Price pursuant to Section 3.2.3.7 for the Owner's and Architect's approval, which shall be attached as an exhibit to the GMP Amendment prior to execution thereof. The Construction Manager shall identify subcontract prices for agreements with Subcontractors and suppliers in separate line items within the schedule of values. Values for particular items of Work that the Construction Manager is permitted to self-perform in accordance with the Contract, and subcontract prices for Work performed by Subcontractors and suppliers for a particular line item, shall be shown in separate line items (e.g. line items in the schedule of values will not blend Work the Construction Manager self-performs and Work performed by Subcontractors or suppliers). It is the Owner's intent that the proposed Guaranteed Maximum Price be based, to the extent reasonably practicable, on hard bids, such that subcontracts and supply agreements will be bought at the bid amounts on which the Guaranteed Maximum Price is based. However, if thereafter there remain subcontracts or supply agreements to be "bought out", as the Construction Manager finalizes agreements with Subcontractors and suppliers, all "buy-out" savings (i.e. difference between amounts shown in the schedule of values attached to the GMP Amendment for an item of Work, services, materials or equipment and the amount for which the Construction Manager obtains a binding commitment from a Subcontractor or supplier to supply or furnish such item) ("**Buy-Out Savings**") shall be transferred to a separate line item within the Schedule of Values. References hereto to "Schedule of Values" mean the most recent version approved by the Owner.

### **§ 3.3 Construction Phase**

#### **§ 3.3.1 General**

**§ 3.3.1.1** For purposes of Section 8.1.2 of A201-2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

**§ 3.3.1.2** The Construction Phase shall commence upon the latest to occur of: (a) the Owner's execution of the GMP Amendment; (b) the date specified in the Owner's written Notice to Proceed; or (c) the issuance of the requisite permit(s) by the applicable governmental authority necessary to commence the Work of the Project. The Construction Manager shall proceed diligently in applying for and expediting issuance of the requisite permit(s).

**§ 3.3.1.3** The Construction Manager shall diligently prosecute the Work and achieve Substantial Completion (as defined in Section 9.8 of the A201-2017) of the entire Work not later than the time period in calendar days after the date of commencement of the Work (or the calendar date for achieving Substantial Completion) specified in the GMP Amendment, subject to adjustment of the Contract Time as provided for in the Contract Documents. The Construction Manager shall achieve Final Completion within forty-five (45) days after the Construction Manager

achieves Substantial Completion (the "**Final Completion Date**"). The term "**Final Completion**" as used herein shall mean the date on which the Architect has certified that the Construction Manager has fully completed all of the Work, including all Punch List items, and all conditions precedent to final payment have been satisfied (other than Owner's auditor's final report). Time is of the essence in the performance of the Construction Manager's obligations under the Contract.

### **§ 3.3.2 Administration**

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

**§ 3.3.2.2** The Construction Manager shall submit with the Guaranteed Maximum Price proposal a construction schedule for the Work, including the Owner's occupancy requirements, activity sequences and durations of components of the Work; milestone dates for receipt and approval of pertinent information, using the critical path method and otherwise in a format acceptable to the Owner for the Owner's and the Architect's review and the Owner's approval and, upon the execution of the GMP Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a submittal schedule in accordance with Section 3.10.2 of A201-2017. The approved construction schedule shall be updated in accordance with Section 3.10 of the A201-2017.

**§ 3.3.2.2.1** The Construction Manager shall include in its original construction schedule and updates thereto a "phasing plan", which phasing plan shall: (1) account for the needs of the Owner's operations at any existing buildings or facilities located and operating at the Project site ("**Existing Facilities**"), (2) applicable Infection Control Risk Assessment ("**ICRA**") standards and requirements for the Project, and (3) a proposed circulation plan. The Construction Manager shall perform and coordinate its work in such a manner as to avoid interference with the operations of Existing Facilities, including equipment and employee areas of and access to Existing Facilities (including access by emergency vehicles, delivery trucks and other vehicles) and provide for the safety of the Existing Facilities' patients, staff and visitors.

### **§ 3.3.2.3 Monthly Report**

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

### **§ 3.3.2.4 Daily Logs**

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

### **§ 3.3.2.5 Cost Control**

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

## **ARTICLE 4 OWNER'S RESPONSIBILITIES**

### **§ 4.1 Information and Services Required of the Owner**

**§ 4.1.1** The Owner shall provide, with reasonable promptness, information reasonably requested by Construction Manager and under the Owner's control regarding requirements for and limitations on the Project, including the Owner's objectives, constraints, and criteria, schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

**§ 4.1.2** Prior to the execution of the GMP Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the GMP Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

**§ 4.1.3** The Owner shall establish and may periodically update the Owner's budget for the Project, which may include, as the Owner deems appropriate, (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and, if required by the Owner, the Architect, in consultation with the Construction Manager, shall thereafter discuss whether a corresponding change in the Project's scope and quality is necessary or appropriate.

**§ 4.1.4 Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services, to the extent such information or services are required of the Owner by law or are reasonably required by the scope of the Work, with reasonable promptness. The Owner shall also furnish any other information under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information. Except to the extent the Construction Manager knows or reasonably should know of any inaccuracy, the Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work and shall promptly notify the Owner in writing should it identify any inaccuracy in the information or services furnished by the Owner.

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

**§ 4.1.4.2** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

**§ 4.1.4.3** The Owner, when such services are reasonably requested by the Construction Manager and demonstrated as being necessary, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

**§ 4.1.6 Direct Purchase Materials.** The Construction Manager acknowledges and agrees that the Owner may elect to directly purchase certain materials from vendors and provide the same to the Construction Manager for the Construction Manager's incorporation into the Project. The Owner's election in this regard may be the result of certain tax advantages (including sales tax exemptions afforded by Section 212.08(7), Florida Statutes) or for the purpose of other discounts or deductions, including those in kind. Before placing orders for material and equipment, the Construction Manager shall inform the Owner in writing of the various sources from which the materials or equipment may be purchased and the purchase price thereof and afford the Owner fourteen (14) days after the Owner receives such written information within which to issue a direct purchase order to the Owner's vendor of choice for the item or items to be purchased at the Owner's election (such materials and equipment that the Owner elects, in its sole discretion, to procure directly from vendors referred to herein as "**Direct Purchase Materials**"). The following provisions shall apply to such Direct Purchased Materials: (a) the Construction Manager shall prepare and provide to the Owner a purchase order containing the name and address of the material supplier, a list of required items, the quantity needed, the price of the materials and the Owner's Consumer Certificate of Exemption number; (b) the Owner shall issue a purchase order directly to the material supplier for such materials; (c) the Owner shall issue its exemption certificate; (d) the materials shall be delivered to the Owner at the Project site and title to the materials shall be transferred directly from the material supplier to the Owner; (e) the Construction Manager

shall be responsible for all matters relating to the receipt of the materials, including verifying correct quantities, inspection and acceptance of the materials at the time of delivery; (f) the Owner shall be billed directly by the material supplier; (g) the Owner shall pay the material supplier directly; and (h) the Owner shall bear all risk of loss or damage to the materials from the time of purchase and prior to their installation into the Project. Title to the materials purchased directly by the Owner shall vest in the Owner at the time the materials are delivered to the Project site. The Guaranteed Maximum Price shall, by Change Order or Construction Change Directive, be reduced by the cost of such Direct Purchase Materials, plus all sales tax associated with such Direct Purchase Materials; provided, however, the cost of such Direct Purchase Materials (but not the tax saved) shall be considered a Cost of the Work for purposes of the calculation of the Construction Manager's Fee. To the extent permitted by Applicable Laws, the Construction Manager shall be responsible for coordinating and receiving delivery of, inspecting, accepting delivery of, handling, safeguarding, and installing Direct Purchase Materials to the same extent as if the Construction Manager itself had procured such Direct Purchase Materials. The Construction Manager shall cooperate with the Owner and shall assist the Owner with any other processes necessary for the Owner to take full advantage of any available tax advantages, discounts or deductions associated with the purchase of materials and equipment. In the event the Construction Manager has faithfully followed the procedures set forth herein (to the extent applicable to the Construction Manager) and the Owner's other instructions concerning the purchase of Direct Purchase Materials but, nevertheless, the Construction Manager is determined by the Florida Department of Revenue (the "FDOR") to have been responsible for paying taxes on Direct Purchase Materials for which no taxes have been paid to the FDOR, the Owner shall either pay such amounts to the FDOR itself or reimburse the Construction Manager for such taxes for which the Construction Manager has been held responsible by the FDOR and has paid, together with any interest and penalties thereon, provided that the Construction Manager has promptly notified the Owner in writing of such determination by the FDOR. Further, any such payment by the Owner shall not be deemed to be a waiver of any rights of the Owner to challenge such determination by the FDOR and receive a refund of such amounts paid or reimbursed by the Owner. The Construction Manager shall cooperate in the Owner's efforts in that regard.

#### **§ 4.2 Owner's Designated Representative**

The Owner shall identify one or more representatives authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2017, the Architect does not have the authority to make a decision, approval or consent that is binding against the Owner. The term "Owner" means the Owner or the Owner's authorized representative. Notwithstanding the foregoing or anything in the Contract Documents to the contrary, no Modification of the Contract (including any adjustment of the Contract Sum the Guaranteed Maximum Price or Contract Time), decision of the Owner with respect to self-performed Work by the Construction Manager (including consents, approvals and agreements required of the Owner pursuant to Section 9.1 of this Agreement) and no decisions of the Owner with respect to requiring or approving the use of Subcontractor bonds or subcontractor default insurance (as contemplated by Section 14.3.2.1 of this Agreement) shall be binding upon the Owner unless such Modification, decision, consent, approval or agreement is in a written document executed by the Project Manager, Studio Leader and Executive Director, each as identified in Section 1.1.8 of this Agreement, or any replacement of any such Owner representative designated by an authorized representative of the Owner in writing in accordance with Section 2.1.1 of the A201 - 2017. An email is not a "written document" for the purposes of the foregoing sentence.

**§ 4.2.1 Legal Requirements.** The Owner shall furnish or cause to be furnished all legal, insurance and accounting services, including auditing services, that the Owner may determine to be reasonably necessary at any time for the Project to meet the Owner's needs and interests, other than services required of the Construction Manager by other provisions of the Contract Documents.

#### **§ 4.3 Architect**

The Owner shall retain an Architect to provide services, duties and responsibilities as described in the Owner's agreement with the Architect. The Owner, upon the Construction Manager's request, shall provide the Construction Manager a copy of the scope of services from the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

### **ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES**

#### **§ 5.1 Compensation**

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

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

« The "Preconstruction Fee" is a lump sum of \$ \_\_\_\_\_ and shall be paid monthly in proportion to the percentage of Preconstruction Phase services completed in the prior month, unless otherwise agreed in writing between the Construction Manager and the Owner. The Preconstruction Fee is a fixed lump sum and shall not be increased regardless of the time of performance of the Preconstruction Phase services. The Preconstruction Fee shall be included in the GMP.»

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

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

**§ 5.1.3** Intentionally deleted.

## **§ 5.2 Payments**

**§ 5.2.1** Unless otherwise agreed, payment for the Construction Manager's Preconstruction Phase services shall be made monthly in proportion to services performed.

**§ 5.2.2** Payments for amounts earned in a given month by the Construction Manager for Preconstruction Phase services performed by the Construction Manager in such month are due and payable thirty ( 30 ) days after the date the Construction Manager's invoice therefor is received by the Owner. Amounts unpaid after the date on which payment is due shall not bear interest.

## **ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

### **§ 6.1 Contract Sum**

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

**§ 6.1.2** The Construction Manager's Fee (which Fee is inclusive of the Construction Manager's overhead and profit):  
(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

« \_\_\_\_\_ percent ( \_\_\_\_\_ %) of the Cost of the Work (as defined in Article 7 of this Agreement), subject to the exclusions therefrom in calculating Construction Manager's Fee as provided for herein; provided, however, if the Cost of the Work plus the Construction Manager's Fee exceeds the Guaranteed Maximum Price, then the Construction Manager's Fee shall be reduced appropriately so that the total of the Cost of the Work plus the Construction Manager's Fee does not exceed the Guaranteed Maximum Price. For the avoidance of doubt, the Cost of the Work for the purpose of calculating the Construction Manager's Fee shall not include the amount of any unspent contingency and unspent allowance amounts. »

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

« .1 For Change Order or Construction Change Directive Work, for Work performed by the Construction Manager's Subcontractors, for: (a) additive Change Orders or Construction Change Directives, a fee equal to \_\_\_\_\_ % of the net increase in the Cost of the Work, plus overhead equal to five percent (5%) of the net increase in the Cost of the Work, and (b) deductive Change Orders or Construction Change Directives, the Owner

shall be credited the Construction Manager's Fee percentage of **10%** on the amount of the deductive change in the Work. .

**.2** For Work performed by the Construction Manager's own employees with the Owner's prior approval pursuant to Section 9.1, the Self-Perform Fee (defined in Section 9.1.4) on the net change in the Cost of the Work for such self-performed Work. Such Self-Perform Fee shall be included in the cost of the Change Order or Construction Change Directive Work for calculating the Construction Manager's fee and overhead on such Change Order or Construction Change Directive Work pursuant to Section 6.1.3.1 above.

For the avoidance of doubt, GMP Amendments for Project Segments (as described in Section 3.2.1.1) shall not constitute a "Change Order" or "Construction Change Directive" for purposes of this Section 6.1.3.»

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

« For Change Order Work or Construction Change Directives, the maximum amounts payable for fees (including overhead, profit, and the like) are as follows:

**.1** For each Subcontractor, for Work performed by that Subcontractor's own forces, a fee equal to five percent (5%) of the net change in the Cost of such Work performed by such Subcontractor's own forces, plus overhead equal to ten percent (10%) of the net change in the Cost of the Work performed by such Subcontractor's own forces.

**.2** For each Subcontractor, for Work performed by that Subcontractor's Sub-subcontractor, a fee equal to five percent (5%) of the net change in the Cost of the Work performed by the Subcontractor's Sub-subcontractor but no overhead charges.

**.3** For each Sub-subcontractor, for Work performed by that Sub-subcontractor's own forces, a fee equal to five percent (5%) of the net change in the Cost of the Work performed by such Sub-subcontractor's own forces plus overhead equal to ten percent (10%) of the net change in the Cost of the Work performed by such Sub-subcontractor's own forces.

**.4** No further tiering of Sub-subcontractors will be allowed mark up for overhead or profit (fees). »

**§ 6.1.5** Rental rates for Construction Manager-owned equipment shall not exceed the standard rental rate paid at the place of the Project, which rate shall be substantiated by the Construction Manager to the Owner's reasonable satisfaction. In no event, shall the total rental cost of any Construction-Manager-owned item exceed 75% of the lesser of the fair market value or purchase price of that equipment at the commencement of the rental period..

**§ 6.1.6** Liquidated damages, if any:

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

« The Construction Manager acknowledges and agrees that the Owner will suffer damages if the Construction Manager does not achieve Substantial Completion of the Work within the Contract Time specified in the GMP Amendment. The specific damages for delay in timely achieving Substantial Completion of the Work within the Contract Time are difficult to determine at this time but the Parties agree that the liquidated damages for delayed Substantial Completion computed as specified herein represent a reasonable estimate of the damages the Owner will incur for each day of delay beyond the Contract Time and bear a reasonable relationship to the Owner's risk of loss. Accordingly, as liquidated damages, and not as a penalty, the Construction Manager shall pay to the Owner liquidated damages computed as follows for each day of delay in achieving Substantial Completion of the Work beyond the Contract Time, subject to a not-to-exceed cap equal to twice the Construction Manager's Fee (including profit) for the Project: (Guaranteed Maximum Price x **10%**) / 365; provided, however, a thirty-day (30-day) grace period will be allowed such that should the Construction Manager achieve Substantial Completion within the thirty-day (30-day) grace period, no liquidated damages shall be payable pursuant to this Section 6.1.6.

The Owner may deduct liquidated damages from any unpaid amounts then or thereafter due the Construction Manager under the Contract. Any liquidated damages not so deducted shall be payable to the Owner by the Construction Manager upon demand by the Owner. It is further mutually understood and agreed that the Owner's assessment of liquidated damages for delays is intended to compensate the Owner solely for the Construction Manager's failure to timely achieve Substantial Completion of the Work and shall not release the Construction Manager from liability for any other breach of the requirements of the Contract. If the liquidated are determined by a court of competent jurisdiction to be unenforceable for any reason, then the Owner instead shall be entitled to

recover those actual delay damages that it sustained as a result of the Construction Manager's failure to timely achieve Substantial Completion of the Work. The Owner's right to liquidated damages hereunder is self-executing and no prior claim by the Owner is required as a condition precedent to the Owner's right to offset liquidated damages from amounts otherwise due the Construction Manager or to otherwise pursue recovery of liquidated damages; provided, however, the Owner shall not offset liquidated damages against amounts otherwise due the Construction Manager unless the Construction Manager has failed to make payment to the Owner of liquidated damages assessed by the Owner hereunder within ten (10) days of the Owner's written demand therefor. If the Construction Manager disputes any liquidated damages to which the Owner asserts it is entitled, the Construction Manager may make a Claim in accordance with the terms of the A201-2017.»

#### § 6.1.7 Other:

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

« The difference, as of the date of final completion of the Work, between (i) the Guaranteed Maximum Price (as it may be adjusted in accordance with the terms of the Contract Documents, including reducing the Guaranteed Maximum Price by the unused portion of any allowance amounts included in the Guaranteed Maximum Price in accordance with Section 3.8 of the A201 - 2017) and (ii) the total aggregate sum of the Cost of the Work plus the Construction Manager's Fee (such difference equals the "Savings") shall be shared by the Owner and the Construction Manager as follows: (a) twenty-five percent (25%) of such Savings of the Guaranteed Maximum Price shall be paid to the Construction Manager as an additional fee, provided that the Construction Manager's share of any Savings shall be capped at one percent (1%) of the Guaranteed Maximum Price and, provided further that the Construction Manager shall not be entitled to receive any Savings until the date of final payment; and (b) the remainder of the Savings shall inure to the benefit of the Owner.»

#### § 6.2 Guaranteed Maximum Price

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the GMP Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

#### § 6.3 Changes in the Work

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

§ 6.3.1.1 The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201-2017, General Conditions of the Contract for Construction.

§ 6.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the GMP Amendment may be determined by any of the methods listed in Section 7.3.3 of the A201-2017.

§ 6.3.3 In calculating adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201-2017, as they refer to "cost" and "fee," and not by Articles 6 and 7 of this Agreement, subject to Sections 6.1, 6.2, and 7.1 through 7.9, and Article 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts, subject to the provisions of Section 6.1.4 above.

§ 6.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of the A201-2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 6.1.2 of this Agreement.

§ 6.3.5 Intentionally deleted.

### ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE

#### § 7.1 Costs to Be Reimbursed

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work, less all discounts and rebates that shall be taken by the Construction Manager, subject to

Article 8 of this Agreement. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7. Items of Work not included in Sections 7.1 through 7.7 are compensable only as part of Construction Manager's Fee and are otherwise not reimbursable.

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

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

## § 7.2 Labor Costs

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

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

§ 7.2.2.1 Wages or salaries of the Construction Manager's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

*(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)*

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

§ 7.2.4 Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions (collectively, "**Labor Burden Costs**"), provided such Labor Burden Costs are based on wages included in the Cost of the Work under Section 7.2.1, and such Labor Burden Costs shall be reimbursed at a rate of forty-eight percent (48%) of the wages and salaries for such personnel.

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

§ 7.2.6 Overtime wages paid to salaried personnel will be reimbursed at the actual rate of overtime pay paid to the individual. No time charges for overtime hours worked on the Project will be allowed if the individual is not paid for the overtime worked. If the Construction Manager is required to work overtime as a result of an inexcusable delay or other coordination problems caused by the Construction Manager or anyone for whom the Construction Manager is responsible, the overtime premium and/or shift differential expense portion of the payroll expense and related Labor Burden Costs will not be reimbursed.

## § 7.3 Subcontract Costs

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

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

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

§ 7.4.2 Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work and the Construction Manager shall deliver such materials to the Owner or, at the Owner's

option, such materials shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

**§ 7.5.1** Costs of transportation, storage for equipment and materials that need to be held until they can be used for or incorporated into the Project (with the Owner's prior approval), installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

**§ 7.5.2** Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers required for the Work and not included in subcontracts that are provided by the Construction Manager at the Project site. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval and shall not exceed rates determined as provided in Section 6.1.5. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item.

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

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

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

#### **§ 7.6 Miscellaneous Costs**

**§ 7.6.1** Premiums for that portion of insurance and bonds required of the Construction Manager by the Contract Documents that can be directly attributed to this Contract. However, the cost of the bond and insurance premiums and any insurance costs specified in Sections 7.6.1.1 and 7.6.1.2 shall not be considered a Cost of the Work for purposes of calculating the Construction Manager's Fee.

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

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

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

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

**§ 7.6.4** Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.4.3 of A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

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

**§ 7.6.5.1** The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall

not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

**§ 7.6.6** Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

**§ 7.6.7** Costs of document reproductions and delivery charges.

**§ 7.6.8** Deposits lost for causes other than the fault or negligence of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, or the Construction Manager's failure to fulfill a responsibility in the Contract Documents.

**§ 7.6.9** Legal, mediation and arbitration costs, including reasonable attorneys' fees, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, but excluding such costs arising from: (a) disputes (i) between the Owner and the Construction Manager or (ii) between the Construction Manager and Subcontractors and suppliers of any tier, or (b) the alleged fault, recklessness, negligence or willful misconduct of the Construction Manager or those for whom the Construction Manager is responsible.

**§ 7.6.10** Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval pursuant to a separate written request by the Construction Manager (i.e. there must be a separate written request expressly requesting approval of an expense under this Section and inclusion of such costs in a schedule of values, budget or other document where such costs are lumped in with other costs does not constitute a "separate written request").

**§ 7.6.11** That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work, provided that no travel expenses shall be reimbursed to the Construction Manager unless the destination is more than thirty (30) miles from the Project location. Any travel involving airfare requires prior approval by an authorized Owner's representative.

**§ 7.6.12** Reasonable truck allowance for superintendent's, or field employee's, truck for use by the Construction Manager's personnel in expediting on-site Work in accordance with the Construction Manager's standard written personnel policy, provided such allowance shall only be included if the Construction Manager's standard written personnel policy describing such truck allowance is set forth in the Guaranteed Maximum Price proposal.

## **§ 7.7 Other Costs and Emergencies**

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

**§ 7.7.2** Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of A201-2017.

**§ 7.7.3** Costs of repairing damaged Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damage was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager or anyone for whom the Construction Manager is responsible and only to the extent that (i) the Construction Manager maintains all required and insurance coverages and bonds, and (ii) the cost of repair is not recoverable by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

**§ 7.7.4** The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201-2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

## **§ 7.8 Related Party Transactions**

**§ 7.8.1** For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; (3) any person or entity which has the right to control the business or affairs

of the Construction Manager; or (4) any person, or any member of the immediate family of any person identified above.

**§ 7.8.2** If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner in writing of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

#### **§ 7.9 Costs Not To Be Reimbursed**

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 7.2;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

#### **ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS**

**§ 8.1** Cash discounts, trade discounts, volume discounts, commissions, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained, including providing to the Owner seven (7) days' prior written notice of the potential discount, rebate or refund and an opportunity for Owner to furnish funds necessary to obtain such discount, rebate or refund on behalf of the Owner in accordance with the requirements of this Section.

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

#### **ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS**

**§ 9.1** The intent of the Parties is that all Work, materials, equipment and services be obtained at competitive prices. Unless otherwise authorized by the Owner in writing or unless the Owner requires (in writing) that the subcontracted Work be provided by a singular bidder or reduced number of bidders, the Construction Manager shall obtain at least three (3) bids from qualified bidders on all of the Work, including on any Work that Construction Manager desires to self-perform. The Construction Manager shall prepare and submit its own bids, and shall cause the other third-party bidders to prepare and submit their sealed bids directly, to the Owner for any Work the Construction Manager desires to self-perform. Notwithstanding the foregoing, the Construction Manager may, in its Guaranteed Maximum Price proposal, provide for self-performing: (a) Competitively Bid Self-Performed Work (defined below), (b) No Bid Self-Performed Work (defined below), and (c) Incidental Self-Performed Work (defined below), subject to the terms of this Section 9.1.

**§ 9.1.1 "Competitively Bid Self-Performed Work"** means Work packages that are bid to other Subcontractors for which the Construction Manager desires to self-perform and for which it provides a competitive bid. Competitively Self-Performed Work shall be bid on the basis of a stipulated sum, unless otherwise agreed by the Owner in writing.

**§ 9.1.2 "No Bid Self-Performed Work"** means Work that the Construction Manager and the Owner agree in writing that: (a) does not lend itself to a competitive bid environment (e.g. there are no or too few other qualified bidders); or (b) the Construction Manager is best suited to perform and for which there is no need for competitive bids.

**§ 9.1.3 "Incidental Self-Performed Work"** means incidental Work, limited to wood blocking, miscellaneous clean-up, miscellaneous support steel, Infection Control Risk Assessment ("ICRA"), temporary construction, and rough carpentry.

**§ 9.1.4** The Construction Manager must conspicuously identify any un-bid self-performed Work (i.e. No Bid Self-Performed Work and Incidental Self-Performed Work) in its Guaranteed Maximum Price proposal, and the Owner reserves the right to require the Construction Manager to obtain bids for such proposed self-performed Work. Unless otherwise agreed to by the Owner in writing the Construction Manager shall not provide in its Guaranteed Maximum Price proposal for the Construction Manager to self-perform more than ten percent (10%) of the Work as No Bid Self-Performed Work or Incidental Self-Performed Work, combined. The Construction Manager shall be entitled to fee for overhead and profit on No Bid Self-Performed Work equal to seven percent (7%) multiplied by the Cost of the Work for such self-performed Work (the "**Self-Perform Fee**"). Those portions of the Work that the Construction Manager does not self-perform with the Construction Manager's own personnel shall be performed under written subcontracts or other appropriate written agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids, provided that no designation, recommendation or approval of a bidder by the Owner shall be deemed to make the Owner responsible for such bidder's performance. The Construction Manager may obtain bids from other qualified bidders in addition to any bidders recommended by the Owner. The Construction Manager shall prepare bids for Competitively-Bid Self-Performed Work and shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver to the Architect and Owner all such bids (without redaction), a bid recap table, and copies of the bid solicitation materials that the Construction Manager provided to the bidders, with an indication as to which bids the Construction Manager recommends accepting. The bids for each bid package shall be delivered to the Owner all at the same time, except for the sealed-bids to be submitted directly to the Owner for portions of the Work the Construction Manager desires to self-perform. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. Any advice of the Architect, or determination by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable and substantiated objection. The Construction Manager shall deliver copies of all signed subcontracts and purchase orders with Subcontractors and suppliers to the Owner promptly after the full execution thereof.

**§ 9.1.5** If the Guaranteed Maximum Price has been established, and a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner. If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 7.8, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 7.8.2.

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

## ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of five (5) years after final payment, or for such longer period as may be required by Applicable Laws. Furthermore, Construction Manager shall cooperate with the reasonable requests from the Owner's auditors for documentation and other information related to the Project. In the event any such audit discloses that the Owner has overpaid the Construction Manager, the Construction Manager shall refund the amount of such overpayment to the Owner with interest accrued thereon at the legal rate prevailing from time to time at the place where the Project is located between the date on which the Owner overpaid such sum and the date on which the Construction Manager refunds such sum to the Owner. Additionally, in the event any audit reveals one or more overcharges exceeding an amount equal to five-tenths of one percent (0.5%) of the GMP in the aggregate, the Construction Manager shall promptly reimburse the Owner for the reasonable cost of such audit. In no event shall any audit increase the amount of the Guaranteed Maximum Price.

## ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 11.1 Progress Payments

§ 11.1.1 Based upon properly completed Applications for Payment, together with all required supporting documentation and information required by the Contract Documents, submitted to the Owner and the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

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

« »

§ 11.1.3 The Construction Manager shall prepare a monthly draft Application for Payment to be reviewed and discussed at a "pencil draw meeting" to be held no later than the 25<sup>th</sup> day of each month. The Construction Manager, the Architect, and the Owner (if necessary in the Owner's sole discretion) shall be in attendance. The Construction Manager shall revise the draft Application for Payment pursuant to the pencil draw meeting and send three (3) duplicate originals of the revised Application for Payment (together with all required supporting documentation and information required by Sections 11.1.3.3 and 11.1.4) to Owner and to the Architect. Provided that a properly-completed Application for Payment, together with all required supporting documentation and information required by the Contract Documents, is received by the Owner and the Architect not later than the « last » day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the « 30<sup>th</sup> » day of the « following » month; otherwise, payment shall be made by the Owner not later than « thirty » ( « 30 » ) days after all such preconditions to progress payments are satisfied.  
*(Federal, state or local laws may require payment within a certain period of time.)*

§ 11.1.3.1 The Construction Manager shall submit to the Owner before its first Application for Payment, all evidence of insurance required by the Contract Documents (in accordance with the requirements of **Exhibit B**), a listing of all Subcontractors (awarded at that time), a schedule of values (with any proposed revisions to the previously-approved Schedule of Values as described in Sections 3.2.10 and 11.1.5). Additionally, the Construction Manager must update its list of Subcontractors and suppliers on a monthly basis and deliver it to the Owner and the Architect with the Construction Manager's Applications for Payment. With respect to Work that is to be completed within thirty (30) days of an Application for Payment, the Construction Manager shall provide to the Owner and the Architect evidence reasonably satisfactory to the Owner that one hundred percent (100%) of the aggregate dollar amount of all subcontracts for such Work are in place or bid out.

§ 11.1.3.1.1 Each Application for Payment shall constitute a certification and representation by the Construction Manager to the Owner that: (i) the construction has progressed to the point indicated; (ii) the quality of the Work

covered by the Application is in accordance with the Contract Documents; (iii) there are no liens or claims outstanding or known to exist at the date of the Application; (iv) all due and payable bills with respect to the Work have been paid to date or included in the amount requested in the current Application, and there is no known basis for the filing of any construction liens or claims or any other lien or claim on the Work; (v) duly executed and notarized waivers and releases of lien and bond claims have been obtained from all Subcontractors and suppliers for work done and materials furnished through the date of payment; (vi) the Construction Manager is entitled to payment in the amount requested; (vii) such Application represents a just estimate of cost reimbursable to Construction Manager under the terms of the Contract Documents, and (viii) such Application has not been front-end-loaded either by Construction Manager or, to the best knowledge of the Construction Manager, by any of its Subcontractors (including placing a value on a line item that is in excess of its cost, increasing unit prices on early completed items while decreasing unit prices on later completed ones, and/or inflating the percentage of completion on line items).

**§ 11.1.3.1.2** If any of the Subcontractors, material suppliers or laborers of any tier under the Construction Manager refuse to furnish a waiver and release of lien and bond claims required by the Contract Documents, payment may be withheld by the Owner on account thereof while the remainder is paid, unless and until the Owner receives the required waiver and release of lien and bond claims, the Construction Manager has transferred the claim of lien to bond in accordance with Section 713.24, Florida Statutes (if a claim of lien has been recorded) or the Construction Manager has provided other security acceptable to the Owner.

**§ 11.1.3.2** Each Application for Payment shall be notarized and provided in the form of AIA Document G702-1992, with the Continuation Sheet based on AIA Document G703-1992, and shall be itemized by operations completed in accordance with the Schedule of Values that has been submitted by the Construction Manager in accordance with the Contract Documents and approved in writing by the Owner and Architect. All blanks and columns on the forms must be filled in, including every percentage completed figure.

**§ 11.1.3.3** In addition to other required items, each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and the Architect and in compliance with Applicable Laws:

- .1 A duly executed and notarized unconditional partial release of lien and bond claims from the Construction Manager and each Subcontractor and supplier who has performed work or who has provided labor, services, equipment or materials to the Project, effective through the last date the Owner has paid the Construction Manager;
- .2 A duly executed and notarized partial release of lien and bond claims from the Construction Manager and each Subcontractor and supplier who has performed work for or who has provided labor, services, equipment or materials to the Project effective through the date of the Construction Manager's current Application for Payment (which may be conditioned upon receipt of payment of the amount specified in the partial release of lien and bond claims);
- .3 If requested by the Owner, a duly executed and notarized completed sworn statement from the Construction Manager in the form attached hereto as **Exhibit D**;
- .4 An updated schedule of values and cash flow projections;
- .5 All new Change Orders executed since the last progress payment and the Change Order Log, including a list of any Change Orders contemplated or under negotiation at the date of such payment request;
- .6 Copy of monthly progress report (if not previously delivered);
- .7 An updated construction schedule;
- .8 For the final site Work draw, (a) all as-built drawings and an as-built survey for the site Work, prepared in accordance with ALTA-ACSM standards by a properly licensed surveyor showing the location of all site Work improvements constructed on the Project site and showing the location of all water, sewer, gas and electric lines and mains and all existing utility easements as may be more particularly described in the site plan set for the Project, and (b) copies of all soil reports, compaction reports and tests performed by or obtained by the Construction Manager with respect to the Project site;
- .9 If the Owner has required payment and performance bonds, a consent of surety, if required by the Owner;
- .10 All required evidence of the insurance identified in the Contract Documents (to the extent not previously provided); and

- .11 Such other information, documentation, and materials as the Owner, the Architect, the Owner's lender, if any, or the title company that is responsible for issuing endorsements to the Owner's lender's title policy may reasonably require.

**§ 11.1.4** With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

**§ 11.1.5** Each Application for Payment shall be based on the most recent Schedule of Values. The Schedule of Values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee, contingency, and allowances shall be shown as single separate line items (and, for the avoidance of doubt, all unused contingency and allowance amounts shall accrue to the benefit of the Owner). Each item shall show its total scheduled value, value of previous Applications, value of the Application, percentage completed, value completed and value remaining to be completed. Values for materials and equipment stored offsite shall be shown in a separate column.

**§ 11.1.5.1** The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner or the Architect may require. The Schedule of Values last approved by the Owner shall be used as a basis for reviewing the Construction Manager's Applications for Payment. If the Owner believes at any time the Schedule of Values is unbalanced, the Construction Manager will, after review and agreement with the Owner, adjust the Schedule of Values accordingly.

**§ 11.1.5.2** Intentionally deleted

**§ 11.1.5.3** The Construction Manager shall submit to the Owner requests, if any, for use of the contingency, specifying the amount of contingency the Construction Manager requests to use and the justification for such use and provide a monthly contingency log tracking contingency status. No sum exceeding Ten Thousand Dollars (\$10,000) for any one item, or for any series of related items in the aggregate, may be charged to the contingency except with prior written approval of the Owner, which such written approval shall not be unreasonably withheld. The Construction Manager shall reconcile the contingency in the schedule of values monthly.

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

**§ 11.1.7** In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

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

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the Schedule of Values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Owner determines, in the Owner's reasonable judgment, to be reasonably justified, as provided in Section 7.3.9 of A201–2017; and
- .4 The Construction Manager's Fee, computed upon the Cost of the Work described in the preceding Sections 11.1.7.1.1 and 11.1.7.1.2 at the rate stated in Section 6.1.2 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee

as the Cost of the Work included in Sections 11.1.7.1.1 and 11.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

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

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Construction Manager does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Construction Manager intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Owner may withhold payment, or the Architect may withhold or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of the A201–2017, and any other amounts properly withheld by the Owner;
- .5 The shortfall, if any, indicated by the Construction Manager in the documentation required by Sections 11.1.3.3 and 11.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner’s auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 11.1.8.

### **§ 11.1.8 Retainage**

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

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

«Ten percent (10%)»

**§ 11.1.8.1.1** The following items are not subject to retainage:

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

« The Construction Manager’s general conditions costs, insurance and bond costs and the cost of materials and equipment directly purchased by the Construction Manager. »

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

*(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)*

« Unless otherwise specified by Applicable Laws, once the entire Work is fifty percent (50%) complete, and provided that the Construction Manager is not in default, retainage withheld on Applications for Payment submitted thereafter may be reduced from ten percent (10%) to five percent (5%) with the Owner’s prior written consent. »

**§ 11.1.8.3** Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage, such as upon completion of the Owner’s audit and reconciliation, upon Substantial Completion.)*

**§ 11.1.9** «The Owner may continue withholding as retainage, through Final Completion of the entire work, (a) an amount equal to one hundred fifty percent (150%) of the cost to correct and complete the Work, including items on the Punch List per Section 9.8.4 of the A201–2017, as determined by the Owner, and (b) other amounts the Owner is entitled to withhold.»

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

**§ 11.1.11** The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors. The percentage of retainage held on subcontracts shall be ten percent (10%), unless otherwise agreed to by the Owner and the Construction Manager in writing. The Construction

Manager shall execute subcontracts in accordance with the foregoing. Upon mutual written agreement between the Owner and Construction Manager and before Substantial Completion of the entire Work, reduction of retainage or payment in full, including release of applicable retainage, may be made to the Construction Manager for a particular Subcontractor's Work that is fully and satisfactorily completed, provided that the Construction Manager and Subcontractor provide a satisfactory complete final waiver and release of all claims for such Work and provided that both have complied with all requirements for final payment thereof in accordance with the Contract Documents, provided that, in no event, shall retainage withheld by the Owner from the Construction Manager be reduced below the levels specified in Section 11.1.8. Any reduction or release of retainage, or portion thereof, however, shall not be a waiver of (i) any of the Owner's rights to retainage in connection with other payments to the Construction Manager or (ii) any other right or remedy the Owner has under the Contract Documents, at law or in equity.

**§ 11.1.12** In taking action on the Construction Manager's Applications for Payment the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Owner or the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Owner or the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

## **§ 11.2 Final Payment**

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

- .1 the Construction Manager has fully performed the Contract, including all punch list items, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of the A201-2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment and the Owner's auditors report has been completed and delivered in accordance with Section 11.2.2.1 below;
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.
- .4 the Construction Manager has delivered to the Owner final, fully consolidated, accurate and legible Record Drawings and Record Documents in format acceptable to the Owner;
- .5 the Construction Manager has delivered to the Owner a complete list of Subcontractors and principal suppliers on the Project, including addresses and telephone numbers;
- .6 a permanent Certificate of Occupancy has been issued for the Project by the applicable building authority and the Construction Manager has delivered to the Owner evidence reasonably acceptable to the Owner that the Work has passed all requisite governmental inspections;
- .7 the Construction Manager has delivered to the Owner, organized and indexed, three hard (3) copies and readable and searchable electronic copies, in format acceptable to the Owner, of all operation and maintenance manuals, permits, inspection reports, and temporary and final certificates of completion or occupancy, as applicable, material data sheets and third-party warranty documents applicable to the Work;
- .8 the Construction Manager has delivered to the Owner a properly completed and duly executed and notarized Final Payment Affidavit in statutory form;
- .9 the Construction Manager has delivered to the Owner duly executed and notarized final waivers and releases of lien and bond claims in statutory form from the Construction Manager and all Subcontractors and suppliers, as well as a duly-executed and notarized General Release in favor of the Owner, in form and substance required by the Owner;
- .10 the Construction Manager has completed its final site cleanup and restoration, including removal of all excess materials, rock, sand, paving and miscellaneous debris, supplies, equipment and trailers;
- .11 all temporary utilities (if any) are disconnected;
- .12 the Construction Manager has delivered to the Owner evidence that all training, testing balancing and HVAC commissioning (if applicable) has been completed in accordance with the Contract Documents;
- .13 the Construction Manager has delivered to the Owner any and all other items required by the Contract Documents, including those items specified in Section 9.10.2 of A201-2017;
- .14 the Construction Manager has delivered to the Owner the consent to final payment from the surety issuing the Performance Bond and Labor and Material Payment Bond; and

- .15 the Construction Manager has delivered to the Owner such other information, documentation, and materials as the Owner, the Owner's lender, the Owner's title insurer, or the Architect may reasonably require.

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

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

**§ 11.2.2.2** Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of the A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of the A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

**§ 11.2.2.3** If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner, subject to the satisfaction of all other conditions precedent to payment, shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment up to the amount substantiated in the Owner's auditor's report as being due and unpaid.

**§ 11.2.3** The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment and the completion or satisfaction of all other conditions precedent to final payment specified in this Section 11.2.

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

### **§ 11.3 Intentionally deleted**

## **ARTICLE 12 DISPUTE RESOLUTION**

### **§ 12.1 Initial Decision Maker**

**§ 12.1.1** Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

**§ 12.1.2** The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

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

## § 12.2 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 Article 15 of AIA Document A201–2017

☒ Litigation in a court of competent jurisdiction. In that connection, each of the Parties hereto hereby: (a) irrevocably and unconditionally consents to submit itself to the sole and exclusive personal jurisdiction of the federal or state court located in the state and county where the Project is located (the "**Applicable Courts**"), (b) waives any objection to the laying of venue of any such litigation in any of the Applicable Courts, (c) agrees not to plead or claim in any such court that such litigation brought therein has been brought in an inconvenient forum and agrees not otherwise to attempt to deny or defeat such personal jurisdiction or venue by motion or other request for leave from any such court, and (d) agrees that such Party will not bring any action, suit, or proceeding in connection with any dispute, claim, or controversy arising out of or relating to this Agreement in any court or other tribunal other than any of the Applicable Courts. THE PARTIES EXPRESSLY AGREE THAT THE PROVISIONS OF CHAPTER 558, FLORIDA STATUTES, SHALL NOT APPLY TO THIS AGREEMENT, ANY CONTRACT OR ANY DISPUTE RELATING TO IT OR THE PROJECT.

☐ Other: (Specify)  
☐

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

## § 12.3 Jury Trial Waiver

To the extent allowed by Applicable Laws, the Owner and the Construction Manager expressly covenant and agree to waive the right to trial by jury in connection with any litigation or judicial proceeding arising from or related to, directly or indirectly, this Agreement, the Contract, or the conduct, omission, action, obligation, duty, right benefit, privilege or liability of a Party. This waiver of right to trial by jury is separately given and is knowingly, intentionally and voluntarily made by the parties, and both acknowledge that separate and good and valuable consideration has been provided by each for this waiver. The parties have had an opportunity to seek legal counsel concerning this waiver. This waiver is intended to and does encompass each instance and each issue as to which the right to a jury trial would otherwise accrue. The parties further certify and represent to each other that no employee, representative or agent of the Construction Manager or the Owner (including their respective counsel) has represented, expressly or otherwise, to the Construction Manager or the Owner or to any agent or representative of the Construction Manager or the Owner (including their respective counsel) that they will not seek to enforce this waiver of right to jury trial. This waiver shall apply to this Agreement and any future amendments, supplements or modifications hereto.

## § 12.4 Joinder

In the event the dispute resolution procedure applicable to another dispute between the Owner and another party regarding the Project is different from the procedure specified in this Agreement, then the Construction Manager hereby consents, if requested by the Owner, to its joinder in such dispute resolution proceeding, provided that the dispute resolution proceeding involves substantially common questions of law or fact. The Construction Manager shall include a substantially similar provision in its agreements with the Construction Manager's Subcontractors.

## § 12.5 Attorneys' Fees

In any suit, action, or other proceeding, including arbitration or bankruptcy, arising out of or in any manner relating to the Contract or the Project, including (a) the enforcement or interpretation of either Party's rights or obligations

under the Contract whether in contract, tort, or both, or (b) the declaration of any rights or obligations under the Contract, the prevailing Party, as determined by the court or arbitrator, shall be entitled to recover from the losing Party Attorneys' Fees. For purposes of this Section, "Attorneys' Fees" shall mean all reasonable fees and disbursements (including disbursements that would not otherwise be taxable as costs in the proceeding) which are incurred by a Party, including all legal assistants', paralegals', law clerks', and experts' fees and all fees incurred through all post award or judgment and appellate levels and in connection with arbitration, bankruptcy, and collection proceedings (post judgment and otherwise).

## **ARTICLE 13 TERMINATION OR SUSPENSION**

### **§ 13.1 Termination Prior to Execution of the GMP Amendment**

**§ 13.1.1** Intentionally deleted.

**§ 13.1.2** Intentionally deleted.

**§ 13.1.3** Prior to the execution of the GMP Amendment, the Owner may terminate this Agreement for the Owner's convenience and without cause as set forth in Article 14 of the A201-2017.

**§ 13.1.4** In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work (authorized by the Owner in writing) performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

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

- .1** Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2** Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3** Subtract the aggregate of previous payments made by the Owner for Construction Phase services and any other amounts properly withheld by the Owner.

**§ 13.1.6** The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above and in Section 5.4 of the A201-2017.

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

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

### **§ 13.2.1 Termination**

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

### **§ 13.2.2 Termination by the Owner for Cause**

**§ 13.2.2.1** If the Owner or the Construction Manager terminates the Contract after execution of the GMP Amendment, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1** Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2** Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3** Subtract the aggregate of previous payments made by the Owner; and
- .4** Subtract the costs and damages incurred, or to be incurred, for Construction Phase services and any other amounts properly withheld by the Owner.

**§ 13.2.2.2** The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above and in Section 5.4 of the A201–2017.

### **§ 13.2.3 Intentionally deleted**

### **§ 13.3 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of A201–2017. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of A201–2017.

## **ARTICLE 14 MISCELLANEOUS PROVISIONS**

**§ 14.1** Terms in this Agreement shall have the same meaning as those in A201–2017. 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.

### **§ 14.2 Successors and Assigns**

**§ 14.2.1** The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither the Owner nor the Construction Manager shall assign the Contract, in whole or in part, without the written consent of the other. If either Party attempts to make an assignment without such consent, such assignment shall be void and the Party attempting to assign the Contract, or portion thereof, shall nevertheless remain legally responsible for all obligations under the Contract. Further, the Construction Manager may not assign rights to recover payments without the Owner's prior written consent.

**§ 14.2.2** The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing financing for the Project, to an affiliate of the Owner, or to a transferee of all or substantially all of the Owner's interest in the Project, if the lender, affiliate or transferee, as the case may be, agrees to assume the Owner's rights and obligations thereunder and, as to an affiliate or transferee, provides reasonable evidence that it has made financial arrangements to fulfill the balance of the Owner's obligations under the Contract. After final payment, the Owner may assign the Contract and its rights under it to anyone, in whole or in part, without the Construction

Manager's consent or any other preconditions or limitations. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

## § 14.3 Insurance and Bonds

### § 14.3.1 Preconstruction Phase

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement.

§ 14.3.1.1 Commercial General Liability with policy limits of not less than «Two Million Dollars » (\$ «2,000,000 » ) for each occurrence and « Four Million Dollars » (\$ «4,000,000 » ) in the aggregate for bodily injury and property damage, and otherwise compliant with the requirements of **Exhibit B**, Schedule 1, Section A.1.

§ 14.3.1.2 Automobile Liability compliant with the requirements of **Exhibit B**, Schedule 1, Section A.2.

§ 14.3.1.3 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 14.3.1.4 Workers' Compensation at statutory limits and Employers Liability with policy limits not less than «One Million Dollars » (\$ «1,000,000 » ) each accident, «One Million Dollars » (\$ «1,000,000» ) each employee, and «One Million Dollars » (\$ «1,000,000» ) policy limit, and otherwise compliant with the requirements of **Exhibit B**, Schedule 1, Section A.3.

§ 14.3.1.5 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than «Five Million Dollars » (\$ « 5,000,000 » ) per claim, and otherwise compliant with the requirements of **Exhibit B**, Schedule 1, Section A.5, which Professional Liability insurance shall be retroactive to the date of that the Construction Manager first performed services for the Project and shall be maintained until the expiration of the applicable statute of repose period.

### § 14.3.1.6 Other Insurance

*(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)*

Coverage	Limits
See <b>Exhibit B</b>	

§ 14.3.1.7 **Additional Insured Obligations.** Each of the Additional Insureds (as defined in **Exhibit B**, Section B.3.1.3) shall be listed as an additional insured on the Construction Manager's liability policies as provided in **Exhibit B**, Schedule 1, Section E.

§ 14.3.1.8 The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1, and other evidence of insurance required by **Exhibit B**.

### § 14.3.2 Construction Phase

After execution of the GMP Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, **Exhibit B**, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 14.3.2.1 If required by the Owner, the Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 **Exhibit B**, and elsewhere in the Contract Documents, in which event the Construction Manager shall deliver the required bonds to the Owner before the commencement of any Work and shall be entitled to reimbursement of the premium amount paid to the surety issuing such bonds, without markup, which amount shall not exceed the amount agreed to in writing by the Owner, if any. Further, at the Construction Manager's request with the Owner's written approval, the Construction Manager shall require any or all of the Subcontractors to provide performance and payment bonds in forms acceptable to the Owner and naming the Owner as an additional

obligee or subcontractor default insurance from a third-party carrier such as Zurich Subguard, XL Caitlin's Subcontractor Surety, or other similar program with annual policy limits approved by the Owner in writing, protecting the Construction Manager and the Owner from default of performance of Subcontractors for the duration of their respective subcontracts and through five (5) years after Substantial Completion. If the Owner approves the use of subcontractor default insurance, the subcontractor default insurance policy must also include an indirect cost sublimit in a minimum amount of Five Million Dollars (\$5,000,000) to offset other contractually agreed upon indirect impacts, such as liquidated damages, extended Project general conditions costs, extended overhead, acceleration of subcontracted work and other Project impacts, including additional costs and expenses, suffered and/or incurred as a result of any Subcontractor default. The form and substance of the subcontractor default insurance provided hereunder shall be subject to the Owner's prior written approval. Once approved by the Owner, the Construction Manager shall not make or permit to be made any material changes to such approved policy without the Owner's prior written approval. The Construction Manager shall deliver to the Owner unpriced copies of the required subcontractor default insurance policies. For any subcontractor default insurance, the Owner shall be named in a "Financial Interest Endorsement" that allows the coverage to be assigned in the event of default for insolvency, bankruptcy or other related financial defaults of the Construction Manager. The Construction Manager shall be responsible for any retentions and co-pays that may exist between the Construction Manager and the subcontractor default insurance provider. If the Owner pays any retention or co-pay under the Construction Manager's subcontractor default insurance policy (e.g. following an event of default by the Construction Manager), then such amounts shall be payable by the Construction Manager to the Owner upon the Owner's demand therefor.

**§ 14.3.2.2** The Construction Manager shall cause each Subcontractor to procure insurance in accordance with **Schedule 2 to Exhibit B**, attached hereto, unless otherwise agreed by the Owner in writing. The Construction Manager shall be responsible for managing Subcontractors' compliance with the insurance requirements of the Contract and maintain evidence of such compliance.

#### **§ 14.3.3 General Insurance Provisions**

In the event of any inconsistency in the insurance requirements of the Construction Manager under the Contract Documents, the requirements that provide the greatest quantity and/or quality of coverage and provide for the delivery of the most comprehensive evidence of insurance shall control. Insurance records are subject to verification and inspection by the Owner at any time upon request.

**§ 14.4** Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

«Notice may be given as provided in Section 1.6 of the A201-2017. »

#### **§ 14.5 Other provisions:**

**«§ 14.5.1 Other Representations and Warranties.** The Construction Manager represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents) as an inducement to the Owner to execute this Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, the termination of this Agreement or the Contract, and Final Completion of the Work: (a) that it is authorized to do business in the State in which the Project is located and it is, and to the best of its knowledge after reasonable inquiry, its Subcontractors are, properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over it and over the Work and the Project; (b) that its execution of this Agreement and its performance hereof is within its duly-authorized power; that it is, and throughout the performance of the Work shall remain, financially solvent, able to pay all debts as they mature and possessed of sufficient working capital to complete the Work and perform all obligations hereunder; (d) that it is able to furnish the tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so; (e) that it possesses a high level of experience and expertise in the business administration, construction and superintendence of projects of the size, complexity and nature of the Work and will perform the Work with care, skill and diligence of such a construction manager; (f) that prior to the delivery of the Guaranteed Maximum Price proposal, it shall have carefully studied the geotechnical report provided by the Owner for the Project site and all other reports of explorations and tests of

subsurface conditions at the Project site and drawings of physical conditions in or relating to existing surface and subsurface structures which are at or contiguous to the Project site made available to it by the Owner (collectively, the "**Geotechnical Report**"); (g) that prior to the delivery of the Guaranteed Maximum Price proposal, it shall have reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities (as defined in Section 3.2.2.1 of the A201-2017) at or contiguous to the Project site; and (h) that prior to the delivery of the Guaranteed Maximum Price proposal its duly authorized representative shall have visited the site of the Project, shall have become familiar with the local and special conditions under which the Work is to be performed shall have correlated the results of all such observations, examinations, investigations, explorations, tests, reports and studies with the terms and conditions of the Contract Documents.

**§ 14.5.2 Interpretation.** The partial or complete 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. The failure of a Party to insist, in any one or more instances, upon the performance of any of the terms, covenants or conditions of Contract, or to exercise any right therein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance. In the Contract, unless otherwise expressly provided, the singular shall include the plural, the plural the singular, and the use of any gender shall include all genders. Unless expressly provided otherwise, in the Contract Documents, the term "including" is not limiting, and the terms "hereof," "herein," "hereunder" and similar terms in the Contract Documents refer to the Contract Documents as a whole and not to any particular provision of the Contract Documents. Each Party, together with their respective legal counsel, has contributed substantially to the preparation of the Contract, and, as such, the Contract shall not be interpreted more favorably against one Party than the other solely upon the basis of which Party actually drafted the Contract. Headings are for convenience only and shall not be used for interpretation of the language in the Contract.

**§ 14.5.3 Additional Site Rules.** Smoking is prohibited on the Project site, and prohibited anywhere on the Owner's property. Neither the Construction Manager, nor any of its personnel or consultants shall ever shut off any utilities, including power, medical gas and water systems at any time for any reason. Medical gas systems shall only be shut off by Owner-authorized engineering personnel according to the Owner's policy. For all other utilities, the Construction Manager, its personnel, and consultants shall follow the Owner's written procedures for shutting off, adjusting, switching, or modifying any utility service.

**§ 14.5.4 Lender Requirements.** The Owner may finance the Project with a loan from one or more lenders. The Construction Manager agrees to execute and deliver to the Owner documents as may be reasonably required by such lenders or their agents provided such documents do not materially alter Construction Manager's rights and obligations under the Contract for Construction. The Construction Manager shall also:

.1 Make the site of the Work available at reasonable times for inspection by the Owner's lenders and their representatives upon reasonable prior notice;

.2 Consent to and execute all documents reasonably requested by the Owner in connection with the assignment of this Agreement to its lenders for collateral purposes. Such assignment shall provide that the Construction Manager agrees that notwithstanding a default by the Owner under the provisions of this Agreement that would give the Construction Manager the right to terminate this Agreement, the Construction Manager will continue to perform its obligations hereunder (on the same terms and conditions as are set forth herein) for and on account of such lenders, provided that the lenders shall agree to pay the Construction Manager all amounts due and owing the Construction Manager under the Agreement.

.3 Promptly furnish the Owner with information, documents, and materials that the Owner may reasonably request from time to time in order to comply with the requirements of its lenders. »

## **ARTICLE 15 SCOPE OF THE AGREEMENT**

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

**§ 15.2** The following documents comprise the Agreement:

- .1 This modified AIA Document A133™-2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

- .2 AIA Document A133™-2019, **Exhibit A**, Guaranteed Maximum Price Amendment, if executed
- .3 AIA Document A133™-2019, **Exhibit B**, Insurance and Bonds
- .4 The modified AIA Document A201™-2017, General Conditions of the Contract for Construction attached hereto as **Exhibit C**
- .5 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
(Insert the date of the E203-2013 incorporated into this Agreement.)

«not used»

- .6 Other Exhibits:  
(Check all boxes that apply.)

[ ☐ ] AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, dated as indicated below:  
(Insert the date of the E234-2019 incorporated into this Agreement.)

«not used»

[ ☐ ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages

- .7 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 Construction Manager’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.)

«**Exhibit D** – Form of Construction Manager’s Sworn Statement

**Exhibit E** – Construction Manager’s Hourly Rates

In the event of conflicts or discrepancies among the Contract Documents, the Construction Manager shall proceed with the Work that is unaffected by the conflict or discrepancy and interpretations of the conflict will be based upon the following Contract Documents, which are set forth and ranked in order of precedence:

(a) Duly executed Modifications, including the GMP Amendment, if agreed to and executed by the Owner and the Construction Manager, and Change Orders and Construction Change Directives, with those of a later date having precedence over those of an earlier date; provided, however, in the event of a conflict between the GMP Amendment and this Agreement (including all Exhibits attached hereto, except for Exhibit A), the terms of this Agreement (including all Exhibits attached hereto, except Exhibit A) shall prevail, unless the Owner has separately and explicitly agreed otherwise in the GMP Amendment and that separate agreement has been initialed by an authorized representative of the Owner;

(b) The Agreement, not including the Exhibits, which are addressed below;

(c) The A201-2017, attached hereto as **Exhibit C**;

(d) The other Exhibits to the Agreement, with more stringent requirements thereof taking precedence over any less stringent requirements, such that in the event of conflicts the Construction Manager shall provide the higher level of service or quality of materials that has been specified; and

(e) All other Contract Documents, if any. »

**§ 15.3** Each of the individuals executing this Agreement represent and warrant that he or she has been duly authorized by the respective Party on whose behalf he or she is executing this Agreement to execute this Agreement on such Party's behalf and that once executed by him or her, this Agreement shall be valid and binding upon such Party.

**§ 15.4** This Agreement may be signed in counterparts, each of which when executed and delivered shall be deemed to be an original and all of which, taken together, shall be deemed to be one and the same instrument. For purposes of execution and delivery of this Agreement, a document signed and transmitted by: (i) emailed PDF scan, or (ii) by electronic signature using DocuSign or other similar technology, shall be treated as an original document. The signature of either Party on an emailed PDF scanned version of this Agreement or a copy of this Agreement signed by electronic signature using DocuSign or other similar technology shall be considered as an original signature and the document transmitted shall be considered to have the same binding legal effect as if it were originally signed. At the request of either Party, any PDF scanned document or document signed using DocuSign or other similar technology shall be re-executed by both Parties in original form. Neither Party may raise the use of emailed PDF scan or DocuSign or other similar technology or the fact that any signature was transmitted by email as a defense to the enforcement of this Agreement or any amendment executed in compliance with this Section.

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

« Adventist Health System/Sunbelt, Inc. d/b/a  
AdventHealth, a Florida not for profit corporation »

**By:**

*(Signature)*

« , » « »

*(Printed name and title)*

« »

**By:**

*(Signature)*

« » « »

*(Printed name and title)*

## Exhibit A

### GMP Amendment, if executed



**Exhibit B**  
**Insurance and Bonds**



**Exhibit C**

**A201–2017**



Exhibit D

Construction Manager's Sworn Statement

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

Before me, the undersigned authority, personally appeared \_\_\_\_\_, who first being duly sworn on oath, deposes and says of his personal knowledge that:

He is the duly authorized representative of \_\_\_\_\_, a \_\_\_\_\_ (the "Construction Manager") and is furnishing the following information in compliance with the Construction Manager's contract (the "Contract") with \_\_\_\_\_, a \_\_\_\_\_ (the "Owner") dated as of \_\_\_\_\_. All capitalized terms utilized but not defined herein shall have the meaning ascribed to them in the Contract.

1. The following are all of the Subcontractors with whom the Construction Manager has entered into subcontracts and the amount of each such subcontract:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. The following are the amounts requested for any Subcontractor covered by the Construction Manager's current Application for Payment dated \_\_\_\_\_, \_\_\_\_\_ and the amount to be paid to such Subcontractor, if different:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. The Construction Manager hereby certifies that all amounts previously paid by the Owner to the Construction Manager have been used to pay the amounts owed by the Construction Manager to Subcontractors and suppliers for labor, services and materials provided for the Work through the date which the Construction Manager has been paid by the Owner.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_.

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

Sworn to (or affirmed) and subscribed by me by means of ☐ physical presence or ☐ online notarization this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_, as the duly authorized representative of \_\_\_\_\_, a \_\_\_\_\_, on behalf of the company, who is personally known to me or produced \_\_\_\_\_ as identification, and did/did not take an oath.

NOTARY PUBLIC

X \_\_\_\_\_

[NOTARY SEAL]

**Exhibit E**  
**Construction Manager's Hourly Rates**



# DRAFT AIA® Document A133™ – 2019

## Exhibit A

### Guaranteed Maximum Price Amendment

This Amendment dated the « » day of « » in the year « », is incorporated into the accompanying AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the « » day of « » in the year « » (the "Agreement")  
(In words, indicate day, month, and year.)

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

« »

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

« [Adventist Health System/Sunbelt, Inc. d/b/a AdventHealth, a Florida not for profit corporation](#)  
[601 East Rollins Street](#)  
[Orlando, FL 32803](#)  
[Attention: Bryan Emde](#)  
[Email: \[Bryan.Emde@AdventHealth.com\]\(mailto:Bryan.Emde@AdventHealth.com\)](#) »

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

« »

#### TABLE OF ARTICLES

- A.1 GUARANTEED MAXIMUM PRICE
- A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

#### ARTICLE A.1 GUARANTEED MAXIMUM PRICE

##### § A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed, as specified below in Section A.1.1.1. The Contract Sum consists of the Cost of the Work (as that term is defined in Article 7 of the Agreement) plus the Construction Manager's Fee thereon at the rate specified in Section 6.1.2 of the Agreement. By executing this Amendment and furnishing the Owner with a Guaranteed Maximum Price based on a detailed schedule of values and a construction schedule, the Construction Manager represents and warrants that the Contract Documents, including

#### ADDITIONS AND DELETIONS:

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

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

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

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the Drawings and Specifications, as well as other materials, and information furnished the Construction Manager as of the date of this Amendment have described the scope, construction requirements, and design intent of the Work in detail sufficient to enable the Construction Manager to establish firmly the Guaranteed Maximum Price, Contract Time and the construction schedule. To the extent that the Drawings and Specifications are anticipated to require further development, the Construction Manager has provided in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Capitalized terms used but not defined herein shall have the meaning given to them in the Agreement or other Contract Documents referenced therein.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed « » Dollars (\$ « » ), subject to additions and deductions by Change Order or Construction Change Directive as provided in the Contract Documents.

§ A.1.1.2 **Itemized Statement of the Guaranteed Maximum Price.** Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, including allowances; the Construction Manager's contingency; alternates; the Construction Manager's Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.  
(Provide itemized statement below or reference an attachment.)

«See Construction Manager's GMP Proposal, attached hereto as **Exhibit 1** and incorporated herein by reference.»

§ A.1.1.3 The Construction Manager's Fee is set forth in Section 6.1.2 of the Agreement.

§ A.1.1.4 The method of adjustment of the Construction Manager's Fee for changes in the Work is set forth in Section 6.1.3 of the Agreement.

#### § A.1.1.5 Alternates

§ A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price
see <b>Exhibit 1</b>	

§ A.1.1.5.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this **Exhibit A**. Upon acceptance, the Owner shall issue a Modification to the Agreement.  
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance

§ A.1.1.6 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)

Such unit prices shall be considered complete and include all materials, equipment, labor, delivery, installation, overhead and profit.

§ A.1.1.7 The Guaranteed Maximum Price includes the Construction Manager's contingency (as described in Section 3.2.4 of the Agreement) in the amount of:

« » Dollars (\$ « » )

## ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ A.2.1 The date of commencement of the Work shall be the date established in accordance with Section 3.3.1 of the Agreement unless otherwise specified below:  
(Check one of the following boxes.)

[ « X » ] The date of execution of this Amendment.

[ « » ] 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 execution of this Amendment.

**§ A.2.2** Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Work.

**§ A.2.3 Substantial Completion**

**§ A.2.3.1** Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work:  
(Check one of the following boxes and complete the necessary information.)

[ « X » ] Not later than « » ( « » ) calendar days from the date of commencement of the Work.

[ « » ] By the following date: « »

**§ A.2.3.2** 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 Construction Manager shall achieve Substantial Completion of such portions by the following dates:

**Portion of Work**

**Substantial Completion Date**

**§ A.2.3.3** If the Construction Manager fails to achieve Substantial Completion as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.6 of the Agreement. The daily amount of liquidated damages for each day of delay in achieving Substantial Completion of the entire Work shall be an amount computed based on the formula specified in Section 6.1.6 of the Agreement, subject to the cap and grace period specified in Section 6.1.6 of the Agreement.

**ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED**

**§ A.3.1** The Guaranteed Maximum Price and Contract Time set forth in this Amendment are based on the Contract Documents and the following:

**§ A.3.1.1** The following Supplementary and other Conditions of the Contract:

**Document**

**Title**

**Date**

**Pages**

**§ A.3.1.2** The following Drawings and Specifications: See the Index of Drawings and Specifications attached hereto as part of **Exhibit 1**. The drawings and specifications themselves that are listed in the index are the "Drawings" and "Specifications" and are incorporated into this amendment by reference.

**§ A.3.1.3** Intentionally deleted.

**§ A.3.1.4** Intentionally deleted.

Other identifying information:

**§ A.3.1.5** Allowances, if any, included in the Guaranteed Maximum Price:  
(Identify each allowance.)

**Item****Price**See **Exhibit 1**

**§ A.3.1.6** Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based:  
(Identify each assumption and clarification.)

« See **Exhibit 1** »

**§ A.3.1.7** The Guaranteed Maximum Price is based upon the following other documents and information:  
(List any other documents or information here, or refer to an exhibit attached to this Amendment.)

« The initial construction schedule required by Section 3.3.2.2 of the Agreement is attached hereto as part of **Exhibit 1**.

The updated list of Key Personnel attached hereto as part of **Exhibit 1** and incorporated herein by reference, as required by Section 3.2.3.12 of the Agreement.

Additionally, the Construction Manager acknowledges having received and reviewed the following reports, which collectively shall be deemed the "Geotechnical Report" referenced in the Agreement and in the A201-2017, and shall be deemed part of the Contract Documents:

For the avoidance of doubt, it is the Parties' intention that this **Exhibit A**, once executed, add to and supplement the terms of the Agreement and not contradict them. In the event of a conflict between this **Exhibit A** and the Agreement (including all Exhibits attached thereto, except for this Exhibit A), the terms of the Agreement (including all Exhibits attached thereto, except for this **Exhibit A**) shall prevail, unless the Owner has separately and explicitly agreed otherwise and such explicit agreement is initialed by an authorized representative of the Owner.»

#### **ARTICLE A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS**

**§ A.4.1** The Construction Manager shall retain the consultants, contractors, design professionals, and suppliers, identified below:

(List name, discipline, address, and other information.)

« »

#### **ARTICLE A.5 MISCELLANEOUS PROVISIONS**

**§ A.5.1** Each of the individuals executing this Amendment represent and warrant that he or she has been duly authorized by the respective Party on whose behalf he or she is executing this Amendment to execute this Amendment on such Party's behalf and that once executed by him or her, this Amendment shall be valid and binding upon such Party.

**§ A.5.2** This Amendment may be signed in counterparts, each of which when executed and delivered shall be deemed to be an original and all of which, taken together, shall be deemed to be one and the same instrument. For purposes of execution and delivery of this Amendment, a document signed and transmitted by: (i) emailed PDF scan, or (ii) by electronic signature using DocuSign or other similar technology, shall be treated as an original document. The signature of either Party on an emailed PDF scanned version of this Amendment or a copy of this Amendment signed by electronic signature using DocuSign or other similar technology shall be considered as an original signature and the document transmitted shall be considered to have the same binding legal effect as if it were originally signed. At the request of either Party, any PDF scanned document or document signed using DocuSign or other similar technology shall be re-executed by both Parties in original form. Neither Party may raise the use of emailed PDF scan or DocuSign or other similar technology or the fact that any signature was transmitted by email as a defense to the enforcement of this Amendment.

**§ A.5.3** This Amendment, once duly executed by the Owner, shall constitute the Owner's written Notice to Proceed with the Construction Phase of the Work.

**§ A.5.4** To the extent the Construction Manager has performed Work within the scope of this Contract before execution of this GMP Amendment all rights and liabilities of the Parties for performance of the prior Work are

merged and included within and shall be governed by the terms and conditions of this GMP Amendment. All compensation paid for prior Work performed by or on behalf of the Construction Manager related to the Project is included in the Contract Sum.

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

« Adventist Health Systems/Sunbelt, Inc., d/b/a  
AdventHealth, a Florida not for profit corporation »

**OWNER** *(Signature)*

«,,»« »

*(Printed name and title)*

« »

**CONSTRUCTION MANAGER** *(Signature)*

«,, »« »

*(Printed name and title)*

## Exhibit 1 to GMP Amendment

### GMP Proposal

(inclusive of Index of Drawings and Specifications, Schedule of Values, Alternates, Allowances, Assumptions and Clarifications, Construction Schedule, and Schedule of Key Personnel)



# DRAFT AIA® Document A133™ – 2019

## Exhibit B

### Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the « » day of « » in the year « »  
(In words, indicate day, month and year.)

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

« »

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

« Adventist Health System/Sunbelt, Inc. d/b/a AdventHealth, a Florida not for profit corporation  
601 East Rollins Street  
Orlando, FL 32803  
Attention: Bryan Emde  
Email: Bryan.Emde@AdventHealth.com »

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

« »

#### TABLE OF ARTICLES

- B.1 GENERAL
- B.2 OWNER'S INSURANCE
- B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS
- B.4 SPECIAL TERMS AND CONDITIONS

#### ARTICLE B.1 GENERAL

The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

#### ARTICLE B.2 OWNER'S INSURANCE

##### § B.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article B.2 and, upon the Construction Manager's request, provide a copy of the property insurance policy or policies required by Section B.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

##### § B.2.2 Liability Insurance

#### 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.

This document is intended to be used in conjunction with AIA Document A201™–2017, General Conditions of the Contract for Construction. Article 11 of A201™–2017 contains additional insurance provisions.

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

### **§ B.2.3 Required Property Insurance**

**§ B.2.3.1** Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, at or prior to the commencement of the construction phase of the Work, the Owner shall purchase and maintain insurance "Builder's Risk" insurance (or equivalent property insurance) that provides coverage on a replacement cost basis in the amount of the Contract Sum, as the Contract Sum may be adjusted in accordance with the Contract Documents, which insurance shall include insurance against direct physical loss or damage to the Project. Should the Owner elect to purchase Builder's Risk insurance without terrorism coverage, the Owner accepts the risk of loss due to terrorist related events and waives any rights as against the Construction Manager and other additional insureds under the Owner's Builder's Risk insurance policy for losses that otherwise would have been covered had the Owner's Builder's Risk insurance policy included terrorism coverage. The Owner's Builder's Risk insurance described herein shall include the Construction Manager and all Subcontractors of any tier as additional insureds. The Owner's Builder's risk insurance shall be maintained unless otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until the later of final payment has been made under the Agreement or until no person or entity other than the Owner has an insurable interest in the property required to be covered by the Owner's Builder's Risk insurance, whichever is later. Materials, supplies and equipment destined to become a permanent part of the completed Project while on or about the Project site or at other locations approved by the Owner in writing or in transit shall be covered. The Construction Manager's, Subcontractors' and Sub-subcontractors of all tiers' temporary structures, tools, equipment, or other materials not to become a permanent part of the completed Project are excluded from the Owner's property insurance required by this Section B.2.3.1. The Owner shall not be responsible for loss, theft, or disappearance of such temporary structures, tools, equipment, or other materials not to become a permanent part of the completed Project. The Construction Manager shall make its own arrangements for any insurance it may require on such items specified in the preceding sentence. The Owner shall purchase and maintain the required property insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. Any such policy obtained by the Construction Manager under this Section B.2.3.1 shall include a waiver of subrogation in favor of the Indemnitees in accordance with the requirements of Section 11.3 of the A201 - 2017. The Owner, in electing to purchase the Builder's Risk insurance for the Project, accepts all financial responsibility for direct, physical damage or loss to the Work and all materials and equipment used to construct the Project, including all resulting consequential loss, whether such materials and equipment have become a permanent part of the Project or not, wherever such materials and equipment are located, including while in transit and while being loaded and unloaded.

**§ B.2.3.1.1 Causes of Loss.** The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude risks otherwise insured by ISO Special Cause of Loss form or equivalent thereof, including earth movement, flood and windstorm subject to availability of coverage from insurers meeting minimum financial requirements outlined within this Agreement and at a coverage level no greater than LEG 2/96 or equivalent insurer wording. The insurance may provide, at the Owner's election in its sole discretion, coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials.

**§ B.2.3.1.2 Specific Required Coverages.** The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Construction Manager's services and expenses required as a result of such insured loss, including claim preparation expenses.

**§ B.2.3.1.3** Intentionally deleted

**§ B.2.3.1.4 Deductibles and Self-Insured Retentions.** If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the Owner shall pay costs not covered because of such deductibles or self-insured retention, unless the loss is caused by the negligent, reckless or intentionally wrongful acts or omissions of the Construction Manager, or any of the Construction Manager's Subcontractors, suppliers, or agents of any tier or their respective employees, in which event the Construction Manager shall be responsible for the payment of such deductibles or self-insured retentions up to the amount of Fifty Thousand Dollars (\$50,000.00) per occurrence.

**§ B.2.3.2 Occupancy or Use Prior to Substantial Completion.** If required by the insurance company, the Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

**§ B.2.3.3 Insurance for Existing Structures**

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

**§ B.2.4 Optional Extended Property Insurance.**

The Owner shall purchase and maintain the insurance selected and described below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

- [ ☐ ] **§ B.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.

☐ ☐

- [ ☒ ] **§ B.2.4.2 Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.

☐ ☐

- [ ☒ ] **§ B.2.4.3 Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.

☐ ☐

- [ ☒ ] **§ B.2.4.4 Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.

☐ ☐

- [ ☒ ] **§ B.2.4.5 Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.

☐ ☐

- [ ☒ ] **§ B.2.4.6 Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.

<< >>

- [ ☐ ] **§ B.2.4.7 Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

<< >>

### § B.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)*

- [ ☐ ] **§ B.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information.  
*(Indicate applicable limits of coverage or other conditions in the fill point below.)*

<< >>

- [ ☐ ] **§ B.2.5.2 Other Insurance**  
*(List below any other insurance coverage to be provided by the Owner and any applicable limits.)*

Coverage

Limits

## ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

### § B.3.1 General

**§ B.3.1.1 Certificates of Insurance.** The Construction Manager shall provide certificates of insurance and additional insured endorsements acceptable to the Owner (and, at the Owner's request, complete copies of all required policies) evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Indemnitees as an additional insured on the Construction Manager's Commercial General Liability and excess or umbrella liability policy or policies.

**§ B.3.1.2 Deductibles and Self-Insured Retentions.** Upon request, the Construction Manager shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Construction Manager. Any deductibles or self-insured retentions shall be subject to the Owner's approval, and the Construction Manager shall be solely responsible for the payment of all deductibles and self-insured retentions. The coverage afforded to the Additional Insureds under the policies required of the Construction Manager shall not be conditioned on the payment of any deductible or self-insured retention.

**§ B.3.1.3 Additional Insured Obligations.** The Indemnitees, as defined in the A201-2017 (i.e. the Owner, the Architect, and their related and affiliated companies, and the respective officers, directors, agents, employees, successors and assigns of any of them), and such other parties as the Owner may designate in writing (collectively, the "Additional Insureds") shall be named as additional insureds under the Construction Manager's liability policies, as further specified in Section E of **Schedule 1** hereto.

**§ B.3.1.4** The Owner's failure to demand or inspect a policy or other evidence of insurance, and/or the Owner's failure to identify or object to any discrepancy therein, is not a waiver of any requirement contained in the Contract. The obligation to procure and maintain required insurance is a separate responsibility of the Construction Manager

an independent of its duty to furnish a certified copy or certificate of such insurance policies. If the Construction Manager fails to purchase and maintain any insurance required by the Contract Documents, the Owner may but shall not be obligated to, upon three (3) days prior written notice to the Construction Manager, purchase such insurance on behalf of the Construction Manager and shall be entitled to be reimbursed by the Construction Manager upon demand.

**§ A.3.1.5** The Construction Manager and its insurance carriers waive, release, and shall not exercise any right of recovery or subrogation for any claim, damage, or loss covered or insured by any insurance policy required under the Contract Documents, that the Construction Manager or its insurers may have at any time against the Indemnitees.

**§ A.3.1.6** Insurance coverage required in this Contract shall be additional security for the obligations assumed by the Construction Manager and in no event shall the types or limits of coverage required be deemed to limit any obligations or liabilities assumed under this Contract. The carrying of insurance shall not be deemed to release the Construction Manager or in any way diminish its liability or obligations, by way of indemnity or otherwise, under the Contract Documents.

### **§ B.3.2 Construction Manager's Required Insurance Coverage**

**§ B.3.2.1** The Construction Manager shall purchase and maintain the types and limits of insurance specified in **Schedule 1** and elsewhere in the Contract Documents, and shall cause its Subcontractors to purchase and maintain the types and limits of insurance specified in **Schedule 2** and elsewhere in the Contract Documents from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager and its Subcontractors shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Construction Manager is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

«for such longer periods as may be specified in **Schedule 1** or **Schedule 2** attached hereto with respect to particular coverages »

### **§ B.3.2.2 Intentionally deleted**

### **§ B.3.3 Intentionally deleted**

#### **§ B.3.3.1 Intentionally**

#### **§ B.3.3.2 Intentionally deleted.**

### **§ B.3.4 Performance Bond and Payment Bond**

The Construction Manager (**check one**) ☒ is not required to provide / ☐ shall provide a Performance Bond and Payment Bond in form and substance acceptable to the Owner and meeting all statutory requirements of the State in which the Project is located and, without limitation, complying with the following specific requirements.

- .1 Bonds shall name the Owner and the Owner's lender as obligees;
- .2 Bonds shall be executed by a responsible surety licensed in the State in which the Project is located, with a Best's rating of no less than A/X, and shall remain in effect for a period of not less than two (2) years following the date of Substantial Completion or the time required to resolve any items of incomplete Work and the payment of any disputed amounts, whichever is longer;
- .3 The penal sum of the Performance Bond and Payment Bond shall equal the Guaranteed Maximum Price specified in the GMP Amendment and adjust automatically commensurate with subsequent adjustments in the Guaranteed Maximum Price via Modification;
- .4 The attorney-in-fact who executes the bonds on behalf of the surety shall affix thereto a certified and current copy of the power of attorney;
- .5 Every bond under this Subsection must display the Surety Bond Number;
- .6 The bonds must provide that the surety is obligated to the obligees for the payment of liquidated damages to the same extent that the Construction Manager is obligated under the Contract; and

.7 A rider including the following provisions shall be attached to each bond (or, alternatively, each bond shall include the following language or substantially similar language acceptable to the Owner): (a) the surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents; (b) the surety agrees that modifications and changes to the terms and conditions of the Contract that increase the total amount to be paid the Construction Manager shall automatically increase the obligation of the surety on the bond and notice to the surety is not required for such increased obligation; (c) any addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forbearance on the part of the Owner or of the Construction Manager to the other, shall not release the surety of its obligations hereunder, and notice to the surety of such matters is hereby waived; and (d) the surety agrees that it is obligated under the bonds to any successor, grantee, or assignee of the obligees.

The bonds shall comply with the requirements of Section 713.23, Florida Statutes. "Conditional" Payment Bonds under Florida Statutes, Section 713.245 shall not be acceptable. If a Payment Bond is required by the Owner, no Work shall commence on the Project until the Notice of Commencement and a copy of the Payment Bond is recorded and certified copies thereof are posted at the Project site.

#### **ARTICLE B.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

«See **Schedule 1** and **Schedule 2**, attached hereto and incorporated herein by reference. »

## SCHEDULE 1

### SCHEDULE OF INSURANCE REQUIREMENTS (CONSTRUCTION MANAGER)

- A. Construction Manager's Insurance. The Construction Manager shall purchase and maintain, the following insurance without interruption from the date of commencement of the Work until the date of Final Completion and for the additional periods specified herein:
1. **Commercial General Liability** insurance on an "occurrence" basis for bodily injury and property damage that may arise out of or result from the Construction Manager's operations and completed operations under the Agreement, whether such operations be by the Construction Manager or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Claims Made Commercial General Liability policies will not be accepted. Such insurance shall include each of the following:
    - (a) At a minimum, the following limits and coverages:
      - (i) not less than \$2,000,000 each occurrence
      - (ii) not less than \$2,000,000 personal and advertising injury
      - (iii) not less than \$4,000,000 general aggregate (reinstated annually)
      - (iv) not less than \$4,000,000 products-completed operations aggregate
      - (v) not less than \$300,000 Damage to Rented Premises
      - (vi) not less than \$5,000 Medical Expense (any one person)
    - (b) Coverage for ongoing operations, premises/operations, independent contractors, underground, explosion and collapse (XCU) (for trades with trenching or excavation activities within their scope of work), and any persons or entities performing work on behalf of the Construction Manager.
    - (c) Products and completed operations coverage, which coverage shall be maintained in effect for 10 years from final completion of the Project or for a period equivalent to the statute of repose for the state in which the Project is located, whichever is shorter. Provisions excluding products and completed operations, or those that limit completed operations coverage to ongoing operations only, will be unacceptable.
    - (d) The Commercial General Liability insurance policy must be endorsed to state that general aggregate limits apply per project.
    - (e) Contractual liability coverage to the same or greater extent as covered under ISO commercial general liability coverage form CG 00 01 10 01.
    - (f) Contain a severability or separation of insureds clause.
    - (g) Include CGL policy Additional Insured Endorsement that includes Ongoing and Completed Operations on Form CG 2010 07 04 and CG 2037 07 04 edition, or an equivalent endorsement acceptable to the Owner, naming the Indemnitees as additional insureds.
    - (h) Provide that such insurance is primary and non-contributing to any insurance maintained by the additional insureds.
    - (i) NO limiting modifications of the ISO standard "insured contract" exception to the contractual liability exclusion.
    - (j) NO exclusion or limitation of coverage for injury to employees or independent contractors other than that contained in the standard coverage ISO form. Include insured contract coverage, including indemnity for damages or injuries to the Construction Manager's employees and shall not exclude any Additional Insured claims pertaining to damages or injuries to the Construction Manager's employees.

- (k) NO limitation of the ISO standard "occurrence" definition.
  - (l) NO conditions on coverage based on any insured's compliance with risk transfer mechanisms through insurance, indemnity clauses, or otherwise.
  - (m) NO form of exclusion of subcontracted work, and no deletion of or modification to the subcontractor exception to the "damage to your work" exclusion.
  - (n) No exclusion or restriction of coverage for the following: (i) Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim; (ii) Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor; (iii) Claims for bodily injury other than to employees of the insured; (iv) Claims for indemnity under Section 3.18 of the A201 - 2017 arising out of injury to employees of the insured; (v) Claims or loss excluded under a prior work endorsement or other similar exclusionary language; (vi) Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language; (vii) Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project; (viii) Claims related to roofing, if the Work involves roofing; (ix) Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces, provided that an exclusion for application of EIFS over wood frame construction shall be permitted if the Work does not include application of EIFS over wood frame construction; (x) Claims related to earth subsidence or movement, where the Work involves such hazards; or (xi) Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.
  - (o) NO exclusion for crane operation. If the Construction Manager is operating, hiring or contracting others to use operate or hire a crane with an updated crane certification and adherence to OSHA Standard # 1926.550. The crane certification shall be kept on the Project site at all times. All damages to the crane are the sole responsibility of the Construction Manager, and the Construction Manager waives and shall cause its crane Subcontractor, if applicable, and its and their applicable insurance carriers providing physical damage insurance on the crane to also waive all right of recovery against Indemnitees.
  - (p) All primary limits may be met in conjunction with excess coverage.
2. **Commercial Automobile Liability** covering all owned, hired and non-owned automobiles utilized by the Construction Manager or its Subcontractors, with a combined single limit for bodily injury and property damage of not less than \$1,000,000 per accident. The policy must include coverage for bodily injury, death and property damage arising out of ownership, maintenance or use of any automobile on or off the Project site. If hauling of hazardous waste is part of the scope of the Work, Commercial Automobile Liability insurance with a \$2,000,000 combined single limit per occurrence (which may be met through a combination of primary and excess policies) for bodily injury and property damage applicable to all hazardous waste hauling vehicles shall be required, which policy shall include an MCS 90 endorsement and the ISO Form CA 9948 (Pollution Liability Broadened Coverage for Business Automobile).
3. **Workers' Compensation insurance**, including employer's liability, for all persons whom the Construction Manager employs (or uses as subcontract labor if the Subcontractor is uninsured) in carrying out any Work. Such insurance shall be in strict compliance with the requirements of the most current and applicable workers' compensation insurance laws in effect from time to time in the state(s) where the Work is performed, and shall include the following:
- (a) Coverage A (Workers' Compensation) - Statutory
  - (b) Coverage B (Employer's Liability)

At a minimum, the following limits and coverages:

- (i) not less than \$1,000,000 for each accident, for bodily injury by accident
- (ii) not less than \$1,000,000 for each employee, for bodily injury by disease
- (iii) not less than \$1,000,000 for each disease policy limit

(c) Contain endorsements that provide:

- (i) Voluntary Compensation
- (ii) If the Construction Manager will borrow or otherwise use loaned employees (including if the Construction Manager leases a piece of equipment and it comes with an operator or the Construction Manager obtains employees from temporary agencies), the Construction Manager shall obtain an Alternate Employer's Endorsement (WC 00 03 01 A).
- (iii) If the Construction Manager will lease "employees" from a professional employer organization, the Construction Manager shall obtain from the professional employer organization a PEO Extension endorsement (WC 00 03 20 B).
- (iv) If the Work is taking place on or adjacent to navigable waters, then USL&H and Jones Act coverage is required.
- (v) Waiver of subrogation against the Indemnitees.

4. **Property insurance** providing coverage for property in which the Construction Manager retains the risk of loss including its own equipment, (stationary or mobile), tools (including employee tools), supplies, materials, or any other property owned or leased by the Construction Manager, which policy must include a waiver of subrogation against the Indemnitees. If the Construction Manager chooses to self-insure any of the property described under this Section, it is agreed that the Construction Manager shall hold the Indemnitees harmless for any loss or damage to that property.
5. **Professional Liability/Errors and Omissions** (to the extent the Work requires professional services) on a claims made basis with limits for each claim not less than \$5,000,000 per claim, which Professional Liability insurance policy shall be maintained for 10 years from final completion of the Project or for a period equivalent to the statute of repose for the state in which the Project is located, whichever is shorter. Indemnitees shall be named as "Indemnified Parties" on the policy.
6. **Pollution Liability** that provides coverage for liability arising from the Construction Manager's Work or construction activities, whether occurring on or off of the Project site, as well existing site conditions made worse by the Construction Manager or those for whom the Construction Manager is responsible, with limits of not less than \$5,000,000 for each loss / \$5,000,000 aggregate (providing coverage for liability arising from, or made worse by, the Work or the Construction Manager's or its Subcontractors' construction activities, which insurance shall cover property damage, bodily injury (including death and disease), environmental damage, remediation, clean-up costs and defense costs). The Construction Manager's pollution liability insurance shall insure against and provide coverage for property damage, abatement/cleanup, whether on or off of the Project site, as well as bodily injury, repair and defense costs resulting from liability arising out of pollution conditions, including exposures arising from silica, water intrusion, petroleum and petroleum-related products, asbestos, lead paint, tank removal, removal of contaminated soil, EIFS, bacteria, fungi and mold. The Construction Manager's pollution liability insurance must cover the liability of the Construction Manager during the process of construction, installation, removal, storage, encapsulation, loading, unloading, transport and disposal of hazardous materials or substances, and shall include coverage for bodily injury and loss of, damage to, or loss of use of property, arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, water materials or other irritants, contaminants or pollutants into or upon the Project site, the Project, the atmosphere, any water course or body of water. The Construction Manager must maintain, without interruption, its pollution liability insurance coverage and renew the pollution liability insurance policy annually from the date of

commencement of the Work through and including the expiration of the applicable statute of repose.

7. **Riggers Liability Insurance** If the Work requires the Construction Manager to provide a crane used to hoist, lower and horizontally move a suspended load that is not materials or equipment related to the Project – and Builder's Risk insurance, as further described in Section B.2.3, does not apply to Work performed by Construction Manager, then the Construction Manager shall maintain or cause to be maintained Riggers Liability insurance with minimum limits equal to equal to the greater of One Hundred Thousand Dollars (\$100,000) or the value of the material or equipment being lifted per occurrence and in aggregate, covering loss or damage to such property. The insurance coverage will include property in the crane operator's care, custody or control, Boom Overload and Collapse, Debris Removal and Preservation of Property. The policy shall name Indemnitees and other entities as may be reasonably requested as loss payees.
8. **Insurance Required by Law** the Construction Manager shall maintain any and all additional insurance coverages as required by applicable law
9. **Excess/Umbrella Liability** (that is not more restrictive than the primary insurance and meets all of the requirements above for Commercial General Liability, Automobile Liability and Employer's Liability) with coverage limits of not less than \$20,000,000 per occurrence, general aggregate (annual) and product/completed operations aggregate (annual), or, if the Contract Sum is \$10,000,000 or less and if the Owner consents in writing, not less than \$10,000,000 per occurrence, general aggregate (annual), and product/completed operations aggregate (annual). Coverage shall be excess of the Employers Liability, Commercial General Liability, and Automobile Liability coverages required herein, shall include all coverages on a "following form" basis, and shall drop down as primary on the exhaustion of any underlying policy limit. The aggregate limits shall apply separately to the Work and the specific project aggregate limits shall be evidenced by the use of an endorsement approved by the Owner. The Construction Manager shall maintain the Excess/Umbrella Liability coverage for 10 years from final completion of the Project or for a period equivalent to the statute of repose for the state in which the Project is located, whichever is shorter.

B. Intentionally deleted.

C. **Severability Clause.** All insurance shall include a severability of insured clause for all named insureds and additional insureds. None of the insurance policies that the Construction Manager is required to procure shall contain insured versus insured exclusions that prevent claims between named insureds and additional insureds.

D. **Evidence of Insurance.** True and complete copies of the required policies and of any other policies maintained by the Construction Manager for which the Construction Manager seeks reimbursement as part of the Cost of the Work (including subcontractor default insurance), including all endorsements thereto, or, if acceptable to the Owner, in its sole discretion, certificates of insurance, declarations pages and additional insured endorsements, Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. However, the Construction Manager may redact confidential or proprietary information from the copies of such policies and may require that the Owner execute a commercially reasonable form of confidentiality agreement as a condition to delivery of such policies, provided, further that such redaction shall not include redaction of information that is material to the scope and amount of insurance coverage provided by the subject policies. These certificates and the insurance policies required by the Contract Documents shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, provided only 10 days' prior written notice shall be required for cancellation for nonpayment of premium. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the A201-2017 and thereafter upon renewal or replacement of such coverage until the expiration of the time required hereunder. Unless otherwise agreed by the Owner in writing, information concerning reduction of coverage below the limits required herein in amounts greater than \$100,000 on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished

by the Construction Manager to the Owner promptly. The Owner's failure to demand or inspect a policy or other evidence of insurance, and/or the Owner's failure to identify or object to any discrepancy therein, is not a waiver of any requirement contained in the Contract. The obligation to procure and maintain insurance required by this Schedule is a separate responsibility of the Construction Manager independent of its duty to furnish a certified copy or certificate of such insurance policies. Should the Construction Manager fail to deliver the evidence of insurance required by the Contract Documents when so required, the Owner may, and the Construction Manager hereby authorizes the Owner to, obtain from the Construction Manager's insurance carriers the required evidence of insurance coverage.

E. **Additional Insureds.** Each of the Additional Insureds (as defined in **Exhibit B**, Section B.3.1.3) shall be listed as an additional insured on the Construction Manager's Commercial General Liability, Comprehensive Automobile Liability, Excess/Umbrella Liability and Pollution Liability insurance policies. Each policy, including the Excess/Umbrella Liability policy, shall be endorsed to state that the insurance provided to the Additional Insureds is primary and non-contributory to any other insurance (including primary, excess, self-insurance, or on any other basis) available to the Additional Insureds. The coverage provided to the Additional Insureds must be at least as broad as that provided to the first named insured on each policy. The additional insured endorsement must include coverage for any liability arising out of any operations, including Products and Completed Operations. In the event that any policy provided in compliance with the Contract states that the coverage provided to an Additional Insured shall be no broader than that required by contract, or words of similar meaning, the Parties agree that nothing in this Contract is intended to restrict or limit the breadth of such coverage. Additional insured status must be provided on forms of endorsement acceptable to the Owner.

F. **Carrier Rating.** All insurance coverage procured by the Construction Manager shall be provided by insurance companies satisfactory to the Owner who are lawfully authorized to do business in the jurisdiction in which the Project is located having policy holder ratings no lower than "A-" and financial ratings not lower than "XII" in the Best's Insurance Guide, latest edition in effect as of the date of the Contract, and subsequently in effect at the time of renewal of any policies required by the Contract Documents.

G. **Deductibles and Self-Insured Retentions.** Except as otherwise set forth herein, any deductibles or self-insured retentions shall be subject to the Owner's approval, and the Construction Manager shall be solely responsible for the payment of all deductibles and self-insured retentions. The coverage afforded to the Additional Insureds under the policies required of the Construction Manager shall not be conditioned on the payment of any deductible or self-insured retention.

H. **Waivers of Subrogation.** The Construction Manager and its insurance carriers waive, release, and shall not exercise any right of recovery or subrogation for any claim, damage, or loss covered or insured by any insurance policy required under the Contract Documents, that the Construction Manager or its insurers may have at any time against the Indemnitees.

I. **No Limitation.** Insurance coverage required in this Contract shall be additional security for the obligations assumed by the Construction Manager and in no event shall the types or limits of coverage required be deemed to limit any obligations or liabilities assumed under this Contract. The carrying of insurance shall not be deemed to release the Construction Manager or in any way diminish its liability or obligations, by way of indemnity or otherwise, under the Contract Documents.

## SCHEDULE 2

### SCHEDULE OF INSURANCE REQUIREMENTS (SUBCONTRACTORS)

1.1 **SUBCONTRACTOR'S INSURANCE OBLIGATIONS.** Before commencing the Work, Subcontractor shall procure and maintain, at its own expense, until completion and final acceptance of the Work (or for such longer periods as stated below or otherwise required by applicable legal requirements) at least the following insurance from insurance companies satisfactory to Construction Manager and Owner who are lawfully authorized to do business in the jurisdiction in which the Project is located and have an A.M. Best rating of A- VII or better:

1.1.1 **WORKERS' COMPENSATION INSURANCE**, including employer's liability, for all persons whom the Subcontractor employs in carrying out any Work. The State in which the Work is to be performed must be listed under Item 3.A. of the Declaration Page of the policy or on the certification from Subcontractor's worker's compensation fund. Such insurance shall be in strict compliance with the requirements of the most current and applicable workers' compensation insurance laws in effect from time to time in the state(s) where the Work is performed, and shall include the following:

- (a) Coverage A (Workers' Compensation) - Statutory
- (b) Coverage B (Employer's Liability)  
At a minimum, the following limits and coverages:
  - (i) not less than \$500,000 for each accident, for bodily injury by accident
  - (ii) not less than \$500,000 for each employee, for bodily injury by disease
  - (iii) not less than \$500,000 for each disease policy limit
- (c) Contain endorsements that provide:
  - (i) If the Subcontractor will borrow or otherwise use loaned employees (including if the Subcontractor leases a piece of equipment and it comes with an operator or the Subcontractor obtains employees from temporary agencies), the Subcontractor shall obtain an Alternate Employer's Endorsement (WC 00 03 01 A).
  - (ii) If the Subcontractor will lease "employees" from a professional employer organization, the Subcontractor shall obtain from the professional employer organization a PEO Extension endorsement (WC 00 03 20 B).
  - (iii) If the Work is taking place on or adjacent to navigable waters, then USL&H and Jones Act coverage is required.
  - (iv) Waiver of subrogation against the Indemnitees.

1.1.2 **COMMERCIAL GENERAL LIABILITY INSURANCE** on a current ISO occurrence coverage form policy, INCLUDING, without limitation, coverage for damages because of BODILY INJURY, PROPERTY DAMAGE, INDEPENDENT CONTRACTORS LIABILITY COVERAGE and PERSONAL AND ADVERTISING INJURY. This insurance shall include, without limitation, coverage for the PRODUCTS/COMPLETED OPERATIONS HAZARD. The COMMERCIAL GENERAL LIABILITY INSURANCE COVERAGE shall have limits not less than the following:

Each Occurrence	\$1,000,000
Personal and Advertising Injury	\$1,000,000
General Aggregate	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Damage to Rented Premises	\$50,000
Medical Expense	\$5,000

The general aggregate shall be on a "per project" basis, and a statement to that effect will be

contained on the certificate that this Commercial General Liability policy has been so endorsed. Subcontractor shall maintain the Commercial General Liability Insurance from commencement of the Work until not less than 5 years after substantial completion and acceptance of the Project by the Owner. Coverage shall include, but not be limited to, liability assumed by Subcontractor under its subcontract, including, without limitation, tort liability of another assumed in a business contract, and shall include unmodified Separation of Insureds coverage. The Personal Injury Contractual Liability Exclusion shall be deleted.

This COMMERCIAL GENERAL LIABILITY INSURANCE COVERAGE shall also comply with the following terms: (a) no limiting modification of the ISO standard "insured contract" exception to the contractual liability exclusion; (b) no exclusion or limitation of coverage for injury to employees or independent contractors other than that contained in the standard coverage ISO form; (c) no deletion of or modification to the subcontractor exception to the "damage to your work" exclusion; and (d) no limiting modification to the ISO standard "occurrence" definition. If the COMMERCIAL GENERAL LIABILITY INSURANCE COVERAGE excludes or limits coverage because of a WRAP policy (e.g. CCIP or OCIP) covering the Project, that exclusion or limitation may only apply to the extent of valid and collectible insurance available from the WRAP policy. Furthermore, without limitation, the COMMERCIAL GENERAL LIABILITY INSURANCE COVERAGE shall not exclude coverage for the following: (i) damage or loss first occurring or continuing at the inception of the policy; (ii) damage or loss first known, actually or constructively, by any insured at the inception of the policy; (iii) cross lawsuits and cross claims; (iv) explosion, collapse and underground hazards; (v) work height; (vi) soils subsidence or earth movement of any kind regardless of cause; (vii) for punitive damages, where allowable by applicable law; or (viii) elevators, if applicable.

NO exclusion for crane operation. If the Subcontractor is operating, hiring or contracting others to use operate or hire a crane with an updated crane certification and adherence to OSHA Standard # 1926.550. Further, the Subcontractor's commercial general liability insurance limits for crane operations shall be not less than: (1) if the crane is a tower crane, \$25,000,000 per occurrence/\$25,000,000 in aggregate; or (2) if the crane is other than a tower crane, \$10,000,000 per occurrence/\$10,000,000 in aggregate, the crane certification shall be kept on the Project site at all times. All damages to the crane are the sole responsibility of the Subcontractor and the Subcontractor waives and shall cause all applicable insurance carriers providing physical damage insurance on the crane to also waive all right of recovery against Indemnitees and all other parties with interest in the Project for all damages to the crane.

A Form No. CG 2010 07 04 and CG 2037 07 04 edition, together as additional insured endorsements, or an equivalent endorsement acceptable to the Construction Manager and Owner, naming the Construction Manager and Indemnitees as additional insureds.

- 1.1.3 COMPREHENSIVE AUTOMOBILE LIABILITY INSURANCE on a current ISO coverage form or equivalent, covering all owned, non-owned and hired automobiles used in connection with Subcontractor's performance hereunder, with the following minimum limits:

Bodily Injury (including death) and Property Damage	\$1,000,000	per accident
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Without limitation, the policy must include coverage for bodily injury, death and property damage arising out of ownership, maintenance or use of any automobile on or off the Project site. If hauling of hazardous waste is part of the scope of the Work, Commercial Automobile Liability insurance with a \$1,000,000 combined single limit per occurrence for bodily injury and property damage applicable to all hazardous waste hauling vehicles shall be required, which policy shall include an MCS 90 endorsement and the ISO Form CA 9948 (Pollution Liability Broadened Coverage for Business Automobile).

- 1.1.4 PROFESSIONAL LIABILITY INSURANCE shall be provided to the extent Subcontractor's performance includes or requires professional services, including, without limitation, the stamping by a professional engineer (P.E.) or the submission of working drawings, with a minimum limit of \$2,000,000.00, provided that if Subcontractor utilizes testing companies or surveying companies, then Subcontractor also shall obtain or require such testing companies or surveying companies to obtain professional liability coverage with a minimum limit of \$1,000,000 per claim. The professional liability insurance shall, at a minimum, have a retroactive date which is the same as or predates the commencement of the Subcontractor's performance and shall be maintained for a minimum of five (5) years beyond termination or completion of the Work. Subcontractor's Professional Liability insurance shall not be permitted to include any type of exclusion or limitation of coverage applicable to claims arising from: (a) bodily injury or property damage where coverage is provided on behalf of design professionals or design/build contractors; (b) mold and/or microbial matter and/or fungus and/or biological substance; or (c) punitive, exemplary, or multiplied damages, where insurable by law.
- 1.1.5 POLLUTION LIABILITY for any Subcontractor's whose work involves potential pollution risk to the environment or losses caused by pollution conditions (including asbestos), including Subcontractors performing the following work: (a) site preparation, (b) erosion control, (c) blasting, (d) demolition, (e) remediation work for hazardous substances (asbestos, mold, silica, and the like), (f) installing underground utilities, (g) mechanical/HVAC, (h) drywall or other work that may affect indoor air quality, (i) asphalt pavers and (j) working off barges or over the water, that provides coverage for liability arising from the Subcontractor's Work or construction activities, whether occurring on or off of the Project site, as well site conditions about which the Subcontractor is unaware but are made worse by the Subcontractor or those for whom the Subcontractor is responsible, with limits of not less than \$2,000,000 for each occurrence/\$2,000,000 aggregate (providing coverage for liability arising from, or made worse by, the Work or the Subcontractor's or its Sub-subcontractors' construction activities, which insurance shall cover property damage, bodily injury (including death and disease), environmental damage, remediation, clean-up costs and defense costs). The Subcontractor's pollution liability insurance shall insure against and provide coverage for property damage, abatement/cleanup, whether on or off of the Project site, as well as bodily injury, repair and defense costs resulting from liability arising out of pollution conditions, including exposures arising from silica, water intrusion, petroleum and petroleum-related products, asbestos, lead paint, tank removal, removal of contaminated soil, EIFS, bacteria, fungi and mold. The Subcontractor's pollution liability insurance must cover the liability of the Subcontractor during the process of construction, installation, removal, storage, encapsulation, loading, unloading, transport and disposal of hazardous materials or substances, and shall include coverage for bodily injury and loss of, damage to, or loss of use of property, arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, water materials or other irritants, contaminants or pollutants into or upon the Project site, the Project, the atmosphere, any water course or body of water. This insurance is not permitted to include any type of exclusion or limitation of coverage applicable to claims arising from: (a) insured vs. insured actions; provided, however, exclusion for claims made between insureds within the same economic family are acceptable; (b) impaired property that has not been physically injured; (c) materials supplied or handled by the named insured; provided, however, exclusions for the sale and manufacture of products are allowed. Exclusionary language pertaining to materials supplied by the insured shall be reviewed by the certificate holder for approval; (d) property damage to the completed work performed by the contractor or property damage to the work performed by a Subcontractor; (e) faulty workmanship as it relates to clean up costs; (f) punitive, exemplary or multiplied damages, where insurable by law; (g) work performed by lower-tier subcontractors; (h) contractual liability incurred as a result of an injury to an employee of the insured; (i) asbestos, lead, or silica. Coverage shall include but not be limited to liability assumed by Subcontractor under the Subcontract, including the tort liability of another assumed in a business contract. Completed Operations Coverage shall be maintained for a minimum of three (3) years after the completion of Work. The extended reporting period on a claims made-based policy does not fulfill this requirement. Pollution Liability insurance policies insuring a specific project shall have

Completed Operations Coverage for at least the duration of the work plus three (3) years. If coverage is provided on a claims made basis, coverage will at least be retroactive to the earlier of the date of this Subcontract or the commencement of Subcontractor's services in relation to the Work.

- 1.1.6 **RIGGERS LIABILITY INSURANCE:** If Subcontractor's work requires it to provide a crane used to hoist, lower and horizontally move a suspended load, then Subcontractor will maintain or cause to be maintained Riggers Liability insurance with minimum limits of Three Million Dollars (\$3,000,000) per occurrence and in aggregate covering loss or damage to all property, including not only property in operator's care, custody and control but also consequential damage to all other property arising from all rigging operations. The insurance coverages will be the broadest form available including, Boom Overload and Collapse, Debris Removal and Preservation of Property. The policy will name Indemnitees and other entities as may be reasonably requested as additional insureds.
- 1.1.7 **OWNED OR LEASED PROPERTY:** It shall be Subcontractor's sole responsibility to insure all property, tools, equipment and machinery owned, leased or rented by Subcontractor and used in its performance hereunder or brought to the Project. Subcontractor shall defend, indemnify, and hold Indemnitees and all other parties with interest in the Project harmless from any and all claims arising from the possession or use of such equipment, or from damage to such equipment.
- 1.1.8 **EXCESS/UMBRELLA LIABILITY** (that is not more restrictive than the primary insurance): Coverage shall be excess of the Employers Liability, Commercial General Liability and Automobile Liability coverages required herein and shall include all coverages on a "following form" basis. Coverage shall drop down as primary on the exhaustion of any underlying policy limit specified herein. The aggregate limits shall apply separately to the Work, and the specific project aggregate limits shall be evidenced by the use of an endorsement approved by the Owner. Subcontractor shall maintain the Excess/Umbrella Liability coverage for three (3) after substantial completion and acceptance of the Project by the Owner.
- |     |                                 |                            |
|-----|---------------------------------|----------------------------|
| (a) | per occurrence                  | Not less than \$3,000,000  |
| (b) | general aggregate               | Not less than \$3,000,000  |
| (c) | product/completed ops aggregate | Not less than \$3,000,000. |

## 1.2 GENERAL INSURANCE REQUIREMENTS

- 1.2.1 **Additional Insureds.** Construction Manager and Indemnitees (the "Additional Insureds") shall be listed as additional insureds on Subcontractor's Commercial General Liability, Comprehensive Automobile Liability, Excess/Umbrella Liability and Pollution Liability insurance policies. Each policy, including the Excess/Umbrella Liability policy, shall be endorsed to state that the insurance provided to the Additional Insureds is primary and non-contributory to any other insurance (including primary, excess, self-insurance, or on any other basis) available to the Additional Insureds. The coverage provided to the Additional Insureds must be at least as broad as that provided to the first named insured on each policy. The additional insured endorsement must include coverage for any liability arising out of any operations, including Products and Completed Operations. In the event that any policy provided in compliance with this Exhibit states that the coverage provided to an Additional Insured shall be no broader than that required by contract, or words of similar meaning, the Parties agree that nothing in this Exhibit is intended to restrict or limit the breadth of such coverage. Additional insured status must be provided on forms of endorsement acceptable to the Owner.

- 1.2.2 **Minimum Limits.** The limits of insurance stated above for each type of insurance are minimum limits only; in the event Subcontractor's policy provides greater limits, then the additional insureds shall be entitled to, or to share in, the full limits of such policy.
- 1.2.3 **Waivers of Subrogation.** To the fullest extent permitted by law, all insurance Subcontractor furnishes in compliance with this Exhibit shall include a waiver of subrogation in favor of the Additional Insureds.
- 1.2.4 **Evidence of Insurance.** Before commencing performance hereunder and upon any renewal of the foregoing required policies of insurance, Subcontractor shall furnish, in form and substance satisfactory to Construction Manager, certificates of insurance ("COIs"), declarations pages and additional insured endorsements, or if required by the Construction Manager, true and complete copies of the required policies, including, without limitation, all endorsements thereto, from each insurance company showing that the insurance required under this Exhibit is in force, and stating policy numbers, dates of expiration, and limits of liability thereunder. Subcontractor's failure to provide copies of policies and/or COIs shall not relieve it of its responsibility to carry and maintain the insurance required by this Exhibit.
- 1.2.5 **Notice of Cancellation.** All policies required under this Exhibit shall contain a provision that the insurance will not be canceled or materially changed until the expiration of at least thirty (30) days after written notice of such cancellation or change has been mailed to and received by the Construction Manager and Owner, provided that only 10 days' prior written notice shall be required of cancellation for non-payment of premium.
- 1.2.6 **Deductibles and Self-Insured Retentions.** Subcontractor shall be solely responsible for the payment of all deductibles and self-insured retentions. The coverage afforded to the Additional Insureds under the policies set forth in this Exhibit shall not be conditioned on the payment of any deductible or self-insured retention.
- 1.2.7 **No Limitation.** Nothing contained herein is to be construed to limit the type, quality or quantity of insurance Subcontractor shall procure and maintain or the extent of Subcontractor's responsibility or liability for payment of damages resulting from the Work or Subcontractor's performance or operations under this Agreement.
- 1.2.8 **Legal Limits.** IN THE EVENT THAT THE LAW OF THE STATE IN WHICH THE PROJECT IS LOCATED (OR APPLICABLE LAW) LIMITS THE APPLICABILITY OF ANY OF THE INSURANCE COVERAGE THAT CONSTRUCTION MANAGER MAY REQUIRE FROM SUBCONTRACTOR, THEN SUBCONTRACTOR SHALL BE REQUIRED TO OBTAIN COVERAGE TO THE FULLEST EXTENT OF COVERAGE AND LIMITS ALLOWED BY APPLICABLE LAW AND THIS EXHIBIT SHALL BE READ TO CONFORM TO SUCH LAW.

# DRAFT AIA® Document A201® – 2017

## General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

« »

THE OWNER:

(Name, legal status and address)

« Adventist Health System/Sunbelt, Inc. d/b/a AdventHealth, a Florida not for profit corporation  
601 East Rollins Street  
Orlando, FL 32803  
Attention: Bryan Emde  
Email: Bryan.Emde@AdventHealth.com »

THE ARCHITECT:

(Name, legal status and address)

« »

### TABLE OF ARTICLES

- |    |  |
|----|--|
| 1  | GENERAL PROVISIONS                               |
| 2  | OWNER  |
| 3  | CONTRACTOR                                       |
| 4  | ARCHITECT  |
| 5  | SUBCONTRACTORS                                   |
| 6  | CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS |
| 7  | CHANGES IN THE WORK                              |
| 8  | TIME   |
| 9  | PAYMENTS AND COMPLETION                          |
| 10 | PROTECTION OF PERSONS AND PROPERTY               |
| 11 | INSURANCE AND BONDS                              |
| 12 | UNCOVERING AND CORRECTION OF WORK                |
| 13 | MISCELLANEOUS PROVISIONS                         |
| 14 | TERMINATION OR SUSPENSION OF THE CONTRACT        |
| 15 | CLAIMS AND DISPUTES                              |

#### 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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## INDEX

(Topics and numbers in bold are Section headings.)

**NOTE:** This index does not incorporate references to any alterations that have been made to the AIA Document A-201 2017, General Conditions for the Contract for Construction.

### Acceptance of Nonconforming Work

9.6.6, 9.9.3, **12.3**

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, **12.3**

### Access to Work

**3.16**, 6.2.1, **12.1**

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5,

10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

Addenda

1.1.1

Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

### Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, **13.4**

### Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, **15.1.6**

### Administration of the Contract

3.1.3, **4.2**, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

### Allowances

**3.8**

### Applications for Payment

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5.1, 9.5.4, 9.6.3, 9.7, 9.10

Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9,

3.12.10.1, 4.2.7, 9.3.2, 13.4.1

### Arbitration

8.3.1, 15.3.2, **15.4**

## ARCHITECT

**4**

Architect, Definition of

**4.1.1**

Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2,

9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1,

13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

Architect, Limitations of Authority and

Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2,

4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4,

9.4.2, 9.5.4, 9.6.4, 15.1.4, 15.2

Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3,

7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1,

13.4.2, 15.2

Architect's Inspections

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 13.4

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,

3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16,

3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5,

9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

Architect's Relationship with Subcontractors

1.1.2, 4.2.3, 4.2.4, 4.2.6, 9.6.3, 9.6.4, 11.3

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

### Award of Subcontracts and Other Contracts for Portions of the Work

**5.2**

## Basic Definitions

**1.1**

Bidding Requirements

1.1.1

Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5,

15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

### Bonds, Performance, and Payment

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**, 11.1.3, **11.5**

### Building Information Models Use and Reliance

**1.8**

Building Permit

3.7.1

## Capitalization

**1.3**

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

**Certificates for Payment**

4.2.1, 4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4, 15.1.4

Certificates of Inspection, Testing or Approval  
13.4.4

Certificates of Insurance

9.10.2

**Change Orders**

1.1.1, 3.4.2, 3.7.4, 3.8.2.3, 3.11, 3.12.8, 4.2.8, 5.2.3, 7.1.2, 7.1.3, **7.2**, 7.3.2, 7.3.7, 7.3.9, 7.3.10, 8.3.1, 9.3.1.1, 9.10.3, 10.3.2, 11.2, 11.5, 12.1.2

**Change Orders**, Definition of

**7.2.1**

**CHANGES IN THE WORK**

2.2.2, 3.11, 4.2.8, **7**, 7.2.1, 7.3.1, 7.4, 8.3.1, 9.3.1.1, 11.5

**Claims**, Definition of

**15.1.1**

Claims, Notice of

1.6.2, 15.1.3

**CLAIMS AND DISPUTES**

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, **15**, 15.4

Claims and Timely Assertion of Claims

15.4.1

**Claims for Additional Cost**

3.2.4, 3.3.1, 3.7.4, 7.3.9, 9.5.2, 10.2.5, 10.3.2, **15.1.5**

**Claims for Additional Time**

3.2.4, 3.3.1, 3.7.4, 6.1.1, 8.3.2, 9.5.2, 10.3.2, **15.1.6**

**Concealed or Unknown Conditions, Claims for**  
**3.7.4**

Claims for Damages

3.2.4, 3.18, 8.3.3, 9.5.1, 9.6.7, 10.2.5, 10.3.3, 11.3, 11.3.2, 14.2.4, 15.1.7

Claims Subject to Arbitration

15.4.1

**Cleaning Up**

**3.15**, 6.3

Commencement of the Work, Conditions Relating to

2.2.1, 3.2.2, 3.4.1, 3.7.1, 3.10.1, 3.12.6, 5.2.1, 5.2.3, 6.2.2, 8.1.2, 8.2.2, 8.3.1, 11.1, 11.2, **15.1.5**

**Commencement of the Work**, Definition of

**8.1.2**

**Communications**

3.9.1, **4.2.4**

Completion, Conditions Relating to

3.4.1, 3.11, 3.15, 4.2.2, 4.2.9, 8.2, 9.4.2, 9.8, 9.9.1, 9.10, 12.2, 14.1.2, 15.1.2

**COMPLETION, PAYMENTS AND**

**9**

Completion, Substantial

3.10.1, 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2, 15.1.2

Compliance with Laws

2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14.1.1, 14.2.1.3, 15.2.8, 15.4.2, 15.4.3

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

3.4.2, 3.14.2, 4.1.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3, 13.2, 15.4.4.2

**Consolidation or Joinder**

**15.4.4**

**CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

1.1.4, **6**

**Construction Change Directive**, Definition of

**7.3.1**

**Construction Change Directives**

1.1.1, 3.4.2, 3.11, 3.12.8, 4.2.8, 7.1.1, 7.1.2, 7.1.3, **7.3**, 9.3.1.1

Construction Schedules, Contractor's

3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

**Contingent Assignment of Subcontracts**

**5.4**, 14.2.2.2

**Continuing Contract Performance**

**15.1.4**

**Contract**, Definition of

**1.1.2**

**CONTRACT, TERMINATION OR SUSPENSION OF THE**

5.4.1.1, 5.4.2, 11.5, **14**

Contract Administration

3.1.3, 4, 9.4, 9.5

Contract Award and Execution, Conditions Relating to

3.7.1, 3.10, 5.2, 6.1

Contract Documents, Copies Furnished and Use of  
1.5.2, 2.3.6, 5.3

**Contract Documents**, Definition of

**1.1.1**

**Contract Sum**

2.2.2, 2.2.4, 3.7.4, 3.7.5, 3.8, 3.10.2, 5.2.3, 7.3, 7.4, **9.1**, 9.2, 9.4.2, 9.5.1.4, 9.6.7, 9.7, 10.3.2, 11.5, 12.1.2, 12.3, 14.2.4, 14.3.2, 15.1.4.2, **15.1.5**, **15.2.5**

**Contract Sum**, Definition of

**9.1**

Contract Time

1.1.4, 2.2.1, 2.2.2, 3.7.4, 3.7.5, 3.10.2, 5.2.3, 6.1.5, 7.2.1.3, 7.3.1, 7.3.5, 7.3.6, 7, 7, 7.3.10, 7.4, 8.1.1, 8.2.1, 8.2.3, 8.3.1, 9.5.1, 9.7, 10.3.2, 12.1.1, 12.1.2, 14.3.2, 15.1.4.2, 15.1.6.1, 15.2.5

**Contract Time**, Definition of

**8.1.1**

**CONTRACTOR**

**3**

Contractor, Definition of

**3.1**, **6.1.2**

**Contractor's Construction and Submittal Schedules**

**3.10**, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2

Contractor's Employees  
2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6,  
10.2, 10.3, 11.3, 14.1, 14.2.1.1

**Contractor's Liability Insurance**  
**11.1**  
Contractor's Relationship with Separate Contractors  
and Owner's Forces  
3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4  
Contractor's Relationship with Subcontractors  
1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2,  
9.6.7, 9.10.2, 11.2, 11.3, 11.4  
Contractor's Relationship with the Architect  
1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2,  
3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2,  
6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6,  
10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1  
Contractor's Representations  
3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2  
Contractor's Responsibility for Those Performing the  
Work  
3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8  
Contractor's Review of Contract Documents  
3.2  
Contractor's Right to Stop the Work  
2.2.2, 9.7  
Contractor's Right to Terminate the Contract  
14.1  
Contractor's Submittals  
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2,  
9.8.3, 9.9.1, 9.10.2, 9.10.3  
Contractor's Superintendent  
3.9, 10.2.6  
Contractor's Supervision and Construction  
Procedures  
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4,  
7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4  
Coordination and Correlation  
1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1  
Copies Furnished of Drawings and Specifications  
1.5, 2.3.6, 3.11  
Copyrights  
1.5, **3.17**  
Correction of Work  
2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, **12.2**, 12.3,  
15.1.3.1, 15.1.3.2, 15.2.1

**Correlation and Intent of the Contract Documents**  
**1.2**

**Cost, Definition of**  
**7.3.4**  
Costs  
2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3,  
7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6,  
11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14

**Cutting and Patching**  
**3.14**, 6.2.5  
Damage to Construction of Owner or Separate  
Contractors  
3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4

Damage to the Work  
3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4  
Damages, Claims for  
3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2,  
11.3, 14.2.4, 15.1.7  
Damages for Delay  
6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2  
**Date of Commencement of the Work, Definition of**  
**8.1.2**  
**Date of Substantial Completion, Definition of**  
**8.1.3**  
**Day, Definition of**  
**8.1.4**  
Decisions of the Architect  
3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4,  
7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2,  
14.2.2, 14.2.4, 15.1, 15.2  
**Decisions to Withhold Certification**  
9.4.1, **9.5**, 9.7, 14.1.1.3  
Defective or Nonconforming Work, Acceptance,  
Rejection and Correction of  
2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3,  
9.10.4, 12.2.1  
Definitions  
1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1,  
6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1  
**Delays and Extensions of Time**  
**3.2**, **3.7.4**, 5.2.3, 7.2.1, 7.3.1, **7.4**, **8.3**, 9.5.1, **9.7**,  
10.3.2, **10.4**, 14.3.2, **15.1.6**, 15.2.5  
**Digital Data Use and Transmission**  
**1.7**  
Disputes  
6.3, 7.3.9, 15.1, 15.2  
**Documents and Samples at the Site**  
**3.11**  
**Drawings, Definition of**  
**1.1.5**  
Drawings and Specifications, Use and Ownership of  
3.11  
Effective Date of Insurance  
8.2.2  
**Emergencies**  
**10.4**, 14.1.1.2, **15.1.5**  
Employees, Contractor's  
3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2,  
10.3.3, 11.3, 14.1, 14.2.1.1  
Equipment, Labor, or Materials  
1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,  
4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3,  
9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2  
Execution and Progress of the Work  
1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1,  
3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1,  
9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4  
Extensions of Time  
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2,  
10.4, 14.3, 15.1.6, **15.2.5**

## **Failure of Payment**

9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Faulty Work

(See Defective or Nonconforming Work)

## **Final Completion and Final Payment**

4.2.1, 4.2.9, 9.8.2, **9.10**, 12.3, 14.2.4, 14.4.3

Financial Arrangements, Owner's

2.2.1, 13.2.2, 14.1.1.4

## **GENERAL PROVISIONS**

### **1**

#### **Governing Law**

##### **13.1**

Guarantees (See Warranty)

#### **Hazardous Materials and Substances**

##### **10.2.4, 10.3**

Identification of Subcontractors and Suppliers

5.2.1

#### **Indemnification**

3.17, **3.18**, 9.6.8, 9.10.2, 10.3.3, 11.3

#### **Information and Services Required of the Owner**

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5,

9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2,

14.1.1.4, 14.1.4, 15.1.4

#### **Initial Decision**

##### **15.2**

#### **Initial Decision Maker, Definition of**

1.1.8

Initial Decision Maker, Decisions

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

Initial Decision Maker, Extent of Authority

14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5

#### **Injury or Damage to Person or Property**

##### **10.2.8, 10.4**

Inspections

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,

9.9.2, 9.10.1, 12.2.1, 13.4

Instructions to Bidders

1.1.1

Instructions to the Contractor

3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2

#### **Instruments of Service, Definition of**

##### **1.1.7**

Insurance

6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5,

### **11**

Insurance, Notice of Cancellation or Expiration

11.1.4, 11.2.3

#### **Insurance, Contractor's Liability**

##### **11.1**

Insurance, Effective Date of

8.2.2, 14.4.2

#### **Insurance, Owner's Liability**

##### **11.2**

#### **Insurance, Property**

##### **10.2.5, 11.2, 11.4, 11.5**

Insurance, Stored Materials

9.3.2

## **INSURANCE AND BONDS**

### **11**

Insurance Companies, Consent to Partial Occupancy

9.9.1

Insured loss, Adjustment and Settlement of

11.5

Intent of the Contract Documents

1.2.1, 4.2.7, 4.2.12, 4.2.13

#### **Interest**

##### **13.5**

#### **Interpretation**

1.1.8, 1.2.3, **1.4**, 4.1.1, 5.1, 6.1.2, 15.1.1

Interpretations, Written

4.2.11, 4.2.12

Judgment on Final Award

15.4.2

#### **Labor and Materials, Equipment**

1.1.3, 1.1.6, **3.4**, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,

5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1,

10.2.4, 14.2.1.1, 14.2.1.2

Labor Disputes

8.3.1

Laws and Regulations

1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4,

9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8,

15.4

Liens

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

Limitations, Statutes of

12.2.5, 15.1.2, 15.4.1.1

Limitations of Liability

3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6,

4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3,

11.3, 12.2.5, 13.3.1

Limitations of Time

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,

5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,

9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15,

15.1.2, 15.1.3, 15.1.5

#### **Materials, Hazardous**

##### **10.2.4, 10.3**

Materials, Labor, Equipment and

1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,

5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2,

10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2

Means, Methods, Techniques, Sequences and

Procedures of Construction

3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2

Mechanic's Lien

2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8

#### **Mediation**

8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, **15.3**, 15.4.1,

15.4.1.1

#### **Minor Changes in the Work**

1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, **7.4**

## **MISCELLANEOUS PROVISIONS**

### **13**

## **Modifications, Definition of**

### **1.1.1**

#### **Modifications to the Contract**

1.1.1, 1.1.2, 2.5, 3.11, 4.1.2, 4.2.1, 5.2.3, 7, 8.3.1, 9.7, 10.3.2

## **Mutual Responsibility**

### **6.2**

#### **Nonconforming Work, Acceptance of**

9.6.6, 9.9.3, **12.3**

Nonconforming Work, Rejection and Correction of  
2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2

#### **Notice**

**1.6**, 1.6.1, 1.6.2, 2.1.2, 2.2.2., 2.2.3, 2.2.4, 2.5, 3.2.4, 3.3.1, 3.7.4, 3.7.5, 3.9.2, 3.12.9, 3.12.10, 5.2.1, 7.4, 8.2.2 9.6.8, 9.7, 9.10.1, 10.2.8, 10.3.2, 11.5, 12.2.2.1, 13.4.1, 13.4.2, 14.1, 14.2.2, 14.4.2, 15.1.3, 15.1.5, 15.1.6, 15.4.1

Notice of Cancellation or Expiration of Insurance  
11.1.4, 11.2.3

#### **Notice of Claims**

1.6.2, 2.1.2, 3.7.4, 9.6.8, 10.2.8, **15.1.3**, 15.1.5, 15.1.6, 15.2.8, 15.3.2, 15.4.1

Notice of Testing and Inspections  
13.4.1, 13.4.2

Observations, Contractor's  
3.2, 3.7.4

Occupancy  
2.3.1, 9.6.6, 9.8

Orders, Written  
1.1.1, 2.4, 3.9.2, 7, 8.2.2, 11.5, 12.1, 12.2.2.1, 13.4.2, 14.3.1

## **OWNER**

### **2**

#### **Owner, Definition of**

### **2.1.1**

#### **Owner, Evidence of Financial Arrangements**

**2.2**, 13.2.2, 14.1.1.4

#### **Owner, Information and Services Required of the**

2.1.2, **2.2**, 2.3, 3.2.2, 3.12.10, 6.1.3, 6.1.4, 6.2.5, 9.3.2, 9.6.1, 9.6.4, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2, 14.1.1.4, 14.1.4, 15.1.4

#### **Owner's Authority**

1.5, 2.1.1, 2.3.32.4, 2.5, 3.4.2, 3.8.1, 3.12.10, 3.14.2, 4.1.2, 4.2.4, 4.2.9, 5.2.1, 5.2.4, 5.4.1, 6.1, 6.3, 7.2.1, 7.3.1, 8.2.2, 8.3.1, 9.3.2, 9.5.1, 9.6.4, 9.9.1, 9.10.2, 10.3.2, 11.4, 11.5, 12.2.2, 12.3, 13.2.2, 14.3, 14.4, 15.2.7

#### **Owner's Insurance**

### **11.2**

#### **Owner's Relationship with Subcontractors**

1.1.2, 5.2, 5.3, 5.4, 9.6.4, 9.10.2, 14.2.2

#### **Owner's Right to Carry Out the Work**

**2.5**, 14.2.2

#### **Owner's Right to Clean Up**

### **6.3**

## **Owner's Right to Perform Construction and to Award Separate Contracts**

### **6.1**

#### **Owner's Right to Stop the Work**

### **2.4**

#### **Owner's Right to Suspend the Work**

14.3

#### **Owner's Right to Terminate the Contract**

14.2, 14.4

## **Ownership and Use of Drawings, Specifications and Other Instruments of Service**

1.1.1, 1.1.6, 1.1.7, **1.5**, 2.3.6, 3.2.2, 3.11, 3.17, 4.2.12, 5.3

#### **Partial Occupancy or Use**

9.6.6, **9.9**

#### **Patching, Cutting and**

**3.14**, 6.2.5

Patents

3.17

#### **Payment, Applications for**

4.2.5, 7.3.9, 9.2, **9.3**, 9.4, 9.5, 9.6.3, 9.7, 9.8.5, 9.10.1, 14.2.3, 14.2.4, 14.4.3

#### **Payment, Certificates for**

4.2.5, 4.2.9, 9.3.3, **9.4**, 9.5, 9.6.1, 9.6.6, 9.7, 9.10.1, 9.10.3, 14.1.1.3, 14.2.4

#### **Payment, Failure of**

9.5.1.3, **9.7**, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Payment, Final

4.2.1, 4.2.9, **9.10**, 12.3, 14.2.4, 14.4.3

#### **Payment Bond, Performance Bond and**

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

#### **Payments, Progress**

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

## **PAYMENTS AND COMPLETION**

### **9**

#### **Payments to Subcontractors**

5.4.2, 9.5.1.3, 9.6.2, 9.6.3, 9.6.4, 9.6.7, 14.2.1.2

PCB

10.3.1

#### **Performance Bond and Payment Bond**

7.3.4.4, 9.6.7, 9.10.3, **11.1.2**

#### **Permits, Fees, Notices and Compliance with Laws**

2.3.1, **3.7**, 3.13, 7.3.4.4, 10.2.2

## **PERSONS AND PROPERTY, PROTECTION OF**

### **10**

Polychlorinated Biphenyl

10.3.1

#### **Product Data, Definition of**

### **3.12.2**

#### **Product Data and Samples, Shop Drawings**

3.11, **3.12**, 4.2.7

#### **Progress and Completion**

4.2.2, **8.2**, 9.8, 9.9.1, 14.1.4, 15.1.4

#### **Progress Payments**

9.3, **9.6**, 9.8.5, 9.10.3, 14.2.3, 15.1.4

#### **Project, Definition of**

### **1.1.4**

Project Representatives  
4.2.10  
**Property Insurance**  
10.2.5, 11.2  
**Proposal Requirements**  
1.1.1  
**PROTECTION OF PERSONS AND PROPERTY**  
**10**  
Regulations and Laws  
1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1,  
10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8,  
15.4  
Rejection of Work  
4.2.6, 12.2.1  
Releases and Waivers of Liens  
9.3.1, 9.10.2  
Representations  
3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1  
Representatives  
2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1  
Responsibility for Those Performing the Work  
3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10  
Retainage  
9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3  
**Review of Contract Documents and Field**  
**Conditions by Contractor**  
**3.2, 3.12.7, 6.1.3**  
Review of Contractor's Submittals by Owner and  
Architect  
3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2  
Review of Shop Drawings, Product Data and  
Samples by Contractor  
3.12  
**Rights and Remedies**  
1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1,  
6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2,  
12.2.4, 13.3, 14, 15.4  
**Royalties, Patents and Copyrights**  
**3.17**  
Rules and Notices for Arbitration  
15.4.1  
**Safety of Persons and Property**  
**10.2, 10.4**  
**Safety Precautions and Programs**  
3.3.1, 4.2.2, 4.2.7, 5.3, 10.1, 10.2, 10.4  
**Samples, Definition of**  
**3.12.3**  
**Samples, Shop Drawings, Product Data and**  
3.11, 3.12, 4.2.7  
**Samples at the Site, Documents and**  
**3.11**  
**Schedule of Values**  
9.2, 9.3.1  
Schedules, Construction  
3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2  
Separate Contracts and Contractors  
1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2

**Separate Contractors, Definition of**  
**6.1.1**  
**Shop Drawings, Definition of**  
**3.12.1**  
**Shop Drawings, Product Data and Samples**  
3.11, 3.12, 4.2.7  
**Site, Use of**  
**3.13, 6.1.1, 6.2.1**  
Site Inspections  
3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4  
Site Visits, Architect's  
3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4  
Special Inspections and Testing  
4.2.6, 12.2.1, 13.4  
**Specifications, Definition of**  
**1.1.6**  
**Specifications**  
1.1.1, 1.1.6, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14  
Statute of Limitations  
15.1.2, 15.4.1.1  
Stopping the Work  
2.2.2, 2.4, 9.7, 10.3, 14.1  
Stored Materials  
6.2.1, 9.3.2, 10.2.1.2, 10.2.4  
**Subcontractor, Definition of**  
**5.1.1**  
**SUBCONTRACTORS**  
**5**  
Subcontractors, Work by  
1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4,  
9.3.1.2, 9.6.7  
**Subcontractual Relations**  
**5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1**  
Submittals  
3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3,  
9.8, 9.9.1, 9.10.2, 9.10.3  
Submittal Schedule  
3.10.2, 3.12.5, 4.2.7  
**Subrogation, Waivers of**  
**6.1.1, 11.3**  
**Substances, Hazardous**  
**10.3**  
**Substantial Completion**  
4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3,  
12.2, 15.1.2  
**Substantial Completion, Definition of**  
**9.8.1**  
Substitution of Subcontractors  
5.2.3, 5.2.4  
Substitution of Architect  
2.3.3  
Substitutions of Materials  
3.4.2, 3.5, 7.3.8  
**Sub-subcontractor, Definition of**  
**5.1.2**  
Subsurface Conditions  
3.7.4

## **Successors and Assigns**

### **13.2**

#### **Superintendent**

##### **3.9, 10.2.6**

#### **Supervision and Construction Procedures**

1.2.2, **3.3**, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4

#### **Suppliers**

1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6, 9.10.5, 14.2.1

#### **Surety**

5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2, 15.2.7

#### **Surety, Consent of**

9.8.5, 9.10.2, 9.10.3

#### **Surveys**

1.1.7, 2.3.4

#### **Suspension by the Owner for Convenience**

### **14.3**

#### **Suspension of the Work**

3.7.5, 5.4.2, 14.3

#### **Suspension or Termination of the Contract**

5.4.1.1, 14

#### **Taxes**

3.6, 3.8.2.1, 7.3.4.4

#### **Termination by the Contractor**

**14.1**, 15.1.7

#### **Termination by the Owner for Cause**

5.4.1.1, **14.2**, 15.1.7

#### **Termination by the Owner for Convenience**

### **14.4**

#### **Termination of the Architect**

2.3.3

#### **Termination of the Contractor Employment**

14.2.2

## **TERMINATION OR SUSPENSION OF THE CONTRACT**

### **14**

#### **Tests and Inspections**

3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3, 9.9.2, 9.10.1, 10.3.2, 12.2.1, **13.4**

#### **TIME**

### **8**

#### **Time, Delays and Extensions of**

3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, **8.3**, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

#### **Time Limits**

2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,

9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2, 15.1.3, 15.4

#### **Time Limits on Claims**

3.7.4, 10.2.8, 15.1.2, 15.1.3

#### **Title to Work**

9.3.2, 9.3.3

## **UNCOVERING AND CORRECTION OF WORK**

### **12**

#### **Uncovering of Work**

### **12.1**

#### **Unforeseen Conditions, Concealed or Unknown**

3.7.4, 8.3.1, 10.3

#### **Unit Prices**

7.3.3.2, 9.1.2

#### **Use of Documents**

1.1.1, 1.5, 2.3.6, 3.12.6, 5.3

#### **Use of Site**

**3.13**, 6.1.1, 6.2.1

#### **Values, Schedule of**

**9.2**, 9.3.1

#### **Waiver of Claims by the Architect**

13.3.2

#### **Waiver of Claims by the Contractor**

9.10.5, 13.3.2, **15.1.7**

#### **Waiver of Claims by the Owner**

9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, **15.1.7**

#### **Waiver of Consequential Damages**

14.2.4, 15.1.7

#### **Waiver of Liens**

9.3, 9.10.2, 9.10.4

#### **Waivers of Subrogation**

6.1.1, **11.3**

#### **Warranty**

**3.5**, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2, 15.1.2

#### **Weather Delays**

8.3, 15.1.6.2

#### **Work, Definition of**

### **1.1.3**

#### **Written Consent**

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3, 13.2, 13.3.2, 15.4.4.2

#### **Written Interpretations**

4.2.11, 4.2.12

#### **Written Orders**

1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

## 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, these General Conditions of the Contract, any Supplementary and other Conditions identified in the Agreement, Drawings, Specifications, Addenda issued prior to execution of the Contract, if any, 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**" or the "**Contract for Construction**". The Contract represents the entire and integrated agreement between the Parties 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, except as set forth in Sections 5.3 and 5.4, (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. The Contract shall not be construed as conferring on any third parties any rights or claims against the Owner.

#### § 1.1.3 The Work

The term "**Work**" means the construction and services required of the Contractor by the Contract Documents (whether expressly or by reasonable inference), whether completed or partially completed, and includes all other labor, materials, supplies, 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 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.

#### § 1.1.9 Product

The term "**product**" includes materials, systems and equipment.

#### § 1.1.10 Furnish

The term "**furnish**" means to supply and deliver to the Project site, ready for unloading, unpacking, assembly, erection, placement or similar requirements.

#### § 1.1.11 Install

The term "**install**" means to unload, unpack, assemble, erect, place, finish, protect, adjust, and clean, or similar requirements.

#### § 1.1.12 Provide

The term "**provide**" means to furnish and install.

#### § 1.1.13 Knowledge

The terms "**knowledge**", "**recognize**" and "**discover**", their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows, recognizes or discovers in exercising the care, skill and diligence required by the Contract Documents.

Analogously, the expression "**reasonably inferable**" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill and diligence required of the Contractor by the Contract Documents.

#### § 1.1.14 Party and Parties

The term "**Party**" means each of the Owner and the Contractor, individually. The term "**Parties**" means the Owner and the Contractor, together.

### § 1.2 Correlation and Intent of the Contract Documents

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and Applicable Laws (as defined in Section 3.1.13 of the Agreement) or applicable industry standards, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement; either or both in accordance with the Architect's interpretation. The terms and conditions of this Section 1.2.1, however, shall not relieve the Contractor of any of the obligations set forth in Sections 3.2, 3.4.2, or 3.7.

§ 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, or the application thereof to any person or circumstance, 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.

§ 1.2.3.1 Whenever a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other Association Standard, the Contractor shall present an affidavit from the manufacturer when requested by the Owner or the Architect certifying that the product complies with the particular standard or specification. When requested by the Owner or the Architect or otherwise required by the Contract Documents, support test data shall be submitted to substantiate compliance.

### § 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 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 Owner's, 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.

**§ 1.5.3** Upon execution of the Agreement, the Contractor grants to the Owner a fully-paid up, royalty free, perpetual and nonexclusive license to use the Contractor's and Contractor's Subcontractors' and consultants' representations, in any medium of expression now known or later developed, of the tangible and intangible creative work created, prepared or issued by the Contractor or its Subcontractors or consultants, for purposes of constructing, using, maintaining, altering and adding to the Project, including Shop Drawings, design drawings and specifications and electronic data for design-build systems delegated to the Contractor in the Contract Documents. The Contractor shall obtain similar nonexclusive licenses from the Contractor's Subcontractors and consultants consistent with this Section. The license granted under this Section permits the Owner to authorize contractors, consultants and material and equipment suppliers, to reproduce applicable portions of such work product for use in performing services or construction for the Project.

**§ 1.5.4** Any and all inventions and discoveries, whether or not patentable, conceived or made by the Contractor as a result of the Contractor's discussions with the Owner or performance of the Work which are based substantially on the Owner's proprietary information, shall be and shall become the sole and exclusive property of the Owner. The Contractor agrees to disclose fully and promptly to the Owner all such inventions and discoveries. Upon request by the Owner, the Contractor agrees to assign such inventions and discoveries to the Owner, or cause them to be so assigned by its personnel. Further, the Contractor shall execute or cause to be executed by its personnel, all applications, assignments, or other instruments which the Owner may deem reasonably necessary in order to enable the owner at its expense to apply for, prosecute, and obtain patents in any country for said inventions and discoveries, or in order to sign and transfer to the Owner the entire right, title, and interest thereto.

**§ 1.5.5** The Contractor, at any time upon the request of the Owner, shall immediately return and surrender to the Owner all copies of any or all Instruments of Service and any or all materials, records, notices, memoranda, recordings, drawings, specifications, and mock-ups and any other documents furnished by the Owner or the Architect to the Contractor.

## **§ 1.6 Notice**

Any notice pursuant to the Contract shall be given in writing by (a) personal delivery, (b) reputable overnight delivery service with proof of delivery, or (c) email transmission, sent to the intended addressee at the address set forth in the Agreement, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given upon receipt or refusal to accept delivery, or, in the case of email transmission, as of the date of the email transmission, provided that for notices of Claims as provided in Section 15.1.3, default or termination, an original also must be delivered to the intended addressee by means described in clauses (a) or (b) above and a copy must be delivered to::

Adventist Health System/Sunbelt Inc. d/b/a AdventHealth  
Attention: Legal Department  
550 East Rollins Street, 6th floor  
Orlando, Florida 32803  
Telephone: (407) 303-8585

### § 1.7 Digital Data Use and Transmission

The parties shall discuss and endeavor to agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

### § 1.8 Intentionally deleted.

### § 1.7 CONFIDENTIALITY

§ 1.7.1 The Contractor shall not communicate or disclose at any time to any person or entity any information in connection with the Work or the Project, except (i) with prior written consent of the Owner, (ii) information that was in the public domain prior to the date of the Agreement, (iii) information that becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of the Contractor, or (iv) as may be required to perform the Work or by Applicable Laws. In the event that the Contractor is required by any court of competent jurisdiction or legally constituted authority to disclose any Owner information, at least seven (7) days prior to any disclosure thereof, the Contractor shall notify the Owner and shall give the Owner the opportunity to challenge any such disclosure order or to seek protection for those portions that it regards as confidential. The covenants contained in this Section 1.7 shall survive the complete performance of the Work or earlier termination of the Contract. In addition, because an award of money damages (whether pursuant to the foregoing sentence or otherwise) would be inadequate for any breach of this Agreement and any such breach would cause the Owner irreparable harm, the Contractor also agrees that, in the event of any breach or threatened breach of this Section, the Owner shall also be entitled, without the requirement of posting a bond or other security, to equitable relief, including injunctive relief and specific performance. Without limitation, the Contractor shall cause the covenants of this Section 1.7 to flow down and bind its Subcontractors.

## 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 one or more representatives 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 Owner may from time to time change its designated representative with ten (10) days' prior written notice to the Contractor. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen (15) days after receipt of a written request, information necessary and relevant to the Contractor to evaluate, give notice of or enforce mechanic 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 Intentionally deleted.

§ 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 increases 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 increases 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** Information furnished under this Section 2.2 shall be treated by the Contractor as "confidential" in accordance with Section 1.7.

### **§ 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 development of real estate, use or occupancy of permanent structures or for permanent changes in existing facilities, including any required permits or approvals from the Florida Agency for Health Care Administration.

**§ 2.3.2** The Owner has retained 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 general locations of known utilities 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, except as otherwise provided therein or in the Contract, 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 reproducible or electronic 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, and any delay resulting from such work stoppage shall not extend any Milestone Date identified in the Contract for Construction or the required dates of Substantial or Final Completion. Nothing herein shall be deemed to limit the Owner's rights with respect to termination as set out in Article 14 herein. The Owner shall incur no liability for delays occasioned by any stop work order issued in accordance with this Section.

### **§ 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. 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 (including attorneys' fees) and compensation for the Architect's and other consultants' 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.

### **§ 2.6 Rapid Response to Emergencies**

If the Contractor neglects to prosecute the Work properly or to perform any provision of the Contract Documents, or does, or omits to do, anything, whereby the safety or proper construction may be endangered or whereby damage or injury may result to person or property, then the Owner, after twenty-four (24) hours' written notice to the

Contractor, may, but shall not be obligated to, without prejudice to any other right or remedy of the Owner, take such action as the Owner deems necessary or desirable to endeavor to correct such condition, and may deduct the cost thereof from the amounts then due or thereafter due the Contractor. No action taken by the Owner pursuant to this Section 2.6 shall affect or diminish any of the Owner's other rights or remedies under the Agreement, at law or in equity, nor shall it relieve the Contractor from any consequences or liabilities arising from its acts or omissions.

## **§ 2.7 Extent of Owner's Rights**

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

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 General**

**§ 3.1.1** The "Contractor" is the person or entity identified as such in the Agreement and 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 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 Contractor may from time to time change its designated representative with ten (10) days' prior written notice to the Owner. 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, and also in accordance with approved submittals as provided in and subject to Section 3.12 below.

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

**§ 3.1.4** The Contractor shall coordinate and hold at least bi-weekly jobsite meetings with the Architect, the Owner and representatives of such Subcontractors and suppliers as the Contractor or the Owner may deem advisable, for the purpose of: (a) reviewing status of the Work, (b) the progress of the Work as compared to the most recent construction schedule, (c) responses to submittals and requests for information, (d) proposed and pending Change Orders and Construction Change Directives, (e) Applications for Payment, (f) and other items relevant to the Project. The Contractor shall prepare an agenda for each such meeting and deliver the agenda at least three (3) business days in advance of the meeting and, after the meeting, shall prepare minutes of the meeting and deliver such minutes to the Owner and the Architect with reasonable promptness after the meeting. Further, the Contractor shall send a representative, with full authority to act on behalf of and bind the Contractor, to the foregoing bi-weekly and to such other meetings and conferences relating to any Work as may be requested from time to time by the Owner.

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

**§ 3.2.1** Execution of a GMP Amendment by the Contractor is a representation that the Contractor has visited and inspected the site, become familiar with local conditions under which the Work is to be performed, correlated personal observations with requirements of the Contract Documents, and evaluated and satisfied itself as to the condition and limitations under which the Work is to be performed, including: (a) the location, condition, layout and nature of the Project site and surrounding areas, including conditions bearing upon ingress to and egress from the Project site, delivery, handling and storage of materials, disposal of waste, availability of water and electric power, ground water table or similar physical conditions of the ground, the character, quality and quantity of surface and sub-surface conditions and materials to be encountered, and the character of equipment and facilities needed prior to and during the execution of the Work; (b) generally prevailing climatic conditions, (c) anticipated labor supply and costs, (d) availability and cost of materials, tools and equipment, and (e) all other matters which can in any way affect the Work or the cost thereof under this Contract. The Contractor shall locate prior to performing any Work all utility lines, telephone company lines and cables, sewer lines, water pipes, gas lines, electrical lines, and shall perform the Work in such a manner so as to avoid damaging any such lines, cables, and pipes. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to

make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Section 3.2.1.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting and while executing each portion of the Work: (a) carefully study and compare the various Contract Documents relative to that portion of the Work with the other Contract Documents and with information provided or otherwise reasonably available to the Contractor, (b) take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the Project site affecting it, including existing structures, (c) confirm the accuracy of all grades, elevations, dimensions, and locations given on any Drawings and Specifications, and (d) in all cases of interconnection of its Work with existing or other work, verify at the site all dimensions relating to such existing or other work. The foregoing obligations of the Contractor 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. The Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specified in the Contract Documents. The Contractor shall promptly notify the Owner and Architect in writing of any errors, inconsistencies or omissions, including omissions from the Drawings and Specifications of figures that are necessary to a clear understanding of the Work, that are discovered by or made known to the Contractor as a request for information in such form as the Owner or Architect may require. Any errors due to the Contractor's failure to so verify such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without additional cost to the Owner. Figures on Drawings take precedence over measurements by scale, and scaling is done at the Contractor's own risk. If the Contractor discovers (or fails to discover because of the Contractor's inattention to, or willful disregard of, the Contract Documents) any errors, inconsistencies, omissions, or discrepancies in the Contract Documents and proceeds with ordering of materials or construction of the Work without obtaining necessary clarification or instruction from the Architect and Owner, the Contractor shall assume full responsibility for such performance and shall bear all costs of correcting and resulting errors, inconsistencies, omissions, or discrepancies in the Work without adjustment of the Contract Sum or the Contract Time.

**§ 3.2.2.1** The Owner shall not be responsible for the accuracy or completeness of information and data shown or indicated in the Contract Documents with respect to existing underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems (collectively, "**Underground Facilities**") at or contiguous to the Project site. The Contractor shall have full responsibility for: (a) reviewing and checking all such information and data; (b) locating all Underground Facilities; (c) coordination of the Work with the owners of such Underground Facilities during construction; and (d) the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work. If an Underground Facility is uncovered or revealed at or contiguous to the Project site which was not previously identified and accounted for by the Contractor, the Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency that threatens imminent damage to property or injury or death to person), identify the owner of such Underground Facility and give written notice to that owner and to the Owner and the Architect. If the Contractor has performed its due diligence obligations in the Contract, including reviewing the available Geotechnical Report and other reports, tests and drawings regarding Underground Facilities at or contiguous to the Project site and nevertheless encounters an Underground Facility that was not discoverable through such above identified obligations, then the Contractor may request an equitable adjustment for additional Costs of the Work plus Contractor's Fee thereon and/or time resulting from such unforeseen Underground Facility in accordance with Section 7.5 below.

**§ 3.2.2.2** The Contractor shall be responsible for laying out the site Work, shall protect and preserve reference points and property monuments, and shall make no changes or relocations without the prior written approval of the Owner and the Architect. The Contractor shall report to the Owner and the Architect whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

**§ 3.2.2.3** All grade lines, levels and bench marks shall be established and maintained by the Contractor. The Contractor shall establish bench marks in no less than two widely separated locations. Bench marks established by others shall be verified and may be used for the Work but shall be maintained in correct position, and if moved or

damaged, shall be replaced by a registered civil engineer or land surveyor at the expense of the Contractor. The Contractor shall submit certification by civil engineer for established building corners and finish floor elevations prior to commencing placement of the slab on grade.

**§ 3.2.2.4** The Contractor shall be responsible for assuring that fill on the Site shall consist of well to moderately-well graded soils consistent with the Drawings and Specifications and acceptable to the Architect, consisting of sands, silts, non-plastic clays and gravel and shall be free from detrimental quantities of debris, muck, peat, roots, grass, leaves, humus, sewage and other organic material, clods, lumps, balls of clay, rocks, trees, stumps, branches, twigs, limbs, trash, refuse, development debris, non-plastic soils and frozen materials (collectively, "**Unsuitable Materials**") in accordance with the Architect's instructions. The Contractor shall remove all Unsuitable Materials and deposit them in areas specified by the Owner. No Unsuitable Material shall be located within the boundary of a building pad or on pond banks that abut or are adjacent to a building pad. The Contractor shall compact all fill areas within the Project site as necessary in order to comply with the structural requirements set forth in the Drawings and Specifications. The Contractor shall abide by recommendations in the Geotechnical Report unless otherwise specified in the civil Drawings for the Project or instructed in writing by the Architect.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with Applicable Laws, but the Contractor shall promptly report to the Owner and Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Owner or Architect may require. If the authority having jurisdiction requires that additional work beyond what is quantifiably shown in the Drawings and Specifications is required to address building code deficiencies in the existing systems, if any, and the Owner elects to incorporate such work into the Work, the Contractor may request a Change Order in accordance with Section 7.5 below for the added Costs of the Work plus Contractor's Fee thereon and/or increased time of performance of such work.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Owner or 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 a PCO, ROM and COR in accordance with Section 7.5. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to Applicable Laws.

**§ 3.2.5** Notwithstanding anything herein to the contrary, the Contractor shall be responsible for the satisfactory and complete execution of the Work described in the Contract Documents. By executing a GMP Amendment, the Contractor represents that it has carefully examined all Drawings and Specifications for the Work to be performed, that it has made investigations essential to the construction methods for the Project, and that it has the experience and necessary personnel, equipment, and material at its disposal to complete the Work in a good workmanlike manner in accordance with the Contract Documents without defects in materials or workmanship. The Owner and the Contractor acknowledge that questions may arise concerning the level and scope of performance required under the Contract Documents. The Owner and the Contractor will in good faith attempt to resolve such conflicts and uncertainties in a manner that is consistent with the design intent of the Contract Documents and without adjustment to the Contract Sum or Contract Time.

### **§ 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 written 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 Owner or 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. The relationship of Contractor to Owner shall be that of an independent contractor. Nothing herein shall be construed to make Contractor the agent, servant, or employee of Owner or create any partnership, joint venture, or other association.

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

**§ 3.3.4** The Contractor shall require that all material suppliers and Subcontractors, their agents and employees, adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions and that they provide materials on time. The Contractor shall require each Subcontractor have a competent supervisor assigned to the Project, who shall be on site whenever the Subcontractor's work is being performed. The Contractor shall coordinate its Work with that of all others performing work for the Project, including deliveries, storage, installations and construction utilities. The Contractor shall be responsible for the space requirements, locations and routing of its equipment.

**§ 3.3.5** The Contractor shall prepare and maintain daily reports recording the date, weather conditions, deliveries received, Subcontractors on site, general description of work accomplished, problems or conflicts in the field, and other important details. Said reports shall be maintained at the job site in an orderly manner and available to the Owner, the Architect, and the Owner's representatives for review at any time. The Contractor shall submit the format of such daily report to the Owner for approval prior to commencement of the Work.

**§ 3.3.6** Upon Contractor's receipt of Direct Purchase Materials (as provided in Section 4.1.6 of the Agreement), the Contractor shall promptly notify the Owner in writing of any damage to defects in the Direct Purchase Materials, failing which the Contractor shall bear full responsibility for removing the damaged and/or defective Direct Purchase Materials, for procuring and installing replacement materials or equipment, and for remedying losses and damage arising from or relating to same as the Contractor's expense, and without adjustment in either the Contract Sum or Contract Time.

**§ 3.3.7** All Work as described or required shall be executed in a neat, skillful workmanlike manner in accordance with the best recognized trade practices.

### **§ 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. If the Contractor desires to submit or submits an alternate product or method in lieu of what has been specified in the Contract Documents, subsections 3.4.2.1 and 3.4.2.2 apply.

**§ 3.4.2.1** The Contractor must submit to the Architect and the Owner (a) a full explanation of the proposed substitution and submittal of all supporting data including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution; (b) a written explanation of the reasons for the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (c) the adjustment, if any, in the Contract Sum, in the event the substitution is acceptable; (d) the adjustment, if any, in the time of completion of the Work and the construction schedule in the event the substitution is acceptable, and (e) an affidavit stating that the proposed substitution conforms and meets all requirements of the pertinent Specifications and the requirements shown on the Drawings, and the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted in triplicate to the Architect and Owner in sufficient time to allow them no less than ten (10) business days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated herein.

**§ 3.4.2.2** In addition to and without limitation of the requirements of subsection 3.4.2.1, by making requests for substitutions, the Contractor: (a) represents that it has investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified; (b) represents that it will provide the same or better warranty for the substitution as it would have provided for the product specified and the manufacturer will provide the same or better warranty for the substituted product; (c) certifies that the cost data presented is complete and includes all related costs for the substituted product and for Work that must be changed as a result of the substitution, except for the Architect's redesign costs, and waives all claims for additional costs related to the substitution that subsequently become apparent; and (d) shall coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall also be responsible for labor peace on the Project and shall at all times use its best efforts and judgment as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes or strikes where reasonably possible and practical under the circumstances and shall at all times maintain Project-wide harmony. The Contractor shall be responsible to control any labor disputes that may arise among its employees or the employees of its Subcontractors. Only competent laborers who satisfactorily perform their duties shall be employed on Work. When requested by the Owner or Architect, the Contractor, without entitlement to adjustment of the Contract Sum or Contract Time, shall discharge and shall not reemploy on work any person who commits trespass or who is, in the Owner's opinion, disorderly, dangerous, insubordinate, incompetent, or otherwise objectionable.

**§ 3.4.3.1** The Contractor shall be responsible to the Owner for all actions, omissions, breaches, negligence, recklessness and misconduct of the Contractor's Subcontractors and suppliers, such Subcontractors' and suppliers' Sub-subcontractors and suppliers, of any tier, and all of their respective employees and agents in the performance of the Contractor's obligations under the Contract. At the Owner's request, the Contractor, without additional cost to the Owner and without any increase of the Contract Time, shall reassign, replace or remove from the Project site any of the Contractor's or its Subcontractors' personnel who, in the Owner's opinion, acting in good faith, (a) are disruptive or negatively affect (i) the efficiency or safety of the Project or (ii) the timely progress or completion of the Work, or (b) who have (i) acted in a threatening or offensive manner or (ii) who have otherwise committed a violation of the Owner's job site policies.

**§ 3.4.3.2** The Contractor shall require all construction personnel at the Project site to maintain a neat general appearance at all times. Shirts, trousers, and proper shoes are required apparel. The display or utterance of vulgar words, signs, or figures is prohibited. The wearing of sandals and flip-flops on the Project site is prohibited. Construction personnel shall not use profanity, illegal drugs, or alcohol on the Project site. The use of radios, tape players, cd players, boom boxes, sound producing devices, and the like on the Project site is prohibited. Smoking on the Project site is prohibited, except in areas, if any, specifically designated for same by the Owner. The Contractor shall remove from the Project any employee, Subcontractor, or Subcontractor employee that fails to comply with the requirements of this Section, other provisions of the Contract, or other written rule and regulations of the Owner regarding jobsite conduct.

**§ 3.4.4** Materials shall be installed in accordance with manufacturer's directions, unless the Contract Documents indicate otherwise. All packaged materials shall be shipped to the site in the original containers clearly labeled, and delivery slips can be submitted with bulk materials identifying thereon the source and warranting quality and compliance with Contract Documents. The Contractor shall check all materials and services to be incorporated into the Work, including quality and quantity. All materials delivered to the job site shall be so stored and handled as to preclude inclusion of foreign substance or causing any discoloration therein and to prevent any damage thereto which might reduce the materials' effectiveness as part of the Work.

## **§ 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 those, if any, that the Contract Documents expressly require or permit, and will be performed in a good and workmanlike manner and in compliance with Applicable Laws. Work, materials, or equipment (including items specified as sole source) 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 Owner or 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 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. Further, the Contractor hereby assigns to the Owner, on a non-exclusive basis, all third party warranties pertaining to the Work and the materials and equipment incorporated therein that are not issued in the name of the Owner, including warranties of all Subcontractors and suppliers, and, upon completion of the Work, as a condition to final payment, the Contractor shall deliver to the Owner all such warranty documents. The Contractor shall perform the Work in such manner so as to preserve all such warranties. All warranty periods shall commence as of the date of Substantial Completion

**§ 3.5.3** The Contractor's warranties given herein are not in derogation of such longer warranties as may be provided by the Contractor's Subcontractors, suppliers and the manufacturers of equipment and materials incorporated into the Project. Further, the Contractor's warranties will not be affected or limited by the terms of any manufacturer's warranty that has lesser terms or otherwise. The Contractor is responsible for ensuring that all warranties and guarantees required by the Contract Documents for materials, systems, equipment and work provided to and incorporated into the Work shall be issued in the name of and for the benefit of the Owner. The Contractor shall perform the Work in such a manner so as to preserve any and all such warranties. The Contractor shall assist the Owner without charge in asserting manufacturer and other third party warranty claims.

**§ 3.5.4** The Contractor is responsible for any Subcontractor's nonperformance of warranty Work. The refusal of a Subcontractor or supplier to correct defective Work for which it is responsible will not excuse the Contractor from performing under the Contractor's warranty.

**§ 3.5.5** As a condition precedent to final payment under the Contract, the Contractor shall deliver to the Owner three (3) bound volumes of all guarantees and warranties on material furnished by all manufacturers and suppliers to the Contractor and its Subcontractors, with duly-executed instruments properly assigning the guarantees and warranties to the Owner. The guarantees and warranties in each bound volume shall be grouped together by trade and properly indexed. The Contractor shall obtain from manufacturers and suppliers, the guarantees and warranties according to the Contract terms and upon the optimum terms and longest periods reasonably obtainable. The documentation must also clearly describe proper operational and maintenance activities required to sustain said warranties.

### **§ 3.6 Taxes**

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted as of the date of the GMP Amendment, whether or not yet effective or merely scheduled to go into effect, including all taxes, withholdings, contributions and/or premiums payable in respect of its employees or on its operations, including under workers' compensation laws, unemployment compensation laws, the Federal Social Security Act, health and welfare benefit plans, gross business taxes, sales and use taxes and any other taxes, contributions and/or premiums which are payable by the employees. The Contractor shall provide reasonable evidence to the Owner to substantiate the Contractor's compliance with this Section.

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

**§ 3.7.1** Unless otherwise provided in the Contract Documents (including as provided in Section 2.3.1 hereof), the Contractor shall use its best efforts and take all action necessary to obtain and pay for the building permits and other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work, including all inspections by government authorities required for certificates of occupancy. The Contractor shall assist the Owner as requested by the Owner in the Owner's efforts to procure and obtain bonds required of the Owner by the municipality or any other public or private body with jurisdiction over the Project (which bonds shall be acquired at the Owner's cost). Except to the extent the Owner elects to do so itself, the Contractor shall obtain and pay all charges for all approvals for street closings, parking meter removal or rental, and other similar matters as may be necessary or appropriate from time to time for the performance of the Work.

**§ 3.7.2** The Contractor shall comply with and give notices required by Applicable Laws, shall make copies of such notices available to the Owner and its representatives, and shall pay all fines, penalties and interest levied as a result of such Work. Without limitation of the foregoing, the Contractor shall fully comply, and remain in full

compliance, with (1) the Americans with Disabilities Act with respect to all Work to be performed by Contractor, provided that, for the avoidance of doubt, the Contractor does not thereby take on any design responsibility of the Architect or the Owner's other design consultants for compliance of the design of the Work with the Americans with Disabilities Act; and (2) the Immigration and Control Act of 1986 as applicable to the Contractor, including all required employment and identity verification procedures and record keeping requirements. In the event the Contractor fails to comply in any respect with the applicable requirements of Applicable Laws, including the Americans with Disabilities Act and the Immigration Reform and Control Act of 1986, the Contractor shall indemnify and hold harmless the Owner for all penalties, fines, charges, assessments, claims, demands, actions, or causes of action by the United States Government or by any other entity or person. Further, the Contractor shall pay any expenses, including attorneys' and paralegals' fees, incurred by the Owner as a result such failure to comply with Applicable Laws and all penalties and interest levied or assessed as a result thereof by applicable governmental authorities.

**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to Applicable Laws, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction (including all fines, penalties, and interest levied as a result of such Work), which, for the avoidance of doubt, shall not be compensable as a Cost of the Work.

#### **§ 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 and are not the Contractor's responsibility to identify and address under 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 and are not the Contractor's responsibility to identify and address under 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 forty-eight hours after first observance of the conditions. The Owner and/or Architect will promptly investigate such conditions. If the Contractor believes such conditions differ materially and are not the Contractor's responsibility to identify and address under the Contract Documents and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall submit a PCO, ROM and COR in accordance with Section 7.5. If the Contractor fails to perform the obligations of Section 3.7.4, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. 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 Section 7.5.

**§ 3.7.6** The Contractor warrants it is familiar with Applicable Laws concerning the recognition, handling and disposal of waste materials and rubbish and it will obey all such Applicable Laws. The Contractor shall provide to the Owner copies of all manifests and disposal records required by any Applicable Laws for any hazardous or other substances that have been handled or disposed by or through the Contractor.

#### **§ 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. Only items clearly specified as "allowances" in the Contract Documents shall be deemed allowances for purposes of this Section 3.8.

**§ 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 within the time specified for making such election in the construction schedule and, if no such time frame is specified, with reasonable promptness after the Contractor notifies the Owner of the need to make a selection.

**§ 3.8.4** The Contractor shall submit a written proposal to the Owner of the costs associated with an allowance before incurring any such costs. Under no circumstances shall the Contractor incur any costs related to an allowance on behalf of the Owner without the prior written authorization of the Owner.

### **§ 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 in writing of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Owner or 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 both the Owner and 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 written request or consent.

**§ 3.9.4** If, in the opinion of the Owner, the Contractor's superintendent, any other personnel of the Contractor or Subcontractors, or any laborers by whomever employed, are not qualified to supervise or perform work considered as first class quality for the area, or do not conduct themselves in a proper manner, or are interfering with the operations of any facility on or adjacent on the site of the Work, the Contractor shall cause such persons(s) to be replaced with qualified personnel immediately upon written notice from the Owner, without any additional cost to the Owner and without extension of the Contract Time. Neither the Owner's rights herein, nor the Owner's exercise or failure to exercise such rights, shall relieve the Contractor of the obligations to select, assign, and supervise competent and qualified personnel or otherwise make the Owner responsible for original or replacement personnel.

### **§ 3.10 Contractor's Construction and Submittal Schedules**

**§ 3.10.1** The Contractor, as part of its Guaranteed Maximum Price Proposal, shall submit Contractor's initial construction schedule for the Work. The construction schedule and all updates thereto shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, the date of Substantial Completion, and the dates for completion of punch list work and the closeout requirements; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule, including all updates thereto, 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 and to reflect actual conditions of the Project site. The schedule shall also be revised upon request by the Owner. The Contractor's construction schedule, including all updates thereto, shall include all significant activities required to complete the Work, including all field tasks, significant material deliveries, other off-site constraints such as permits, inspections, approvals, and milestones for start dates, completion dates and availability dates, and other activities the Contractor, the Owner, or the Architect deem significant. The construction schedule shall be in time-scaled precedence format with the critical path clearly indicated, and shall indicate Float (as defined in Section 8.2.4 below) values. Tasks shall be broken down into activities that allow monitoring their monthly progress. The Contractor shall submit monthly an updated schedule accurately reflecting progress achieved and any changes in the Contractor's planned activities. The Contractor shall give specific notice to the Owner and its consultants of any change in the logic of the schedule or any part thereof, or the removal of any restraints, or the deduction of any duration. If any schedule update shows that the progress of the Work is delayed in comparison to the construction schedule, the Contractor shall, if required by the Owner, provide a proposed "recovery schedule" showing how the Contractor proposes to correct the delay,

including overtime and additional labor. No schedule updates shall modify any milestone dates identified as a "Milestone Date" ("**Milestone Dates**") in the initial construction schedule or subsequently agreed to by the Parties in any update thereto, the Contract Time, the Substantial Completion Date, or the Final Completion Date, unless the Parties execute a Change Order which modifies the Contract Time. In the event that the Contractor should achieve completion of a portion of the Work that is subject to a Milestone Date earlier than the applicable Milestone Date, such early completion shall not be a basis for the Owner to advance subsequent Milestone Dates or to shorten the Contract Time unless mutually agreed in a Change Order.

**§ 3.10.2** The Contractor, within fourteen (14) days after execution of the GMP Amendment, and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Owner's and Architect's approval. The Owner's and Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) indicate the dates each specific Shop Drawing or sample required by the Contract Documents will be submitted for approval, (2) be coordinated with the Contractor's construction schedule, and (3) 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. The Contractor's submittal sequence shall permit an orderly review by the Architect and its consultants, and the schedule shall allow reasonable added time according to the number or complexity of drawings in each submittal and for checking, correction and rechecking or corrections, as well as for return of approved or rejected Shop Drawings and samples to the Contractor and, in turn, to any Subcontractor.

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect and approved by the Owner, provided that no such schedule may adjust the Milestone Dates, Contract Time, the Substantial Completion Date, or the Final Completion Date without the Owner's written approval pursuant to a Change Order or Construction Change Directive.

**§ 3.10.4** In the event the Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment and facilities, and (iii) other similar measures (hereinafter referred to as "**Extraordinary Measures**"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the construction schedule. The Contractor shall be entitled to an adjustment of the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Section 3.10.4, unless the delay giving rise to the need for Extraordinary Measures is a delay for which the Contractor is not entitled to an increase in the Contract Sum pursuant to Section 8.3.3 below. The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.10.4 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Dates or completion deadlines set forth in the Contract Documents.

**§ 3.10.5** By submitting the initial construction schedule and each update thereto, the Contractor shall be deemed to warrant that the schedule has been prepared in good faith, is accurate to the best of the Contractor's knowledge and the Owner may rely thereon in regard to any and all decisions or actions by the Owner in regard to the Project.

### **§ 3.11 Documents and Samples at the Site**

**3.11.1** The Contractor shall maintain at the Project site and shall make available to the Owner and Architect: (a) one record copy of the Drawings ("**Record Drawings**"), and (b) Specifications, Addenda, requests for information, bulletins, Change Orders and other Modifications to the Contract Documents approved Shop Drawings and a log of such Shop Drawings, Product Data, Samples and mock-ups, permits, inspection reports, test results, daily reports, field notes, accident reports, schedules, subcontracts, and purchase orders (collectively, "**Record Documents**"), in good order. The Record Drawings shall be prepared and continuously updated during the prosecution of the Work but no less than once per month. The prints for Record Drawings will be a set of blackline prints provided by the Architect to the Contractor at the start of construction. The Contractor shall maintain said set in good condition and shall use colored pencils or some other method acceptable to the Owner to mark-up said set with "record information" in a legible manner to show; (a) deviations from the Drawings made during construction; (b) details in the Work not previously shown; (c) changes to existing conditions or existing conditions found to differ from those shown on any existing Drawings; (d) the actual installed position of equipment, piping, conduits, light switches,

electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, and stub outs; and (e) such other information as either the Owner or the Architect may reasonably request. For design-build systems, the Contractor shall continuously update Record Drawings reflecting the as-built condition of design-build systems.

**3.11.2** The Contractor's obligation to make Record Drawings and Record Documents, updated with current Project information, available for inspection by the Owner, the Architect, and their respective consultants, shall be a condition precedent to Owner's duty to process payment applications. The Contractor, as part of the Contract Sum, as a precondition to Final Completion, or upon earlier termination of the Agreement, and as a condition precedent to the certifying of the final payment under the Contract, shall forward to the Owner and Architect the Record Drawings and Record Documents in hard copy, digital, and/or such other format as the Owner requires, along with a certification that such Record Drawings and Record Documents are true, correct and complete to the best of the Contractor's knowledge, information and belief.

### **§ 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"** and mock-ups are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. 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. All Shop Drawings shall (i) comply with performance specifications and other criteria established by the Architect, (ii) comply with all governmental requirements; and (iii) permit the Work, when completed, to perform as intended by the Contract Documents. Shop Drawings shall be modified at no cost to the Owner as necessary to obtain any permits or approvals and as required to comply with any requirement of the Contract Documents.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect (with copies to the Owner), 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. Shop Drawings found to be inaccurate or otherwise in error are to be returned for correction before submittal to the Architect. The Contractor shall verify the Shop Drawings of all Subcontractors or trades for interrelated work, as required for proper and complete performance of the Work. All Shop Drawings submitted by the Contractor shall be stamped by the Contractor with the wording "APPROVED FOR SUBMITTAL" or marked through some other means to clearly indicate to the Architect the submittals have been reviewed and approved by the Contractor and the date of submittal. Submittals not conforming to all the foregoing or which are not marked as received for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action. Contractor shall be responsible for any delay as a result of any improper submittal.

**§ 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 in writing 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. The Contractor warrants the adequacy for the purpose intended of any Shop Drawing or portion of a Shop Drawing that alters, modifies, or adds to the requirements of the Contract Documents.

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

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work (e.g. design-build systems delegated to the Contractor) 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 Laws.

**§ 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 criteria provided by 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 and who shall comply with reasonable requirements of the Owner regarding qualifications and insurance. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy, and completeness of the services, certifications, and approvals performed or provided by such design professionals. 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 Owner and Architect at the time and in the form specified by the Architect.

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

**§ 3.12.12** The Architect's review or approval of Shop Drawings and samples shall not be construed as authorizing additional work or increased cost to the Owner, as all changes to the Work, Contract Sum and Contract Time may only be made by a duly executed Modification.

**§ 3.12.13** Substitutions of material or equipment on an "or equal" basis shall not be proposed or requested in Shop Drawings or sample submittals unless (a) approval is requested within thirty (30) days after award of any subcontract, and (b) the Contractor provides the Owner and Architect with supporting data and documentation compliant with Sections 3.4.2 and 7.1.4 herein. Samples may not be employed in the Work without the expressed written permission of the Architect.

### **§ 3.13 Use of Site**

**§ 3.13.1** The Contractor shall confine operations at the site to areas permitted by Applicable Laws and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall use its best efforts to minimize impacts to the surrounding areas and environment. The Contractor acknowledges that the

property on which the Project and Work is located may be occupied and in use during the execution of the Work. Furthermore, the Contractor acknowledges the property on which the Project and Work are located may become an active hospital in the future. The Contractor shall perform and coordinate its work in such a manner the portions of the property occupied and in use will not be encumbered or the use interfered with or interrupted. Any use or occupancy of the property shall not give rise to any right on the part of the Contractor or any of its Subcontractors to any increase in the Contract Sum or Contract Time.

**§ 3.13.2** As part of the Contractor's Guaranteed Maximum Price Proposal, the Contractor shall deliver to the Owner and the Architect a proposed logistics plan that, among other things, shows the proposed locations for the parking of the Contractor's and its Subcontractors' and suppliers' and their respective personnel's vehicles and the storage and staging of materials and equipment to be incorporated into, or used in connection with, the Work. Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

**§ 3.13.3** Without limitation of any other provision of the Contract Documents, the Contractor shall use best efforts to minimize any interference with the occupancy or beneficial use of (i) any areas and buildings adjacent to the site of the Work and (ii) the building in the event of partial occupancy, as more specifically described in Section 9.9. Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including lavatories, toilets, entrances, and parking areas other than those designated by the Owner.

**§ 3.13.4** Without limitation of any other provision of the Contract Documents, the Contractor shall comply with all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and structures, as amended from time to time. The Contractor shall immediately notify the Owner in writing if during the performance of the Work, the Contractor finds compliance of any portion of such rules and regulations to be impracticable, setting forth the problems of such compliance and suggesting alternatives through which the same results intended by such portions of the rules and regulations can be achieved. The Owner may, in the Owner's sole discretion, adopt such suggestions, develop new alternatives or require compliance with the existing requirements of the rules and regulations. The Contractor shall also comply with all insurance requirements and collective bargaining agreements applicable to use and occupancy of the Project site to the extent that these requirements are included in the Contract Documents or of which the Owner provides the Contractor prior written notice.

**§ 3.13.5** Neither the Contractor nor any entity for whom the Contractor is responsible shall erect any sign on the Project site without the prior written consent of the Owner, which may be withheld, conditioned or delayed in the sole direction of the Owner (unless signage is required by a governmental authority having jurisdiction).

**§ 3.13.6** The Contractor shall comply with the Owner's Storm Water Pollution Prevention Plan ("SWPPP"), applicable storm water permit ("Permit"), and the Owner's Storm Water Compliance Guidelines ("Guidelines"). The Contractor shall implement the Best Management Practices ("BMPs"), set forth in the SWPPP, for any work that it performs on the Project site. The Contractor's execution of a GMP Amendment constitutes a representation that the Contractor has carefully reviewed the SWPPP, Guidelines and Permit. The Owner shall be entitled to recover from the Contractor all fines, fees, expenses and other penalties assessed by any governmental body due to the Contractor's violation of the Permit or its obligations herein. THE CONTRACTOR SHALL INDEMNIFY, DEFEND (WITH COUNSEL ACCEPTABLE TO THE OWNER) AND HOLD HARMLESS THE INDEMNITEES (AS DEFINED IN SECTION 3.18.1 BELOW), FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, ATTORNEYS' AND PARALEGALS' FEES, EXPENSES, OR LIABILITIES OF ANY TYPE OR NATURE, INCLUDING ANY AND ALL FINES OR OTHER PENALTIES, CIVIL OR CRIMINAL, ARISING OUT OF ANY VIOLATION OF THE PERMIT OR ANY OF THE CONTRACTOR'S OBLIGATIONS CONTAINED IN THIS SECTION 3.13.6, CAUSED, IN WHOLE OR IN PART, BY THE WRONGFUL ACTS OR OMISSIONS OF THE CONTRACTOR, THE CONTRACTOR'S SUBCONTRACTORS OR SUPPLIERS OR ANYONE ELSE FOR WHOM THE CONTRACTOR MAY BE LIABLE, OR OTHERWISE CAUSED IN WHOLE OR IN PART BY THE CONTRACTOR'S FAILURE TO COMPLY WITH THE OBLIGATIONS IN THIS SECTION.

**§ 3.13.7** The Contractor shall be responsible for maintaining in good condition all cultivated grass plots, trees, shrubs, and landscaping on the Project site. If damaged, Contractor shall restore same to its original condition after completion of the Work.

### **§ 3.14 Cutting and Patching**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly and to the Owner's and Architect's satisfaction. 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 the prior 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 promptly remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project, and, as applicable (a) remove putty stains from glazing, then wash and polish glazing; (b) remove marks, stains, fingerprints and other soil or dirt from painted, stained or decorated work; (c) remove temporary protection and clean floors and other surfaces; (d) clean and polish hardware and plumbing trim; (e) remove stains, dust, dirt, plaster and paint; (f) remove spots, soil, plaster and paint from, and clean, all marble, granite, wood work, and tile; (g) clean all fixtures and equipment, remove excess lubrication, clean light fixtures and lamps, and polish metal surfaces, (h) vacuum-clean carpeted surfaces; (i) clean windows, sliding doors and window and door frames, and (j) remove debris from drainage system, service area and service elevator. The Contractor shall be responsible for the coordination and direction of the cleanup and maintenance work of all trades. The Contractor shall not identify the Owner as the generator of, as the person who disposed of, or as the person who arranged for the disposal of any waste materials or rubbish generated in connection with the Work.

**§ 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. In the event the Owner undertakes the removal of same from the Project site, such removal will in no way qualify or limit the Contractor's obligations under the Contract Documents, including the Contractor's indemnity obligation under Section 3.18 hereof.

### **§ 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 Indemnitees 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, made known to, or reasonably should be known to the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Owner and Architect.

### **§ 3.18 Indemnification**

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify, defend (at Owner's request with counsel reasonably acceptable to the Owner) and hold harmless the Owner, the Architect, and their related and affiliated companies, and the respective officers, directors, agents, employees, successors and assigns of any of them (collectively, "**Indemnitees**"), from and against any and all claims, liabilities, damages, losses, and expenses, including attorneys' fees (collectively, "**Indemnity Claims**"), arising out of or resulting from performance of the Work, provided that such Indemnity Claim is attributable to bodily injury, sickness, disease or death (the

Contractor's employees included), or to injury to or destruction of tangible property (other than the Work itself to the extent of insurance proceeds received by the Owner from the Owner's property insurance), but only to the extent caused, in whole or in part, by the negligent, reckless or intentionally wrongful acts or omissions of the Contractor, or any of the Contractor's Subcontractors, suppliers, or agents of any tier or their respective employees, regardless of whether or not such Indemnity Claim is caused in part by any act, omission, or default of an Indemnatee arising from the Contract or its performance, provided that the Contractor shall not be obligated to indemnify the Indemnitees to the extent (on a comparative negligence basis) that the Indemnity Claim was caused by the act, omission or default of an Indemnatee arising from the Contract or its performance. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to an Indemnatee. The Owner and the Contractor acknowledge and agree that Section 725.06, Florida Statutes, does not require a monetary limitation on the extent of the indemnification provisions of this Section 3.18. If, notwithstanding this agreement, a monetary limitation on the extent of indemnification is deemed necessary to enforce any indemnification provision contained in the Contract, the specifications for the Project shall be deemed to include a monetary limitation on the extent of the indemnification required by said provision equal to the greater of, on a per occurrence basis: (a) two (2) times the Guaranteed Maximum Price, or (b) the amount of all deductibles and self-insured retentions applicable to the Contractor's insurance policy or policies applicable to such Indemnity Claim(s) plus the amount of insurance proceeds paid or payable under the Contractor's insurance policy or policies applicable to such Indemnity Claims, and the Contractor and the Owner expressly agree that this monetary limit bears a reasonable commercial relationship to the Contract. The Contractor's indemnification obligations under the Contract, including those in this Section, shall be deemed to fully comply with Section 725.06, Florida Statutes, to the extent applicable, including any amendments thereto, in all respects. If any word, clause or provision of any of the indemnification provisions of the Contract is determined by a court or arbitrator of competent jurisdiction not to comply with Sections 725.06, Florida Statutes, to the extent applicable, including any amendments thereto, it shall be deemed stricken and the remaining words, clauses, and provisions shall remain in full force and effect. To the greatest extent permitted by Applicable Laws, the Contractor waives for itself and its insurers any and all claims that the indemnification obligations under the Contract violate Applicable Laws.

**§ 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.

**§ 3.18.3** The Contractor's indemnity obligations shall also specifically include all fines, penalties, damages, liabilities, costs, expenses (including reasonable attorneys' and paralegals' fees and court costs), and punitive damages (if any) arising out of, or in connection with, any (a) violation of or failure by the Contractor or its Subcontractors to comply with any law, statute, ordinance, rule, regulation, code or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor, or any person or entity for whom any of them is responsible, (b) means, methods, techniques, procedures or sequences of execution or performance of the Work, and (c) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required of the Contractor under the Contract, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person for whom any of them is responsible.

**§ 3.18.4** The duty of the Contractor to indemnify and hold harmless the Indemnitees includes the separate and independent duty to defend the Indemnitees, which duty arises immediately upon receipt by the Contractor of the tender of any Indemnity Claim from an Indemnatee which under the written content of the claimant's description of its claim reasonably appears to be within the Contractor's indemnification obligation. The Owner shall give the Contractor notice of any Indemnity Claim promptly after becoming aware of such Indemnity Claim. The Contractor shall not be responsible for any defense costs incurred by the Owner prior to the Contractor's receipt of notice of such Indemnity Claim. By proceeding to defend an Indemnity Claim, the Contractor shall not be deemed to have admitted to an obligation to provide indemnification and defense and Contractor may provide a defense under a written reservation of rights. Should the Contractor breach its defense and indemnity obligations, the Owner may, and without relieving the Contractor of its indemnity obligations, assume any defense obligation and try or settle such claim, and the Contractor: (1) shall reimburse the Owner for all costs and expenses incurred or paid by any Indemnatee in such defense, settlement, trial or arbitration, and (2) pay any judgment or award obtained against the Indemnitees or any of them. This provision is separate and distinct from, and in addition to, any other provision, paragraph or section in the Contract Documents, including any provision, paragraph or section concerning indemnification and procurement of insurance.

**§ 3.19** The provisions of Sections 3.17 and 3.18 shall survive Substantial Completion and Final Completion of the Work, and the termination (for any reason) or expiration of this Contract, and no payment, partial payment, issuance of a certificate of Substantial Completion or Final Completion, nor acceptance of occupancy in whole or in part of the Work shall waive or release any rights afforded by Sections 3.17 or 3.18.

## **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** Any approvals, certificates, or decisions of the Architect are subject to the approval of Owner, which approval shall not be unreasonably withheld. At the Owner's discretion, the duties of the Architect described herein, other than those that require licensure as an architect under Applicable Laws, may be performed by the Owner or the Owner's other designated representative (e.g., the role of reviewing and certifying Applications for Payment and approving Change Orders). The Owner may do so by providing the Contractor written notice of any such role which the Owner or other designated representative is to assume. Neither this nor any other provision of the Contract Documents shall be deemed to relieve the Architect of its obligations to the Owner under the separate agreement between the Owner and the Architect.

### **§ 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 Owner makes final payment to the Contractor. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents. Any reference in the Contract Documents to the Architect's taking action or rendering a decision within a "reasonable time" or with "reasonable promptness" is understood to mean no more than ten (10) business days. Further, "rendering" a decision includes communicating that decision in writing to the appropriate party.

**§ 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 familiar with the progress and quality of the portion of the Work completed, and to determine if the Work observed is being performed in a manner indicating that the Work is being performed 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 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.

#### **§ 4.2.4 Communications**

The Owner and Contractor shall promptly notify the Architect of all communications between them that relate to or affect the Architect's services or professional responsibilities. Communications by and with the Architect's consultants shall be through the Architect. Contractor shall make all communications with the Owner through the Owner's authorized representatives. 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 recommend rejection of Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will recommend that the Owner 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, 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. 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. Review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12 and shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. Approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 At the Owner's request, the Architect will prepare Change Orders and Construction Change Directives, and the Architect with the Owner's written consent 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 provide a written opinion on 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. The Contractor shall copy the Initial Decision Maker on any such written requests to the Architect submitted pursuant to this Section, and decisions of the Initial Decision Maker shall take precedence over the decisions of the Architect in the event of conflict with opinions of the Architect.

§ 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.

§ 4.2.13 The Owner'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, as to proposed self-performed Work the Contractor, and those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Owner or 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 both the Owner and Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection. The Owner's recommendation and/or approval of a Subcontractor or supplier is for its own benefit and in no way shall make the Owner responsible for such Subcontractor or supplier or make the Owner responsible for the means and methods of performing the Work.

**§ 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 and Architect have no reasonable objection. The Contractor shall not award subcontracts to, person or entities to whom the Owner has objected. If after award of a subcontract, the Owner objects to a person or entity to whom the Owner has previously consented, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate 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 be subject to the Owner's prior approval. 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. The Contractor shall cause this Contract to be incorporated by reference in all agreements entered into between it and its Subcontractors, such that the terms and conditions of the Contract flow down to and bind all Subcontractors, whether specifically required or not by any provision of the Contract Documents. Additionally, unless otherwise agreed to by the Owner in writing, each subcontract agreement shall require or provide that: (a) nothing in the Contract Documents will create a contractual relationship between the Owner and a Subcontractor unless the Owner elects to accept contingent assignment of the Subcontract as provided in Section 5.4 below, (b) the Owner and its successors and assigns, if any, are each intended third-party beneficiaries of the subcontract having a direct right of action against the Subcontractor, including for breaches of warranties; (c) the Work being performed pursuant to such subcontract, as the case may be, shall be performed in accordance with the requirements of the Contract Documents and provide for no less than ten percent (10%) retainage; (d) the Subcontractor shall submit Applications for Payment in form acceptable to the Owner, together with reasonable backup and supporting information, which will be consistent with each Subcontractor having a stipulated sum subcontract price and not a cost-plus subcontract price, together with duly executed and notarized waivers and releases of lien in the statutory form; (e) the Subcontractor's obligations to indemnify, defend and hold harmless the Indemnitees shall be at least as broad as the Contractor's obligations hereunder, provided that the conditional limitation on the Contractor's indemnification obligations in Section 3.18.1 above need not be included in such subcontracts.; (f) each Subcontractor shall maintain insurance coverage as provided in the Agreement and to deliver to the Owner required certificates of such coverage, and, upon Owner's request, to provide copies of such insurance policies, and if not included in such policies,

additional insured endorsements, to Owner; (g) each Subcontractor and supplier shall continue to perform under its subcontract if the Contract is terminated and if Owner takes an assignment of the subcontract or supply agreement and requests the Subcontractor or supplier to continue such performance, in which event the Subcontractors' and vendors' rights and claims as against the Owner shall be limited as provided below in Section 5.4.2; (h) the termination and suspension provisions set forth in Article 14 below are included; and (i) the Subcontractor shall resolve all disputes involving the Owner in the same manner as provided in the Agreement. 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. The Contractor shall deliver copies of all signed subcontracts and purchase orders with Subcontractors and suppliers to the Owner promptly after the full execution thereof.

#### **§ 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 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, (a) the Owner assumes all of the Contractor's rights under the subcontract, and (b) the Owner assumes all of the Contractor's obligations under the subcontract that accrue after the date of assignment. The Contractor shall indemnify and hold harmless the Owner from any expenses or liability arising from or related to Work by any Subcontractor prior to the date of assignment, and from any Subcontractor rights or claims accruing prior to the date of assignment except only if and to the limited extent such Subcontractor claims include amounts for which the Owner undisputedly owed to but failed to pay the Contractor in accordance with the Contract.

**§ 5.4.2** Each subcontract shall specifically provide that (a) the Owner shall only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the date of assignment of such subcontract, and (b) to the fullest extent permitted by law, the Subcontractor hereby waives and releases all rights and claims against the Owner for reimbursement or other compensation for work performed and expenses and liabilities incurred by the Subcontractor prior to the date of assignment, including any rights the Subcontractor might otherwise have to payment for extra work directed by the Contractor prior to the date of assignment without the Owner's prior written consent.

**§ 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.

### **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.

**§ 6.1.2** The Contractor shall not be responsible for the direction and management of the Owner's Separate Contractors. If the Owner directs the Contractor in writing to assume responsibility for the management and direction of the Owner's Separate Contractors, the Contractor may request a Change Order in accordance with Section 7.5 for the additional Cost of the Work plus Contractor's Fee thereon that the Contractor claims is necessitated thereby.

**§ 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** Prior to commencing their work at the Project site, Separate Contractors shall be required to provide to the Owner and the Contractor a valid certificate of insurance for commercial general liability insurance, and automobile liability insurance. Additionally, all Separate Contractors shall be subject to the Contractor's site safety requirements for the Project site, as described in Section 10.1 below.

## **§ 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 Owner and 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 Owner and 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. Subject to the limitations of Section 8.3.3, the Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's: (a) delays that delay the critical path of the Work, (b) improperly timed activities that delay the critical path of the Work, and (c) 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 Owner 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. Except as permitted in Section 7.3 and Subsection 9.7.2, a change in the Contract Sum or Contract Time shall be accomplished only by a Change Order. Accordingly, no course of conduct or dealings between the Parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be a basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided in the Contract Documents.

**§ 7.1.2** A Change Order shall be based upon agreement between the Owner and Contractor. A Construction Change Directive requires agreement 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, subject to the Owner's prior written approval.

**§ 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.

**§ 7.1.4** In order to facilitate checking of quotations for extras or credits, all proposals (including as part of CORs, as defined below in Section 7.5) shall be accompanied by a complete itemization of both budgeted costs and actual costs, including labor hours, labor burden and labor rates used, and material, equipment, and subcontract costs, all of which shall be broken down by CSI Division (or by line item in the approved Schedule of Values, if different) and supported by Subcontractor and supplier quotes and other actual cost documentation, and such other supporting documentation and information as reasonably requested by the Owner or the Architect. Where major cost items are subcontracts, they shall be itemized also.

## **§ 7.2 Change Orders**

**§ 7.2.1** A Change Order is a written instrument prepared by the Contractor or 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.

The Contractor shall submit with any request for a Change Order a calculation of the costs the Contractor estimates are associated with such requested Change Order, including unit costs, and such other information as reasonably requested by the Owner or the Architect. For those Change Orders for which a unit price has not been established in advance, the basis of the amount of the Change Order shall be the reasonable expenditures and savings of those performing the Work attributable to the change based on the Cost of the Work and Construction Manager's Fee thereon at the rate specified in the Agreement. Unless otherwise specified in the Change Order, agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum, Contract Time and construction schedule unless clearly noted otherwise in the Change Order (such as in the case when multiple changes on the Project have an aggregate effect on Cost of the Work or construction schedule, the cumulative effect of which is not fully known to the Contractor, and the Owner and the Contractor have agreed in writing in a particular Change Order that such cumulative impacts may be subject to a later Change Order).

## **§ 7.3 Construction Change Directives**

**§ 7.3.1** A Construction Change Directive is a written order signed by the Owner and, if required by the Owner, the 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 of the Work for the changed Work to be determined in a manner specified in the Agreement and Construction Manager's Fee thereon as set forth in the Agreement; 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 Owner shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including an amount for fee (overhead and profit) as set forth in the Agreement. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data, including that required by Section

7.1.4. 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 reasonable employee costs approved by the Owner;
- .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 subject to the Contractor's full compliance with notice requirements and other preconditions to and limitations on claims for adjustment in the Contract Time in the Contract.

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

**§ 7.3.7** 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 Owner, and fee (overhead and profit) thereon at the rate specified in the Agreement. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for fee (overhead and profit) shall be figured on the basis of net increase or decrease 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 Owner will make an interim determination for purposes of monthly certification for payment for those costs and permit the Architect to certify for payment the amount that the Owner determines, in the Owner's reasonable judgment, to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of the Contractor 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 Owner 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 Contractor, or at the Owner's request, the Architect will prepare a Change Order consistent with the Owner's determination. Change Orders may be issued for all or any part of a Construction Change Directive.

#### **§ 7.4 Minor Changes in the Work**

The Architect, with the Owner's prior written approval, 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 promptly 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.

**§ 7.5** If the Contractor becomes aware of any circumstance that may be a change in the scope of the Work, or of an act or failure to act by the Owner, the Architect, or the Owner's other consultants, that in the Contractor's opinion

justifies a change to the Contract Sum or Contract Time, or if the Contractor otherwise becomes aware of the need for or desirability of a change in the Work, then the Contractor must within three (3) business days submit a written Notice of Potential Change Order (a "**PCO**") to the Owner and the Architect in a format acceptable to the Owner.

The Contractor may, as provided below, submit a written Rough Order of Magnitude ("**ROM**"), which shall specify the reasons for such proposed change and include a detailed description of the changed Work, an estimated price for such changed Work and estimated adjustment to the Contract Time related to such changed Work, together with any substantiating data required by Sections 7.1.4 or 15.1.6, or otherwise required by the Owner or the Architect, within ten (10) business days after delivery of the PCO or such longer period of time to which the Owner may agree in writing. The Contractor shall submit a written Change Order Request ("**COR**"), which shall include a final detailed description of the changed Work, a final price proposal for such changed Work and any requested adjustment of the Contract Time, together with any additional substantiating data required by Sections 7.1.4 and 15.1.6 not previously delivered to the Owner, or otherwise required by the Owner or the Architect. The Contractor shall clearly label PCOs, ROMs and CORs as such when submitting them to the Owner. In the event that the reasons for the proposed change in the scope of the Work, the scope of changed Work, the price of such changed Work and the time impact of such changed Work is known within the time for submitting an ROM, the Contractor may elect not to deliver to the Owner an ROM but rather proceed directly to the delivery to the Owner of a COR within the time for delivery of an ROM. The Contractor may request additional compensation and/or time through a COR but not for instances that the Contractor knew or reasonably should have known occurred more than thirteen (13) business days prior to the date an ROM or COR (if the Contractor elects to deliver an COR within such 13 business-day period) is submitted.

The Contractor's failure to deliver an ROM or COR within such thirteen (13) business-day period, or such longer time to which the Owner may have agreed in writing, shall be deemed a waiver of the right to adjustment of the Contract Sum or the Contract Time for the alleged change. Any COR that is approved by the Owner will be incorporated in a Change Order or Construction Change Directive. If the Owner determines that the Work in question is not a change in the scope of the Work and the COR is denied but the Contractor believes that it does have merit, the Contractor may submit a Claim in accordance with the procedures set forth herein. The time frames in this Section 7.5 shall control over those specified in Article 15. Further, notwithstanding anything herein to the contrary, the Contractor must comply with the provisions of this Section 7.5 as a condition to entitlement to any Claim for an increase in the Contract Time or Contract Sum.

**§ 7.6** The Owner may issue a request, in writing, to the Contractor, describing a proposed change to the Work and requesting the Contractor submit an itemized proposal in a format acceptable to the Owner within ten (10) business days after the Owner issues the request. The Contractor's proposal shall include an analysis of impacts to cost and time, if any, to perform additional work, or delete Work, as applicable, including the effects and impacts, if any, on unchanged Work, estimates of costs and the Contractor's proposed methods to minimize costs, delay and disruption to the performance of the Work. If the Contractor fails to submit a written proposal or request additional time for submitting the proposal within the 10-business day time period, then the Owner may send a subsequent written notice to the Contractor requesting the Contractor's proposal. If the Contractor fails to submit a written proposal or request for additional time for submitting the proposal within three (3) days after receipt of such subsequent written notice, it shall be presumed that the change described in the Owner's request for a proposed change will not result in a modification to the Contract Sum or Contract Time and the change shall be performed by the Contractor without additional compensation. The Owner's request for a proposed change does not authorize the Contractor to commence performance of the change, unless otherwise specified in writing. If the Owner decides that the proposed change shall be performed, the Work shall be authorized according to the Change Order or Construction Change Directive procedures set forth above.

**§ 7.7** The Contractor shall make a good faith determination of the validity of the nature and amount of changes requested by Subcontractors before passing through such requests to the Owner. It is the Contractor's responsibility to check all Subcontractor and supplier questions for correctness, completeness, detail and fairness before submitting to the Owner.

## **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 established 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, 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 and Final Completion by the Final Completion Date.

§ 8.2.4 In performing any critical path method (CPM) analysis relating to the Work, float or slack time ("Float") associated with one chain of activities is defined as the amount of time between earliest start date and latest start date or between earliest finish date and latest finish date for such activities, as described in the approved construction schedule for the Work, including any revisions or updates to the schedule. The Project owns the Float, which means Float is not for the exclusive use of any of the Parties and it serves whoever needs it first as long as it is used in good faith.

§ 8.2.5 The Contractor shall ascertain, coordinate, and minimize interruptions to Owner's business operations. To avoid impacts to Owner's business operations, the Contractor has anticipated the need to use non-standard work hours and has included same in the Contract Sum. No claims for extras or requests for Change Orders based upon premium or overtime work due to non-standard work hours shall be submitted to or be required to be paid by the Owner.

§ 8.2.6 The Contractor shall cease to conduct Work and construction operations at the Project site from sunset Friday through Sunset Saturday in conformance with Owner's observance of the Sabbath.

## § 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the critical path of the Work by: (a) labor disputes, fire, unavoidable casualties or other causes beyond the Contractor's control that the Owner determines justify delay (collectively, "Force Majeure Events"); (b) an act or neglect of the Owner or Architect, or of an employee of either, or of a Separate Contractor employed by the Owner; (c) changes ordered in the Work by the Owner; (d) issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped, or an act of government, such as a declaration of national emergency or governmental response to a global pandemic, that requires all Work to be stopped, (e) industry-wide or site specific: (i) quarantines or shortages of labor or materials or (ii) injunctions or orders issued by applicable governmental entities that adversely impact the transportation or importation of materials or utilization of labor required for the Work, when such quarantines, shortages, injunctions or orders are a result of an epidemic or pandemic (other than the presently known impacts of and governmental orders presently issued pertaining to COVID-19), or (f) delay authorized by the Owner pending mediation or other dispute resolution proceedings, then the Contract Time shall be extended by Change Order to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not, or would not have been delayed by any other cause for which the Contractor is not entitled to an extension of time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by the Contractor, (ii) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay or reasonable likelihood that the delay will occur, (iii) delays the critical path of the Work and is of a duration not less than one (1) day, and (iv) written notice is provided to the Owner in writing within five (5) working days after the Contractor recognizes or discovers such delay. Notwithstanding anything to the contrary in the Contract Documents, an extension of the Contract Time, to the extent permitted under this Section 8.3.1, shall be the sole remedy of the Contractor for any (i) delay in the commencement, prosecution, or completion of the Work, (ii) hindrance or obstruction in the performance of the Work, (iii) loss of productivity, or (iv) other similar claims whether or not such delays are foreseeable, unless a delay is caused by acts of the Owner constituting active interference with the Contractor's performance of the Work, and only to the extent such acts continue after the Contractor furnishes the Owner with notice of such interference or a delay is caused by a Force Majeure Event exceeding fifteen (15) days in the aggregate (i.e. there shall be no

increase in the Contract Sum for delays caused by Force Majeure Events unless the delays caused by Force Majeure Events exceed 15 days). In no event shall the Contractor be entitled to any compensation or recovery from the Owner in connection with any delay, for consequential damages, lost opportunity costs, impact damages, or other similar remuneration. To the extent the Contractor is entitled under the Contract Documents to an extension of time due to a delay, but the performance of the Work is independently suspended, delayed, or interrupted by a delay for which the Contractor is not entitled to an extension of time, the delay shall be deemed to be a **"Concurrent Delay."** In the case of a Concurrent Delay, the Contractor shall be entitled to an extension of the Contract Time but the Contractor shall not be entitled to any additional compensation whatsoever during the period of Concurrent Delay. The Contractor shall take all reasonable steps to mitigate the impact of any delays, however caused, regardless of whether the Contractor might otherwise be entitled to adjustment of the Contract Sum or Contract Time for such delays.

**§ 8.3.2** Claims relating to time shall be made in accordance with applicable provisions of Section 7.5 and Article 15.

**§ 8.3.3** The extension of time provided for in Section 8.3.1 shall be the Contractor's sole remedy for any delay, with the exception of the additional cost provided in this Section 8.3.3 below. The Owner shall not be obligated or liable to Contractor for, and Contractor expressly waives any claims against Owner on account of, any damages, costs or expenses of any nature whatsoever which Contractor, its Subcontractors of any tier or any other person may incur as a result of any delays, interference, suspensions, rescheduling, changes in sequence, congestion, disruptions or the like arising from or out of any act or omission of Owner, it being understood and agreed that Contractor's sole and exclusive remedy in such event will be an extension of the schedule as provided for in Section 8.3.1, but only in accordance with the provisions of Section 8.3.1, and, if applicable an adjustment to the Contract Sum in accordance with this Section 8.3.3. An adjustment in the Contract Sum shall only be allowed for delays caused by the acts of the Owner constituting active interference with the Contractor's performance of the Work that continue after the Owner's receipt of written notice from the Contractor or delays caused by Force Majeure Events exceeding fifteen (15) days in the aggregate (but not for Concurrent Delays) and such adjustment under or pursuant to this Section 8.3.3 shall be limited to the increase, if any, of direct costs incurred by the Contractor in performing the Work as a result of that portion of such delay or delays that cause the Contract Time to be increased. Without limitation, direct costs do not include and the Contractor waives claims relating to damages, delay damages or time-related costs or damages, including, without limitation: (1) profit on the additional costs beyond those as allowed elsewhere in the documents, (2) loss of anticipated profit, (3) indirect expenses, (4) impact costs, (5) loss of productivity, (6) inefficiency costs, (7) home-office overhead, (8) consequential damages, including, but not limited to, loss of bonding capacity, loss of bidding opportunities and insolvency, and (9) legal fees, claims preparation expenses, or costs of dispute resolution.

**8.3.4** While the Contractor may schedule completion of all of the Work, or portions thereof, earlier than the Contract Time, the Owner is exempt from liability for, and the Contractor shall not be entitled to, an adjustment of the Contract Sum or to any additional costs or damages, including claims for increased or extended General Conditions Costs or any other general requirements costs, home office overhead, jobsite overhead and management or administrative costs, or compensation whatsoever for use of Float or for Contractor's inability to complete the Work earlier than the Contract Time for any reason whatsoever, including delay caused by Owner.

## **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**

The Contractor shall submit a schedule of values with its Guaranteed Maximum Price proposal. The Schedule of Values and each update thereto shall allocate the entire Guaranteed Maximum Price 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 Owner. The most recent schedule of values approved by the Owner (i.e. the **"Schedule of Values"**) shall be used as a basis for reviewing the Contractor's Applications for Payment. The Schedule of Values shall be updated each month by the Contractor, subject to the Owner's review and written approval, to reflect all approved

Change Orders and Construction Change Directives which may have been issued by the Owner during the period covered by the current Application for Payment. Any changes to the Schedule of Values shall be submitted to the Owner and Architect and supported by such data to substantiate its accuracy as the Owner or Architect may require. Without limiting the foregoing, Schedule of Values line items and line-item amounts shall not be modified by the Contractor unless the Owner executes a Change Order or Construction Change Directing expressly authorizing specified additions, deletions or revisions to specific Schedule of Values line items and/or line-item amounts.

### **§ 9.3 Applications for Payment**

**§ 9.3.1** At least twenty (20) days before the date established for each progress payment, the Contractor shall submit to the Owner and Architect a properly completed and itemized Application for Payment on form AIA Document G702 (and G703, if necessary) or such other form as may be approved in writing by the Owner prepared in accordance with the approved Schedule of Values 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 as provided for in the Contract Documents. Upon request of the Owner, Contractor shall provide a certified statement accounting for the disbursement of funds received from the Owner, which shall itemize all disbursements to Subcontractors and suppliers and shall be accompanied by copies of Subcontractor payment vouchers, suppliers' invoices, payrolls, and other data substantiating actual expenditures.

**§ 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 Owner, 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 because of a dispute or any other reason, 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 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 ten (10) business days after receipt of the Contractor's properly completed Application for Payment and all supporting documentation and information required by the Contract Documents, 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, and the Owner may withhold a payment, or because of subsequently discovered evidence, offset against any current payment otherwise due amounts previously paid, to such extent as may be necessary in the Architect's or Owner's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied or Work rejected by any government authority having jurisdiction over the Project and which was not done as required by the Contract Documents;
- .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 Guaranteed Maximum Price (in which event no additional payments will be due the Contractor hereunder unless and until the Contractor, at its sole cost, performs a sufficient portion of the Work so that the portion of the Guaranteed Maximum Price then remaining unpaid is sufficient to complete the Work);
- .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. No interest shall be payable to the Contractor for amounts withheld pursuant to Section 9.5.1.

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

**§ 9.5.4** If the Architect withholds certification for payment, or the Owner withholds 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. Further, the Owner may, in its sole discretion, issue joint checks to the Contractor and to any Subcontractor or supplier as provided in preceding Section 9.5.4, for any reason other than that specified in Section 9.5.1.3, upon five (5) days prior written notice to the Contractor. However, the Owner will not issue a joint check to a Subcontractor or supplier if the Contractor has a bona fide dispute with such Subcontractor or supplier as to such Subcontractor's or supplier's entitlement to such payment and the Contractor has notified the Owner in writing of such dispute and requested the Owner not to issue a joint check prior to the Owner's issuance of such joint check, provided that nothing in this Section 9.5.4 shall be deemed to relieve the Contractor of its obligations herein with respect to payments to Subcontractors or suppliers, including its obligations under Section 9.6.8 below. If the Owner makes payments by joint check, (a) the Owner shall notify the Architect, (b) such amount shall be credited against any payment due to the Contractor hereunder and the Owner shall be relieved and released from the obligation to make such payment to the Contractor, and (c) the Contractor shall reflect such payment on its next Application for Payment. The Owner's reserved right to issue joint checks shall not be construed as imposing any obligation upon

the Owner to do so. The Owner's exercise of its right to make payment by joint check to particular Subcontractors or suppliers shall not be construed as imposing any obligation upon the Owner to make such payments to other Subcontractors or suppliers. The Owner's exercise of its right to make payments by joint check to some or all Subcontractors or suppliers during particular pay periods shall not be construed as imposing any obligation upon the Owner to make such payments to such Subcontractors or suppliers for other pay periods.

## **§ 9.6 Progress Payments**

**§ 9.6.1** After the Architect has issued a Certificate for Payment, subject to the satisfaction of all other conditions precedent to 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, upon receipt of payment from the Owner and clearance of such payment, out of the amount paid 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 Guaranteed Maximum Price, 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, indemnify, and hold harmless the Indemnitees 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, and shall pay any judgment or lien resulting from any such actions, lawsuits, or proceedings. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If any lien or liens are claimed on the Owner's or any other person's or entity's property by any person or entity as a result of the Work, provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall cause the lien or liens to be satisfied or transferred to other security in accordance with Section 713.24, Florida Statutes. If the Contractor fails to do so within twenty (20) days after receiving notice of such lien or claim of lien, the Owner may take such action as it deems advisable to protect itself from such lien or claim of lien and the Contractor shall pay to the Owner the reasonable amounts incurred by the Owner, including reasonable attorneys' and paralegals' fees in taking such protective action. The obligations of the Contractor under this Section 9.6.8 are in addition to and in no way to be construed as a limitation of the obligations of the Contractor's or any Subcontractors' surety under any payment bond.

## § 9.7 Failure of Payment

§ 9.7.1 If the Owner does not pay the Contractor within the time period established in the Contract Documents the undisputed amount due the Contractor, then the Contractor may, upon seven (7) days' notice to the Owner and Architect, stop the Work until payment of the undisputed amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the reasonable amount of the Contractor's out-of-pocket costs necessarily incurred as a direct result of shutdown, delay and start-up, subject to the preconditions and limitations of Sections 7.5, 8.3, and other provisions of the Contract.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor pursuant to the Contract Documents, such payment shall be made within ten (10) days after the Owner's written demand (unless a different time for such payment is expressly provided for in the Contract Documents). Notwithstanding anything in the Contract Documents to the contrary, if the Contractor fails to timely make any payment due the Owner or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have the right to offset such amount against the Contract Sum and may elect either to: (a) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (b) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

## § 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, with all Project systems operational, so that the Owner can lawfully occupy or utilize the Work for its intended use without material interference from unfinished or improperly finished items of Work and the Owner has accepted the Work as evidenced by the delivery from the Owner to the Contractor of a Certificate of Acceptance in form acceptable to the Owner; provided, however, as conditions precedent to Substantial Completion, (a) the Owner must have received all Certificates of Occupancy and any other permits, approvals, licenses and other documents from any governmental authority having jurisdiction thereof necessary to allow the Owner to occupy and operate the Project for its intended use; provided, however, in the event that a certificate of occupancy cannot be issued due to reasons outside the scope of Contractor's responsibilities under the Contract Documents, then the Contractor shall be deemed to have achieved Substantial Completion when the Contractor has satisfied all other requirements for Substantial Completion and the Contractor has passed all building inspections within its scope of Work under the Contract Documents, (b) all Project systems included in the Work are operational as designed, scheduled and commissioned, and (c) all necessary instruction and training has been provided to the Owner's personnel.

§ 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 Owner and Architect a comprehensive draft of a proposed "Punch List" setting forth any items that are incomplete or found not to be done in accordance with the Contract Documents. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. In connection with the preparation of the Punch List, the Contractor shall arrange a meeting with applicable Subcontractors to identify and explain all items that are found to be defective, incomplete or otherwise not in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's draft Punch List, the Architect (and, at the Owner's option, the Owner) will make an inspection to determine whether the Work or designated portion thereof is substantially complete and make any revisions to the draft Punch List determined to be necessary. If such 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 complete or correct such item upon notification by the Owner or Architect as a precondition to issuance of the Certificate of Substantial Completion. In such case, the Contractor shall then submit a request for another inspection by the Architect (and, at the Owner's option, the Owner) to determine Substantial Completion. If more than one (1) inspection by the Architect is required to prepare the Punch List or more than one (1) inspection by the Architect is required to verify the completion or correction of Punch List items, the Owner may require the Contractor to pay for any extra fees charged by the Architect for such additional inspections.

§ 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 revised Punch List accompanying the Certificate to include other items identified by the Owner or the Architect as requiring completion or correction (but minor enough so as not to preclude determination of Substantial Completion). 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.

### **§ 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 (which, without limitation, requires a temporary or permanent Certificate of Occupancy for such portion from the governing authorities having jurisdiction over the Work, and that all mechanical and electrical work be complete and functional within such portion of the Work), 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. 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 Owner.

**§ 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. Further, partial occupancy shall not: (1) constitute final acceptance of any Work (2) relieve the Contractor for responsibility for loss or damage because of or arising out of defects in, or malfunctioning of, any Work, material, or equipment, nor from any other unfulfilled obligations or responsibilities under the Contract Documents, or (3) commence any warranty period under the Contract Documents unless agreed to otherwise by the Parties in writing.

### **§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect (and, at the Owner's option, the Owner) will promptly make such inspection. When the Owner and Architect find 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 by the Architect that all conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Contractor shall submit its final payment request within sixty (60) days of final completion of the Work. Neither final payment nor any remaining retained percentage shall become due until all conditions precedent to final payment set forth in the Contract have occurred or been satisfied and the Contractor submits to the Owner and Architect (1) a duly executed and notarized Contractor's Final Payment Affidavit in statutory form confirming 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) Record Drawings and Record Documents, documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and operation and maintenance manuals, (6) with

the Owner's maintenance personnel, the Contractor shall have directed the checkout and/or commissioning of utilities, operations systems, and equipment for readiness, and assisted in their initial start-up and testing, and (7) 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' and paralegals' 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, provided that all other conditions precedent to final payment have occurred or been satisfied. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Owner and Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

**§ 9.10.4** 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 warranties required by the Contract Documents;
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment; or
- .5 the Contractor's representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, that survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor as provided in Section 13.6 below.

**§ 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 and for providing a safe workplace for performance of the Work, including devising a Project-specific safety program with a qualified and dedicated safety representative. The review of any safety plan by the Owner or Architect shall not, and shall not be deemed to, release the Contractor or in any way diminish its liability, by way of indemnity or otherwise, as assumed by it under the Contract Documents. The Contractor expressly agrees that it is in charge of and in control of the Work and that it shall have sole exclusive responsibility to comply with the requirements of any and all Applicable Laws pertaining thereto. The Owner and the Architect are not in charge of the Work or in control of the execution of the Work. The obligation of the Contractor under this Section 10.1 shall be construed to include injury or damage because the Contractor, its agents and employees failed to use or misused any scaffold, hoist, crane, stay, ladder, support or other mechanical contrivance erected or constructed by any person, or any or all other kinds of equipment, whether or not owned or furnished by the Contractor. The Contractor shall, and shall cause its Subcontractors and suppliers to (in connection with any Work), comply with all Applicable Laws bearing on safety of persons or property or their protection from damage, injury or loss.

### **§ 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 bearing on safety of persons or property or their protection from damage, injury, or loss. Without limitation of the foregoing, the Contractor shall, and shall cause its employees, agents (including Subcontractors) and other representatives to, comply with the requirements of the Occupational Safety and Health Act of 1970, as amended, and similar Applicable Laws. The Contractor shall be deemed the "employer" within the meaning of such Applicable Laws, and neither the Owner nor its consultants shall be responsible for any OSHA non-compliance in connection with performance of the Work. The Contractor shall notify the Owner immediately in the event of an Occupational Safety and Health Administration inspection when no Owner personnel are on site. In addition, the Contractor shall comply with the applicable requirements of the Owner's safety program, if any.

**§ 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. Further, the Contractor shall employ all necessary measures to protect adjoining adjacent property and shall provide barricades, temporary fences and covered walkways required to protect the safety of passersby, as required by prudent construction practices, the Contract Documents and Applicable Laws.

**§ 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 and licensed personnel. Without limitation of the foregoing, the Contractor is solely responsible for maintaining and implementing at the Project site a "Hot Works Program" at no additional cost or charge to the Owner to fully protect against a loss resulting from work being performed that includes an open flame or producing heat or sparks, or both, including when welding, cutting, brazing, grinding, soldering, or using a torch to thaw piping or to heat material. The "Hot Works Program" shall at the very least require at a minimum precautionary safeguard checklists and proper instruction on the implementation to monitor and safeguard the area where work is being performed.

**§ 10.2.5** The Contractor shall promptly remedy damage and loss (other than damage and loss to the extent of proceeds of insurance received by the Owner from the Owner's property insurance) 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 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 or anyone for whom the Contractor is responsible or liable. 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. Without limitation, when required by Applicable Laws or for the safety of the Work, the Contractor shall shore up, brace, underpin, and protect foundations and other portions of existing structures which are in any way affected by the Work. The Contractor, before commencement of any part of the Work, shall give any notices required to be given to adjoining landowners or other parties.

#### **§ 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 ten (10) business days after discovery. The notice shall provide sufficient detail to enable the other Party to investigate the matter.

**§ 10.2.9** When all or a portion of the Work is suspended for any reason, the Contractor shall take reasonable efforts to securely fasten down all coverings and fully protect the Work, as necessary, from injury or damage..

**§ 10.2.10** The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work that cause death, personal injury or property damage, giving full details and statements of any witnesses.

### **§ 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 otherwise concealed and not disclosed, and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including 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. 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 direct costs of shutdown, delay, and start-up, subject to the provisions and limitations of Articles 7 and 8. As used herein, the term "rendered harmless" shall be interpreted to mean that levels of asbestos, polychlorinated biphenyl (PCB) or any hazardous materials are less than any applicable exposure standards set forth in EPA and OSHA regulations.

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor and Subcontractors, and employees of any of them from and against claims, damages, losses, and expenses, including 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 Contractor shall not knowingly use or permit the use of any hazardous substance at the Project site without the express written consent of the Owner. The Contractor agrees not to use any fill or other materials to be incorporated into the Work which are hazardous, toxic or comprised of any items that are hazardous or toxic. The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor or anyone for whom the Contractor is responsible or liable 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, negligence, or non-compliance with Applicable Laws in the use, handling, storage, and disposal 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, or in violation of Applicable Laws, uses, handles, stores, or disposes, 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** The Contractor shall provide the Owner with Material Safety Data Sheets for all hazardous substances prior to bringing such materials to the Project site.

**§ 10.3.7** The indemnity obligations contained in this Section 10.3 shall survive the termination of the Contract.

### **§ 10.4 Emergencies**

In an emergency affecting safety of persons or property, the Contractor shall act promptly, at the Contractor's reasonable 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 Articles 7, 8, and 15.

## **§ 10.5 Mold, Mildew, Fungi and Other Airborne Microbial Conditions**

The Contractor shall perform the Work with all reasonable steps and precautions to minimize as much as reasonably practicable potential danger to person or property exposed to mold, mildew, fungi, or other microbial conditions, including Aspergillosis ("**Airborne Fungi**") caused by the Contractor's performance of the Work. Without limitation, the Contractor shall comply with all Applicable Laws relating to the control of any mold, fungi, or other microbial contamination that is created by the Contractor or anyone for whom the Contractor is responsible for during the course of the Work, without additional charge or expense to Owner. For the avoidance of doubt, Applicable Laws include: (a) all of the requirements of the current Federal Occupational Safety and Health Act ("**Act**"), as well as any amendments thereto and all regulations promulgated under the Act, (b) all guidelines developed by the U.S. Environmental Protection Agency, (c) all orders of public authorities having jurisdiction, (d) all statutes regulating the licensure of persons or business entities engaged in the control or remediation of mold, fungi, or other microbial contamination, and (e) the ICRA standards and requirements for the Project. Should the Contractor fail to comply with the requirements of this Section, the Contractor shall be responsible for all damages caused by any Airborne Fungi arising from or created by such Work and shall indemnify and hold harmless Indemnitees from and against any and all claims, damages, losses or expenses, including attorneys' and paralegals' fees, associated with any actual or alleged bodily injuries or tangible property damage sustained by any person, arising out of or in consequence of Airborne Fungi to the extent caused by or created by the performance of such Work. Upon the discovery of any such contamination, the Contractor shall immediately provide written notice to Owner and any insurance carrier(s) providing applicable coverage.

## **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 or Applicable Laws, at all times during the performance of the Work until final acceptance of the Work or for such longer duration as required by 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 Indemnitees shall be included as additional insureds under the Contractor's commercial general liability policy and as otherwise described in the Contract Documents. The amount of the insurance liability under this insurance policy shall not be reduced by the existence of other insurance. Information concerning reduction of coverage shall be furnished by the Contractor promptly but in no event later than three (3) days after the Contractor obtains knowledge of such reduction. Insurance coverage required in this Contract shall be additional security for the obligations assumed by the Contractor and in no event shall the types or limits of coverage required be deemed to limit any obligations or liabilities assumed under this Contract. The carrying of insurance shall not be deemed to release the Contractor or in any way diminish its liability or obligations, by way of indemnity or otherwise, under the Contract Documents. If the Contractor fails to purchase and maintain any insurance required under the Contract Documents, the Owner may but shall not be obligated to, upon two (2) days prior written notice to the Contractor, purchase such insurance on behalf of the Contractor, and shall be entitled to be reimbursed by the Contractor upon demand. In no event shall any failure of the Owner to receive required evidence of insurance or to demand receipt of evidence prior to the Contractor's commencing the Work be construed as a waiver by the Owner of the Contractor's obligations to obtain insurance pursuant to the Contract Documents. The obligation to procure and maintain insurance required by the Contract Documents is a separate responsibility of the Contractor and independent of its duty to furnish the required evidence of such insurance policies. The delivery of the required evidence of insurance is a condition precedent to the Owner's obligation to make payments. In the event of any conflict or inconsistency in the insurance requirements of the Contractor under the Contract Documents, the Contractor shall deliver prompt written notice to the Owner but shall provide the insurance that meets the higher standard or better quality unless otherwise agreed in writing by the Owner.

**§ 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.

**§ 11.1.5** The Contractor shall cause each Subcontractor to purchase and maintain the insurance as is required of the Subcontractors under the Contract Documents, as well as any other coverage that the Contractor may consider necessary. The coverage afforded under any insurance policy obtained under or pursuant to the Contract Documents shall be primary to, and non-contributory with, any valid and collectible insurance carried separately by any of the additional insureds. If the additional insureds have other insurance that is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurance liability under this insurance policy shall not be reduced by the existence of other insurance.

## **§ 11.2 Owner's Insurance**

**§ 11.2.1 Property Insurance** 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, after five (5) days' prior written notice to the Owner, obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-subcontractors in the Work. The cost of such insurance shall be charged to the Owner by Change Order 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. 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 of insurance proceeds received for those losses from property insurance required by the Contract or other property insurance applicable to the Project or that would have been received but for the failure of the insured to make a claim under the applicable policy. Notwithstanding the foregoing, the insurer providing the property insurance (including Builder's Risk insurance) may be subrogated to all of the Owner's rights of recovery against: (a) any architect or engineer, whether named as an insured or not, for any loss or damage arising out of the performance of professional services in their capacity as such and caused by an error, omission, deficiency or act of the architect or engineer, by any person employed by them or by any others for

whose acts they are legally liable, and (b) any manufacturer or supplier of machinery, equipment or other property, whether named as an insured or not, for the cost of making good any loss or damage which said party has agreed to make good under a guarantee or warranty, whether expressed or implied. 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 for loss of use of the Owner's property, due to fire or other hazards however caused to the extent such loss of use is covered under such insurance or would have been covered but for the Owner's election not to procure such insurance, provided that such insurance was reasonably available prior to the loss.

#### **§ 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 in good faith and made payable to the Owner for the benefit of 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. Subject to the foregoing, the Owner shall have the full power to adjust and settle all losses and claims under the Owner's property insurance policy or policies.

**§ 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 Owner's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Owner or Architect, be uncovered for the Owner's or 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 Owner, Architect, or any governing authority has not specifically requested to examine prior to its being covered, the Owner, the Architect, or any governing authority 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, within twenty-four (24) hours in the event of an emergency threatening imminent harm to person or property or, otherwise, within seven (7) days of receipt of notice from the Owner remove from the Project site any Work that the Owner rejects as unsound or improper or in any way fails to meet 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 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, within twenty-four (24) hours in the event of an emergency threatening imminent harm to person or property or, otherwise, within seven (7) days of receipt of notice from the Owner, commence correction and thereafter diligently prosecute such correction to completion. Without limitation, the Contractor shall provide all labor, engineering, supervision, equipment, tools, and materials necessary to effect the remedy and shall bear all of the Contractor's expenses in connection therewith. The cost of all work incidental to such remedy, including the removal, replacement, or installation of conforming Work or materials or equipment, and the cost of transporting required items to and from the site, shall be borne solely by the Contractor. The Contractor also shall, at no cost to the Owner, perform such tests as Owner may require verifying the corrected or re-performed Work or the repaired, replaced, or modified item of material or equipment is satisfactory. If the Contractor fails to fully and timely correct nonconforming Work as provided herein, 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. The Contractor's obligations under Section 12.2 shall survive acceptance of the Work under the Contract and termination of the Contract.

**§ 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.

**§ 12.2.2.4** The obligations under Section 12.2 shall also include any repairs to and/or replacement of any part of the Work and any other real and personal property which is damaged in the process of correcting any defective Work.

**§ 12.2.3** The Contractor shall, within twenty-four (24) hours in the event of an emergency threatening imminent harm to person or property or, otherwise, within seven (7) days of receipt of notice from the Owner, remove from the site portions of the Work that are defective or otherwise not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner in writing.

**§ 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** The remedies expressed herein are cumulative and in addition to any other right or remedy available to the Owner under statute or Applicable Laws. 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.

### **§ 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 shall assign the Contract as a whole without written consent of the other. If either Party attempts to make an assignment without such consent, such assignment shall be void and the Party attempting to assign the Contract, or portion thereof, shall nevertheless remain legally responsible for all obligations under the Contract. Further, the Contractor may not assign any monies due to it under the Contract without the prior written consent of the Owner.

**§ 13.2.2** Prior to final payment, the Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, to an affiliate of the Owner or to a transferee of all or substantially all of the Owner's interest in the Project, if the lender, affiliate or transferee, as the case may be, provides reasonable evidence that it has made financial arrangements to fulfill the balance of the Owner's obligations under the Contract and assumes the Owner's rights and obligations under the Contract accruing after the date of assignment. After final payment, the Owner may assign the Contract and its rights under it, in whole or in part, without the Contractor's consent. 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. 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 Owner and Architect timely notice of when and where tests and inspections are to be made so that the Owner and/or 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 other Applicable Laws 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 or Owner 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 Owner and Architect of when and where tests and inspections are to be made so that the Owner and/or 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 either the Contractor is not ready at the agreed inspection time or if procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work, or materials to be incorporated

into the Work, to comply with requirements established by the Contract Documents, all costs made necessary by such delay or failure, including those of repeated procedures; standby time; and compensation for the Architect's services and expenses, shall be at the Contractor's expense. If either the Owner or the Architect are not ready at the agreed inspection time, the Contractor shall be compensated for the additional costs incurred in performing a rescheduled test or inspection pursuant to a Change Order.

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

No interest shall be payable by or due from the Owner under the Contract Documents.

### **§ 13.6 Survival**

All of the Contractor's representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

### **§ 13.7 Equal Opportunity / MWBE**

**§ 13.7.1** The Contractor shall maintain policies of employment as follows:

**§ 13.7.1.1** The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin. The Contractor shall take affirmative action to ensure that qualified applicants are employed if work is available and that employees are treated during employment without regard to their race, religion, color, sex, or national origin. The Contractor shall post in places available to all employees and applicants for employment, notices setting forth the policies of nondiscrimination.

**§ 13.7.1.2** The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

**§ 13.7.1.3** The Owner encourages diversity and the utilization on all construction projects of minority and women owned contractors, construction managers, architects, engineers, subcontractors, suppliers, vendors, consultants, businesses, and other enterprises.

**§ 13.8** To comply with the provisions of Section 952 of the Omnibus Reconciliation Act of 1980 (Public Law 96.499) and Regulations, the Contractor hereby agrees to make available to the Secretary of Health and Human Services ("HHS"), the Comptroller General of the General Accounting Office ("GAO"), or their authorized representatives, all contracts, books, documents and records relating to the nature and extent of the costs hereunder for a period of four (4) years after the furnishing of services hereunder. In addition, the Contractor hereby agrees, if services are to be provided by a Subcontractor, to require by contract that such Subcontractor make available to the HHS and GAO, or their authorized representatives, all contracts, books, documents and records relating to the nature and extent of the costs thereunder for a period of four (4) years after the furnishing of services thereunder.

**§ 13.9** Neither the Contractor, nor any of its personnel or Subcontractors shall ever shut off any utilities, including power or medical gas, at any time for any reason. Such utilities shall only be shut off by Owner authorized engineering personnel according to Owner policy. For all other utilities, the Contractor, its personnel, and Subcontractors shall follow the Owner's written procedures for shutting off, adjusting, switching, or modifying any utility service.

**§ 13.10** The Contractor shall not move or otherwise handle any medical equipment located on or in the Project site without obtaining the Owner's permission and coordinating such move or handing with the Owner and, if

permission for the Contractor to move or handle such medical equipment is granted, the Contractor shall exercise all reasonable precautions in moving or handling such equipment.

## **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 sixty (60) 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 because: (a) 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 (b) because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents, or (c) the Owner has failed to provide reasonable evidence of financing as required by Section 3.1.2 of the Agreement.

- .1 Intentionally deleted.
- .2 Intentionally deleted.
- .3 Intentionally deleted.
- .4 Intentionally deleted.

**§ 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 (a) repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than one hundred percent (100%) of the total number of days scheduled for completion, or one hundred twenty (120) days in any 365-day period, whichever is less, or (b) the Work is stopped for a period of one hundred twenty (120) consecutive days because of: (i) issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped, or (ii) an act of government, such as a declaration of national emergency, that requires all Work to be stopped.

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven (7) days' additional notice to the Owner and Architect, terminate the Contract and shall, as the Contractor's sole remedy, recover payment for unpaid amounts for Work properly executed based on the Cost of the Work plus the Construction Manager's Fee thereon at the percentage rate specified in the Agreement (or if Construction Manager's Fee is a lump sum, a percentage of Construction Manager's Fee equal to the percentage completion of the Work). Further the Contractor shall be entitled to recover reasonable costs of demobilization, re-stocking fees, purchase order cancellation fees and similar direct costs of termination. Under no circumstance shall the Contractor be entitled to recover from the Owner indirect, consequential, special, or punitive damages as a result of such termination, including lost profits and loss of business opportunity.

**§ 14.1.4** If the Work is stopped for a period of sixty (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;
- .4 is adjudged a bankrupt, files for bankruptcy protection, or makes a general assignment for the benefit of its creditors, if a receiver is appointed on account of insolvency, or in the event of other evidence of the Contractor's insolvency;
- .5 fails to prosecute the Work to completion in a diligent and timely manner and in accordance with the provisions of the Contract Documents;
- .6 fails or refuses to provide insurance or proof of insurance as required by the Contract Documents; or
- .7 otherwise is guilty of a material or substantial breach of a provision of the Contract Documents.

**§ 14.2.2** When any of the reasons described in Section 14.2.1 exist 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** The Owner may withhold payments to the Contractor until the Work is fully completed, and shall thereafter pay the Contractor for the Work the Contractor satisfactorily completed prior to termination, less cost and damages incurred by the Owner as a result of the Contractor's default. If the costs and damages incurred by the Owner as a result of the Contractor's default exceed the unpaid balance otherwise due to the Contractor, the Contractor shall pay the difference to the Owner with interest thereon at the rate at the legal rate prevailing from time to time at the place where the Project is located. This obligation for payment shall survive termination of the Contract. Nothing herein shall be deemed to limit the Owner's rights at law or in equity.

#### **§ 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. Upon receipt of a written notice, Contractor shall proceed with the orderly cessation of the Work to accomplish such suspension and take steps as well to protect and preserve the Work completed and permit the resumption of the Work if and when directed by the Owner. In this regard, the Contractor shall cooperate with the Owner in good faith and minimize the Cost of Work that accrues during the period of suspension.

**§ 14.3.2** The Contractor shall promptly recommence the Work upon written notice from Owner directing Contractor to resume the Work. 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, subject to the provisions of Section 8.3; provided, however, that adjustment of the Contract Sum shall include only reasonable out-of-pocket costs necessarily incurred by the Contractor for demobilization, remobilization, and protection of the Work during the suspension, and those General Condition Costs that will continue to accrue during the period of the suspension. 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, at the Owner's sole discretion, terminate the Contract, in whole or in part, 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;
- .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;
- .4 transfer title and deliver to Owner Work in progress, specialized equipment necessary to perform the Work, the Record Drawings and Record Documents; and
- .5 except for Work directed by the Owner to be performed, incur no further costs or expenses.

**§ 14.4.3** In case of such termination for the Owner's convenience, the Owner shall, as the Contractor's sole remedy, pay the Contractor (a) amounts due and unpaid for Work properly completed prior to the effective date of termination based on the Cost of the Work plus the Construction Manager's Fee thereon at the percentage rate

specified in the Agreement (or if Construction Manager's Fee is a lump sum, a percentage of Construction Manager's Fee equal to the percentage completion of the Work), (b) amounts due and unpaid for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions, and (d) reasonable costs for demobilization, restocking fees, termination fees for early termination of leases and purchase orders, and lost deposits incurred as a result of the termination. The amounts to be paid the Contractor as provided herein shall be the amount determined by audit of the Contractor's records. The Contractor's invoice for compensation in the event of termination must be supported by sufficient records and documentation to enable the Owner and its auditors to verify all amounts claimed by the Contractor. The Owner shall be credited for (i) payments previously made to the contractor for the terminated portion of the Work, (ii) claims which the Owner has against the Contractor under the Contract, and (iii) the fair market value of materials, supplies, equipment or other items that are part of the Contract Sum, are not fully consumed in the performance of the Work and are not transferred to the Owner. Upon termination pursuant to this Section and payment of the amounts owing the Contractor, the Owner shall have no further obligation to the Contractor. The Owner shall in no event be liable to the Contractor for any unabsorbed overhead or unrealized profits with respect to the terminated Work.

**§ 14.4.4** If the Owner terminates the Contract for cause (as distinguished from termination for its convenience) and it shall be determined that the Owner's termination was unjustified, such termination shall be deemed to have been a termination for the Owner's convenience under Section 14.4 hereof, and the Contractor's sole rights, remedy and recourse shall be governed and determined by this Section 14.4; provided, however, such conversion of a unjustified termination for cause to a termination for convenience shall not occur if a court of competent jurisdiction renders a final, unappealable judgment against the Owner, that the Owner's purported termination for cause was in bad faith.

**§ 14.5** Without limitation of the provisions of Section 5.3, the Contractor shall incorporate Sections 14.2, 14.3 and 14.4 into each subcontract with its Subcontractors.

## **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; provided, however, a request for a Change Order shall not constitute a Claim (and a request for a Change Order shall be governed by the provisions of Article 7 hereof). 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.

#### **§ 15.1.3 Notice of Claims**

**§ 15.1.3.1** Claims by the 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 Owner and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Unless a shorter period of time is specified elsewhere herein, Claims by the Contractor under this Section 15.1.3.1 shall be initiated within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the Contractor first recognizes or reasonably should have recognized 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 of undisputed amounts due 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, provided that notice shall be given as soon as is reasonably practicable. The costs to the Contractor of preparing and negotiating PCOs, ROMs, CORs, and Claims shall not be reimbursable under this Contract.

#### **§ 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. Further, with Claims for additional time, the Contractor shall submit all of the following, without limitation of other requirements under the Contract: (a) the Contractor's PCO, ROM and COR per Section 7.5; (b) the approved, as planned construction schedule in accordance with Section 3.10; (c) identification and explanation of the basis for (i) the duration start and finish dates of each impacted activity, (ii) the successor and predecessor events affected in the construction schedule, and (iii) the duration of any lead/lags inserted into the construction schedule and the duration-related activity duration; and (d) a mark-up construction schedule indicating the causes responsible for changes between the as-planned and as-built schedule and establishing the required cause and effect relationships. In the case of an acceleration Claim in connection with the exercise of the Owner's rights to require the Contractor to implement Extraordinary Measures for which the Contractor is entitled to an increase in the Contract Sum pursuant to Section 3.10.4, the Contractor also shall submit other documentation for typical acceleration consequences, including comparison of anticipated manpower, equipment and material utilization, increased levels of manpower/overtime, duplicated sets of equipment materials, indicating the acceleration that occurred. A detailed explanation of how the planned manpower/equipment levels could have achieved the planned schedule and a comparison of the levels actually consumed in performing the work must be included in the Claim.

**§ 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. The Contract Time contemplated by the Agreement anticipates a certain number of lost days due to normal weather conditions. Only unusual or severe weather conditions for the time of year will be considered as a potential justification for a delay in the completion of the Work and the Contractor agrees that an extension of time will only be granted for actual days lost due to adverse weather conditions and the substantiated effects thereof that are in excess of the normal days lost due to inclement for the given period, and then only if the excessive actual days lost due to adverse weather conditions negatively impact the critical path of the Project.

**§ 15.1.6.3** Claims for increase in the Contract Time shall set forth in detail the circumstances that form the basis for the Claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the Work and the number of days' increase in the Contract Time claimed as a consequence of each such cause of delay. The Contractor shall provide such supporting documentation as the Owner may require including, where appropriate, a revised construction schedule indicating all the activities affected by the circumstances forming the basis of the Claim.

**§ 15.1.6.4** The Contractor shall not be entitled to a separate increase in the Contract Time for each one of the number of causes of delay which may have concurrent or interrelated effects on the progress of the Work.

**§ 15.1.6.5** Except in the case of actions relating to an emergency endangering life or property, the Contractor shall not be allowed any Claim (whether for additional cost or additional time) as a result of any order or interpretation of the Owner or the Architect (i) unless before taking or omitting to take action in response to such order or in reliance

on such interpretation the Contractor first gives seven (7) days written notice to the Owner and the Architect specifying the basis for his Claim, and (ii) following receipt of such notice from the Contractor, the Owner orders the Contractor to proceed in compliance with such order or interpretation.

#### **§ 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. Additionally and notwithstanding anything to the contrary herein, the Parties expressly acknowledge and agree that this waiver of claims for consequential damages does not apply to any damages, liabilities, costs or expenses: (i) proximately caused by either Party's fraud, gross negligence or willful misconduct, (ii) covered by insurance, and (iii) third-party claims for which the Contractor has an indemnification obligation under the Contract.

#### **§ 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 (10) business 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.

§ 15.2.6 Either Party may file for mediation of an initial decision at any time.

§ 15.2.6.1 Intentionally deleted.

§ 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 9.10.5 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 non-binding mediation as if court ordered, which, unless the Parties mutually agree otherwise in writing, shall be administered by a Florida Circuit Certified Civil Mediator who is a Florida licensed attorney with at least ten (10) years' experience and who is mutually acceptable to both the Owner and the Contractor. In the event that the parties fail to agree in writing on a mediator within fifteen (15) days after a request for mediation is made pursuant to this Section, then the mediation 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 mediation shall be scheduled within thirty (30) days of the request for 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.

§ 15.3.3 Intentionally deleted.

§ 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 Intentionally Deleted

§ 15.4.1 Intentionally deleted.

§ 15.4.1.1 Intentionally deleted.

§ 15.4.2 Intentionally deleted.

§ 15.4.3 Intentionally deleted.

### § 15.4.4 Intentionally Deleted

§ 15.4.4.1 Intentionally deleted.

§ 15.4.4.2 Intentionally deleted.

§ 15.4.4.3 Intentionally deleted.