

AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Construction of new Senior Center
15 Louis Lane
Colchester, CT 06415

THE OWNER:

(Name, legal status and address)

Town of Colchester, CT
127 Norwich Avenue
Colchester, CT 06415

THE ARCHITECT:

(Name, legal status and address)

Silver Petrucelli & Associates, Inc.
3190 Whitney Avenue
Hamden, CT 06518
Phone: 203-230-9007

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ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

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

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

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

§ 1.2 Correlation and Intent of the Contract Documents

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

Documents and applicable standards, codes or ordinances, the Contractor shall promptly give notice to the Owner and the Architect of such inconsistency.

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

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

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

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

§ 1.5.1 The 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 reserved rights of the owner of such Instruments of Service.

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

§ 1.6 Notice

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

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

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties may use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA

Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner's representative shall be the person designated as such in the Agreement, or a successor to such person designated by the Owner in writing from time to time, which person shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization, other than the approval and execution of change orders and subject to such limitations as Owner may specify in writing to Contractor from time to time. Any action taken on Owner's behalf other than by the representative so designated by Owner will not be binding upon the Owner. The Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

Intentionally Omitted.

(Paragraph deleted)

§ 2.2 Evidence of the Owner's Financial Arrangements

§ 2.2.1 Prior to commencement of the Work, 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. If such evidence is so requested, the Contractor shall have no obligation to commence the Work until the Owner provides such evidence.

§ 2.2.2

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

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

§ 2.3 Information and Services Required of the Owner

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

§ 2.3.2 The Owner shall retain an architect (or engineer, as appropriate) lawfully licensed to practice architecture (or engineering, as applicable), or an entity lawfully practicing architecture (or engineering, as applicable), 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. The Owner has also retained an Owner's Representative. Upon request, the Owner shall provide Contractor with a copy of the Owner's Representative Agreement. The Contractor is expected to familiarize itself with the duties, responsibilities and authority of the owner's Representative as set forth in said agreement.

§ 2.3.3 If the employment of the Architect (or engineer, as applicable) terminates, the Owner shall employ a successor provided the services of the Architect (or engineer, as applicable) are still needed for the Project at the time of termination. § 2.3.4 The Owner shall, if requested by the Contractor, furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project. The Contractor shall be entitled to rely on the accuracy of such surveys but shall, in all cases, exercise proper precautions relating to the safe performance of the Work. Any other data provided by the Owner to the Contractor concerning the physical characteristics or measurements of the components that comprise the Project site; access to the Project site or staging and storing at the

Project site; present obstructions and conditions of structures on or near the Project site; locations and depths of sewers, conduits, pipes, and gas lines on or near the Project site; positions of sidewalks, curbs and pavements on or near the Project site and other data concerning the conditions of the Project site and its surroundings (collectively, "Site Data"), have been obtained from sources the Owner believes to be reliable and Owner acknowledges that Contractor's price is based upon the Site Data being accurate.

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall furnish such information and services with reasonable promptness after receiving the Contractor's written request for such information or services.

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

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect, and all deficiencies in the Work arising therefrom, with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect and the deficiencies in the Work arising therefrom. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the Owner's reasonable cost of correcting the default or neglect and the deficiencies in the Work arising therefrom, including, without limitation, reasonable expenses, attorneys' fees, and compensation for the Architect's additional services made necessary by such default, neglect, failure and deficiencies. The Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent necessary to pay the Owner the amounts due under this Section 2.5. 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. The right of the Owner to carry out the Work pursuant to this Section 2.5 shall not give rise to any duties on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. In performing any work pursuant to this Section 2.5, the Owner shall have the right to take possession of the site and of all materials and equipment to be incorporated into the Work.

§ 2.6 ADDITIONAL RIGHTS

§ 2.6.1 The rights stated in this Article 2 shall be in addition to, and not in limitation of, any other rights of the Owner provided in the Contract Documents, or as may be available to the Owner at law or in equity.

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 and subcontractors of all tiers shall be lawfully licensed to the extent and as required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

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

§ 3.1.2.1 Unless explicit quality or standards for materials or workmanship are established in the Contract Documents for any portion of the Work with which the Contractor is obligated to comply, the Contractor shall perform such Work in a good and workman like manner, in a manner of good quality for the intended use, and consistent with the quality of the surrounding Work and of the construction of the Project generally.

§ 3.1.2.2 All manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise specifically indicated in the Contract Documents.

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

(Paragraph deleted)

§ 3.1.4 The Contractor shall comply, and shall cause Subcontractors of every tier to comply, with all accounting procedures and record retention policies reasonably requested by the Owner.

§ 3.1.5 NONRESIDENT CONTRACTOR

If the Contractor is a "nonresident contractor" as defined in Section 12-430(7)(A) of the Connecticut General Statutes, as revised, the Contractor shall provide evidence to the Owner prior to commencement of the Work that Contractor has complied fully with the provisions of Section 12-430(7). The Contractor is hereby notified that, if any subcontractor or supplier performing any part of the Work under the Contract Documents is a nonresident unverified contractor, the Contractor will withhold 5% of all payments to such subcontractor or supplier unless and until such subcontractor or supplier provides to the Contractor a Certificate of Compliance issued by the Connecticut Department of Revenue Services as defined in the Connecticut General Statutes §12-430(7). A nonresident unverified contractor is a contractor without an office in the State of Connecticut that is continuously maintained, occupied and used by the contractor's regular employees regularly in attendance to carry on the contractor's business in the contractor's own name and which contractor has not been verified pursuant to the requirements of the Connecticut Department of Revenue Services. The amount withheld pursuant to CGS §12-430(7) shall be in addition to, and not in lieu of, the retainage held by the Contractor under its subcontract with the subcontractor or supplier.

§ 3.1.6 Notwithstanding anything to the contrary in the Contract Documents, the Contractor shall attend such meetings and site-visits, and make such submissions, as are necessary to comply with applicable Legal Requirements.

§ 3.1.7 Nondiscrimination

§ 3.1.7.1 Pursuant to the requirements of Connecticut General Statutes §4a-60:

(a)(1) The Contractor agrees and warrants that in the performance of the Contract the Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status as a veteran, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the state of Connecticut; and the Contractor further agrees to take affirmative action to ensure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status as a veteran, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such contractor that such disability prevents performance of the work involved;

(2) The Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission on Human Rights and Opportunities;

(3) The Contractor agrees to provide each labor union or representative of workers with which such contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the contractor's commitments under Connecticut General Statutes §4a-60, and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(4) The Contractor agrees to comply with each provision of Connecticut General Statutes §4a-60 and Connecticut General Statutes §§46a-68f and with each regulation or relevant order issued by said commission pursuant to sections 46a-56, 46a-68e, 46a-68f and 46a-86; and

(5) The Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the contractor as relate to the provisions of Connecticut General Statutes §4a-60 and Connecticut General Statutes §46a-56.

(b) If the Contract is a public works contract, municipal public works contract or contract for a quasi-public agency project, the Contractor agrees and warrants that he or she will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works or quasi-public agency project.

(c) The Contractor shall include the provisions of subsections (a) and (b) of this section 3.1.7.1 in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the state, and in every subcontract entered into in order to fulfill any obligation of a municipal public works contract or contract for a quasi-public agency project, and such provisions shall be binding on a subcontractor, vendor or manufacturer, unless exempted by regulations or orders of the Commission on Human Rights and Opportunities. The Contractor shall take such action with respect to any such subcontract or purchase order as the commission may direct as a means of enforcing such provisions, including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the commission regarding a state contract, the Contractor may request the state of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the state and the state may so enter.

(d) The Contractor agrees to comply with the regulations referred to in this Section 3.1.7.1 as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.

§ 3.1.7.2 Pursuant to the requirements of CGS §4a-60a:

(a)(1) The Contractor agrees and warrants that in the performance of the Contract the Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or of the state of Connecticut, and that employees are treated when employed without regard to their sexual orientation;

(2) The Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under Connecticut General Statutes §4a-60a, and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(3) The Contractor agrees to comply with each provision of Connecticut General Statutes §4a-60a and with each regulation or relevant order issued by said Commission on Human Rights and Opportunities pursuant to Connecticut General Statutes §46a-56; and

(4) The Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of Connecticut General Statutes §4a-60a and Connecticut General Statutes §46a-56.

(b) The Contractor shall include the provisions of subsection (a) of this section 3.1.7.2 in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the state, and in every subcontract entered into in order to fulfill any obligation of a municipal public works contractor contract for a quasi-public agency project, and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission on Human Rights and Opportunities. The Contractor shall take such action with respect to any such subcontract or purchase order as the commission may direct as a means of enforcing such provisions, including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided, if such contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the commission regarding a state contract, the Contractor may request the state of

Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the state and the state may so enter.

(c) The Contractor agrees to comply with the regulations referred to in this Section 3.1.7.2 as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto. § 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has (i) visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents; (ii) taken all reasonable steps to ascertain the nature and location of the Work, and the general and reasonably observable conditions which can or may affect the Work and/or the cost thereof; (iii) evaluated and satisfied itself, and will cause its Subcontractors to satisfy themselves, as to the conditions and limitations under which the Work is to be performed, including, without limitation (1) the location, condition, layout and visible physical conditions of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, and (4) anticipated availability and costs of materials, tools and equipment. Failure by the Contractor to comply with this Section and to fully acquaint itself with conditions which may affect the Work and/or the cost thereof, including, but not limited to, conditions relating to transportation, handling, storage of materials, availability of labor, water, other known projects in the region, applicable provisions of law bearing on the performance of the Work, and the character and availability of equipment and facilities needed preliminary to and during the prosecution the Work, shall not relieve the Contractor of its responsibilities under the Contract Documents and shall not constitute a basis for extension of the Contract Time or any increase in the Contract Sum. Owner assumes no responsibility for any representations concerning representations made by any of its officers, or employees or representatives, prior to the execution of the Contract, unless such representations are expressly stated in the Contract Documents. The provisions of this Section 3.2.1 shall not be construed to limit the investigative and review responsibilities of the Contractor under any other provisions of the Contract Documents.

§ 3.2.1.1 The execution of the Contract shall constitute:

§ 3.2.1.1.1 A representation by the Contractor that the Contractor has carefully reviewed the Contract Documents, and that the Contract Documents are sufficiently detailed and complete to permit the Contractor, (i) to complete the Project for an amount not in excess of the Contract Sum; and (ii) complete the Work within the Contract Time and in accordance with the Contract Documents. The Contractor shall not perform any construction activity it knows constitutes a recognized error, inconsistency or omission. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without reporting the error, inconsistency or omission to the Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the costs of correction.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7 as

would have been avoided if the Contractor had performed such obligations and the Contractor shall be responsible for associated delays and impacts. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.5 If the Contractor fails to fulfill its obligations to report to the Architect or Owner under this Article 3, such failure shall preclude the Contractor from any subsequent Claim arising from, or relating to the factors giving rise to the Contractor's obligation to make such report.

§ 3.2.6 During the performance of the Work, the Owner assumes no contractual liability or responsibility for safety of the Project site or of any improvements thereon. Except as set forth in Section 10.3, the Contractor shall be solely responsible for providing safe conditions for the performance of the Work.

§ 3.2.7 The Contractor shall give the Architect notice of any additional Drawings, Specification or instructions required to define the Work in greater detail, or to permit the proper progress of the Work. Requests for such information shall be made by the Contractor sufficiently in advance of the time such information is needed by the Contractor so as to permit the Architect a reasonable time for responding to such requests without affecting the progress of the Work.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures. . In no event shall the Contractor employ construction means, methods, techniques, sequences or procedures that violate (1) requirements of any warranties applicable to the Work; or (2) any Legal Requirements.

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

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

§ 3.3.4 The Contractor shall furnish sufficient forces, plant and equipment as may be necessary to insure the progress of the Work in accordance with the Construction Schedule. If, in the reasonable opinion of the Owner, the Contractor has fallen behind the Construction Schedule, the Contractor shall submit its proposal demonstrating the manner in which the desired rate of progress may be achieved and Contractor shall take such steps as may be necessary to meet the Construction Schedule. Unless the Contractor has fallen behind schedule due to delays which entitle Contractor to an adjustment in the Contract Time in accordance with the terms and conditions of the Contract Documents, the taking of such steps shall be at the sole costs and expense of the Contractor.

§ 3.3.5 Contractor's coordination of Work shall include, without limitation, review of all shop drawings (including, without limitation, architectural, civil, structural, mechanical, and electrical shop drawings) submitted by Subcontractors for various trades or subdivisions of work, as indicated by Contractor's approval in accordance with Section 3.12.

§ 3.3.6 The Contractor shall be solely responsible for properly laying out the Work, and for all lines, elevations and

measurements for all of the Work. Contractor shall verify the figures shown on the Drawings before laying out the Work and will be responsible for any errors or inaccuracies resulting from Contractor's failure to do so. In the event that the Contractor shall, while laying out the Work, become aware of: (1) any conflicts between (a) the Drawings, the Specifications or any Modification to the Drawings or the Specifications and (b) the actual layout of the Work, or (2) any conflicts or inconsistencies in the Drawings, the Specifications or any Modification to the Drawings or the Specifications themselves, Contractor shall promptly notify the Architect. If the Contractor proceeds without the Architect's clarification and instruction on the matter, the Contractor shall proceed at Contractor's own risk.

§ 3.4 Labor and Materials

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

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

§ 3.4.3 All labor shall be performed by workmen skilled in their respective trades, and workmanship shall be of good quality so that first class work in accordance with the standards of construction set forth in the Contract Documents and the Contractor's Standard of Care will be achieved. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.3.1 As required under Section 31-53 of the Connecticut General Statutes, the wages paid on an hourly basis to any person performing the work of any mechanic, laborer or worker on the work herein contracted to be done and the amount of payment or contribution paid or payable on behalf of each such person to any employee welfare fund, as defined in subsection (i) of Section 31-53 of the Connecticut General Statutes shall be at a rate equal to the rate customary or prevailing for the same work in the same trade or occupation in the town in which such public works project is being constructed. Any contractor who is not obligated by agreement to make such payment or contribution on behalf of such persons to any such employee welfare fund shall pay to each mechanic, laborer or worker as part of such person's wages the amount of payment or contribution for such person's classification on each pay day.

§ 3.4.3.2 As required pursuant to Connecticut General Statute Section 31-53b, the Contractor shall furnish proof, and shall cause its Subcontractors to furnish proof, with the weekly certified payroll form for the first week each employee begins work on the Project that any person performing the work of a mechanic, laborer or worker pursuant to the classifications of labor under section 31-53 on the Project, pursuant to such contract, has completed a course of at least ten hours in duration in construction safety and health approved by the federal Occupational Safety and Health Administration or, has completed a new miner training program approved by the Federal Mine Safety and Health Administration in accordance with 30 CFR 48 or, in the case of telecommunications employees, has completed at least ten hours of training in accordance with 29 CFR 1910.268 and that any plumber or electrician subject to the continuing education requirements of [section 20-334d](#), who has completed a course of at least ten hours in duration in construction safety and health approved by the federal Occupational Safety and Health Administration five or more years prior to the date such electrician or plumber begins work on the Project, has completed a supplemental refresher training course of at least four hours in duration in construction safety and health taught by a federal Occupational Safety and Health Administration authorized trainer.

§ 3.4.3.3 To the extent consistent with any provision regarding residence requirements contained in a collective bargaining agreement to which the Contractor is a party, in the employment of labor to perform the work specified herein, preference shall be given to citizens of the United States, who are, and continuously for at least three months prior to the date hereof have been, residents of the labor market area, as established by the Labor Commissioner, in which such work is to be done, and if no such qualified person is available, then to citizens who have continuously resided in the county in which the work is to be performed for at least three months prior to the date hereof, and then to citizens of the state who have continuously resided in the state at least three months prior to the date hereof.

§ 3.4.4 If the Contractor desires to substitute a product or method in lieu of what has been specified or shown in the

Contract Documents, the Contractor may propose to do so in a written request delivered to the Architect and the Owner in accordance with the Contract Documents. Any written request for a substitution by the Contractor shall be a representation by the Contractor to the Owner that: (1) the Contractor has investigated the product or method proposed to be substituted and found it to be equivalent to or better than the product or method specified in the Contract Documents, (2) except to the extent otherwise expressly stated in such request, the Contractor is waiving any Claim for additional costs related to such substitution; (3) the Contractor will provide the same warranty for the substitution that the Contractor would for that specified; (4) the substitution will not entail changes in detail and construction of related Work; and (5) the Contractor shall coordinate the installation of the accepted substitution, making such changes as may be required for the Work to be complete in all respects.

§ 3.4.5 Notwithstanding the fact that the Contract Documents may specify a particular brand or make of material or equipment "or equal", if the Contractor elects to utilize "equal" materials or equipment rather than the specified materials or equipment, the "equal" materials or equipment will be subject to the prior written approval of the Owner.

§ 3.5 Warranty

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

§ 3.5.2 The Contractor shall procure and assign to the Owner at the time of Substantial Completion of the Work any and all Subcontractor, manufacturer and supplier warranties relating to any materials, equipment and labor incorporated in the Work. Such warranties shall supplement the warranties provided by the Contractor in Section 3.5.1.

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

§ 3.5.3 Substitutions not properly approved and authorized in accordance with the Contract Documents and work, materials or equipment which fail to perform under the proper use and normal wear for intended purposes may be deemed defective. If required by the Architect or the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment to be incorporated in the Work.

§ 3.5.4 The Contractor further agrees that each Subcontract shall contain a warranty of the portion of the Work performed thereunder in the same form as the above stated warranty of Contractor. Included in said warranty shall be the statement that it shall be enforceable directly by the Owner, if the Owner so elects. The warranty of any Subcontractor shall not relieve the Contractor of its warranty as set forth above and the Owner may look to the Contractor, directly, and in the first instance to correct any defects in the Work.

§ 3.5.6 The representations and warranties under this Section 3.5 shall be in addition to, and not a substitute for, any other rights of the Owner under the Contract Documents or existing in law or equity.

§ 3.5.7 The representations and warranties set forth in this Section 3.5 shall survive final payment and termination of the Contract.

§ 3.6 Taxes

The Owner is exempt from the payment of sales, use and similar taxes. The Contractor shall be familiar with the current regulations of the Connecticut Department of Revenue Services and the sales or use tax on materials or supplies exempted by such regulations shall not be included in the Contract Sum. A sales tax certificate will be provided to the Contractor by the Owner upon request.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, certifications and inspections by government agencies necessary for

proper execution and completion of the Work that are customarily secured after execution of the Contract and required by applicable Legal Requirements as of the effective date of this Contract. The Contractor shall provide the Owner and Architect with reproductions of all permits, licenses, permissions, certifications and receipts for payments and, upon submission of the final Application for Payment, shall deliver all originals of such documents to the Owner with copies to the Architect. All permits shall be posted by the Contractor in accordance with Town of Colchester requirements.

§ 3.7.2 The Contractor shall be responsible for performance of the Work in accordance with, and give notices required by all applicable local, state and federal laws, statutes, ordinances, codes, building codes, rules, regulations, permits, and orders enacted, promulgated, issued or ordered by any governmental body or public or quasi-public authority having jurisdiction over the Work, the Contractor and/ or the site of the Project (collectively, the "Legal Requirements"). Legal Requirements shall include, without limitation, those relating to equal opportunity, labor, wages and employment.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable Legal Requirements, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions

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

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

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site at all times 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. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed upon written request in each case.

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

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. The list of all supervisory personnel, including the project manager and superintendent that the Contractor intends to use on the Project shall be submitted to the Owner for approval prior to the commencement of the Work. The Contractor shall not engage supervisory personnel other than as approved by Owner in writing and shall not change such personnel without the prior written approval of the Owner, which shall not be unreasonably withheld.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's approval, a proposed construction schedule for the Work. The proposed construction schedule (i) shall comply with all of the applicable requirements of, and shall not exceed time limits current under, the Contract Documents, (ii) shall be in such form and detail and include such content as required by the Owner, (iii) shall be related to the entire Project to the extent required by the Contract Documents, (iv) shall provide for expeditious and practicable execution of the Work for completion within the time limits current under the Contract Documents; (v) shall include the date of commencement of the Work, interim schedule milestone dates, and the date required for Substantial Completion; and (vi) shall include an apportionment of the Work by construction activity and the time required for completion of each portion of the Work. If the Owner requires a precedence-style critical path method (CPM) schedule, the proposed construction schedule shall also: (a) provide a graphic representation of all activities and events that will occur during performance of the Work; (b) identify each phase of construction and occupancy (if applicable); and (c) set forth dates that are critical in ensuring the timely and orderly completion of the Work (hereinafter referred to as "Milestone Dates"). If the proposed construction schedule is not accepted by the Owner, the Contractor shall promptly modify the proposed construction schedule in accordance with the recommendations of the Owner and the Architect and resubmit the revised schedules for acceptance. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

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

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent construction schedules submitted to and approved by the Owner and Architect (as so approved, the "Construction Schedule").

§ 3.10.4 The Contractor shall monitor the progress of the Work for conformance with the requirements of the Construction Schedule and shall promptly advise the Owner of any delays or potential delays. The Construction Schedule shall be updated to reflect actual conditions ("Progress Reports") (which updated schedule shall be subject to the approval of the Owner and the Architect) at appropriate intervals as determined by the Contractor and as required by the conditions of the Work and the Project (but in no event less frequently than monthly) or as otherwise requested by the Owner. In the event any Progress Report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any Progress Report

constitute an adjustment in the Contract Time, any Milestone Date or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to a Change Order.

§ 3.10.5 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, but not the obligation, to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, and facilities, and (3) other similar measures (hereinafter referred to collectively 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 purposes of ensuring the Contractor's compliance with the accepted construction schedule as adjusted for time extensions granted pursuant to Section 8.3. Except as provided in Section 8.3, the Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner pursuant to this Section 3.10.5. The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.10.5 as frequently as the Owner deems necessary to ensure that that Contractor's performance of the Work will comply with any Milestone Date or the Substantial Completion Date, as the same may be extended by Change Order.

§ 3.10.6 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the Owner's operations. Any postponement, rescheduling or performance of the Work under this Section 3.10.6 may be grounds for an extension of the Contract Time, if permitted under Section 8.3, and an equitable adjustment in the Contract Sum, to the extent permitted under the Contract Documents, if: (1) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents and (2) such rescheduling or postponement is requested by or required for the convenience of the Owner. Without limiting the foregoing, the Contractor will not be entitled to an extension of the Contract Time or an adjustment of the Contract Sum to the extent the interfering Work so interferes as a result of the negligent act or omission of the Contractor or any Subcontractor or Sub-subcontractor or the failure of any of the same to perform the Work in a manner consistent with the Contract Documents, including Section 3.10.3 hereof.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including a record set of Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. The record set of documents shall reflect all deviations from the Drawings and Specifications and shall be updated in detail from time to time to reflect the actual progress of the Work. The Owner and the Architect shall have free and complete access to such documents during the construction of the Work. Upon Substantial Completion of the Work, the Contractor shall furnish to the Owner through the Architect one set of "as built" plans in such form as the Owner shall require. Such plans shall completely record all Work in place and serve as a record of the Work as constructed. These shall be in electronic form and paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not

expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

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

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. Submittals shall be marked as reviewed by the Contractor for compliance with the Contract Documents and approved by the Contractor. Those that are not so marked may be returned by the Architect without action. The Contractor shall meet with the Architect in a timely fashion to discuss the schedule of submittals required under Section 3.10.2 and shall thereafter timely prepare and submit for approval by the Architect a schedule of submittals for the Work.

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

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

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

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

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, who has been approved by the Owner and that carries such professional liability insurance coverage as required by the Owner and whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

§ 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable Legal Requirements and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. Prior to mobilization at the Project site, the Contractor shall submit for approval by the Architect and Owner a site logistics plan depicting the location of jobsite trailers, materials storage, parking, dumpster location, port-a-john locations and such other items as may be located on the Project site.

§ 3.13.2 The Contractor shall locate, protect and save from damage or disruption utilities and utility services lines of all kinds, either above or below grade found in the areas affected by the Work. The Contractor shall be responsible for all damage caused to such utilities by the operation of equipment or machinery, the delivery of materials, or as the direct or indirect result of any of the Work, and shall repair all such damage at its expense and as part of the Work included in the Contract Documents.

§ 3.14 Cutting and Patching

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

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

§ 3.14.3 Unless authorized in writing by the Owner and the Architect, structural elements of the Work shall not be cut, patched, or otherwise altered or repaired. Existing work that is cut, damaged, disturbed or otherwise interfered with by the Contractor, a Subcontractor, or anyone for whom any of them is responsible shall be fully, properly and carefully repaired by the responsible Contractor or Subcontractor. All such repairs shall be completed to the satisfaction of the Architect, and shall match similar existing adjoining work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall, on a daily basis, keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At the end of each work day, the Contractor shall leave the site in "broom-clean" condition with materials and tools safely and neatly stored. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

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

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner, the Owner's designated representative, the Town of Colchester, the Architect, the Architect's consultants, and all of their respective directors, members of governing boards, officials, officers, partners, employees, shareholders, members, managers, beneficiaries, agents and representatives (each an "Indemnitee") from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions, violations of Legal Requirements bearing on performance of the Work, or breach of contract by the Contractor, a Subcontractor, Sub-subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable. The obligations of the Contractor under the foregoing indemnity shall include, without limitation, to the fullest extent permitted by law, any and all claims (including attorneys' fees resulting therefrom) against an Indemnitee caused by the negligent acts or omissions of Contractor, violations of Legal Requirements bearing on performance of the Work, or breach of contract by the Contractor, a Subcontractor, Sub-subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable directly or indirectly arising or alleged to arise (1) out of the performance of or the failure to perform the Work or damage caused by Contractor in the performance of the Work to the job site, adjoining land or driveways, or streets or alleys, and from any and all claims against an Indemnitee by workmen, suppliers or Subcontractors who are involved in the performance of the Work, and (2) under any scaffolding, structural work or safe place law or any law with respect to the protection of adjacent landowners. These indemnification obligations are not intended to include liability for damage arising out of bodily injury to person or damage to property to the extent caused by or resulting from the negligence of the Indemnitee, such Indemnitee's agents or employees, nor shall such obligations be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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

§ 3.18.3 To the fullest extent permitted by law, the Contractor shall further indemnify, defend and hold harmless each Indemnitee from and against (1) all claims for payment by any Subcontractor or supplier of any tier, (2) any and all actions, lawsuits, claims and proceedings brought against the Indemnitee as a result of liens filed against the Work, the Project site or any improvements thereon (referred to collectively as "Liens") by the Contractor, any Subcontractor, Sub-subcontractor or anyone claiming by, through or under them, and (3) 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. The Contractor 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 approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the Lien or other claim for payment has been asserted. The Contractor's obligations under this Section 3.18.3 are conditioned upon Owner having fulfilled its payment obligations to the Contractor with respect to the Work that is the subject of the Lien or claim and for which indemnification is sought.

§ 3.18.4 The Contractor shall bear any and all reasonable expenses incurred by any Indemnitee because of any claim or other matter indemnified against under this Section 3.18, including without limitation, attorneys' and consultants' fees and expenses, court costs, and costs related to the defense of, or preparing for the defense against, any such claim. If any such claim has not been settled or discharged or bonded at the time of final completion of the Work, and if such claim is not covered in full by a policy of insurance then in effect from a reputable and financially sound insurance company which has not declined or reserved the right to decline coverage of such claim, the Owner may withhold an amount equal to two hundred percent (200%) of the outstanding claim until any such claim is paid or settled or the Contractor provides a bond, acceptable to the Owner, to satisfy such claim.

§ 3.19 MEETINGS

§ 3.19.1 A qualified representative of the Contractor shall attend periodic progress meetings held at such time and as such place as the Architect or the Owner shall designate.

§ 3.19.2 The Contractor shall schedule and conduct progress meetings at the Project site on a weekly basis. Attendance is required of each Subcontractor, supplier or other entity whose portion of the Work is currently the subject of concern or discussion or planning of future construction activities. Contractor shall provide the Owner, Owner's Representative and Architect with forty-eight (48) hours prior notice of each such progress meeting and be permitted to attend and participate in the meetings.

ARTICLE 4 ARCHITECT

§ 4.1 General

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

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

§ 4.2 Administration of the Contract

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

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

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

§ 4.2.4 Communications

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

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with

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

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

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

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

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

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

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site and, unless expressly provided otherwise, refers to subcontractors or any and all tiers other than Subcontractors. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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

§ 5.2.1 Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the

Work, including those who are to furnish materials or equipment fabricated to a special design, plus such other information as required under this Agreement. Unless otherwise provided in the Agreement, within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.1.1 If requested by the Owner, the Contractor shall provide to the Owner copies of all subcontracts and supply agreements entered into by the Contractor for the Work, with all pricing information redacted.

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

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum and 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. If the Contractor wishes to substitute a different person or entity for a person or entity previously selected and approved as a Subcontractor pursuant to this Section 5.2, the procedure set forth in this Section 5.2 and as may be provided in the Agreement shall be followed.

§ 5.3 Subcontractual Relations

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

§ 5.4 Contingent Assignment of Subcontracts

§ 5.4.1 Each subcontract and supply 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 pursuant to and in accordance with Section 14.2 of these General Conditions and only for those subcontract and supply agreements that the Owner accepts by notifying the Subcontractor or supplier and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract to the extent such rights and obligations arise subsequent to Owner's acceptance of the assignment. The Contractor agrees to execute any and all other documents required to effect this assignment.

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

§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract and/or supply agreement 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 retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

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

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

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

§ 6.2 Mutual Responsibility

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

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

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, disruption of the work of such Separate Contractor, improperly timed activities or defective construction. The Owner shall have the right to off-set such costs against any amounts owed to the Contractor by the Owner. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, Separate Contractor's disruption of the Work, improperly timed activities, damage to the Work or defective construction provided that the Contractor promptly notifies the Owner of such delays, disruption, activities, damage 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.

§ 6.2.6 Upon the Owner's request, the Contractor shall defend any proceedings brought against the Owner by any Separate Contractor on account of any damage alleged to have been caused by the Contractor which arises from the Contractor's failure to comply with the terms and conditions of Sections 6.1 and 6.2.

§ 6.3 Owner's Right to Clean Up

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

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

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

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

§ 7.1.4 In the case of a change in the Work proposed by the Owner or a proposed Change Order submitted to the Owner and the Architect by the Contractor, the Contractor shall submit to the Architect, in such form as the Architect may require, an accurate written estimate of the cost of any proposed extra Work or change in the Work. Such estimates shall be provided without cost to the Owner. The Contractor's estimate shall indicate the description, quantity and unit cost of each item of material, and the number of hours of work and hourly rate for each class of labor, as well as all other costs chargeable under the terms of this Article. Unit labor costs for the installation of each item of materials shall be provided if required by the Architect. The Contractor shall promptly revise and resubmit such estimate if the Architect determines that it is not in compliance with the requirements of this Section, or that it contains errors of fact or mathematical errors. If required by the Architect, in order to establish the exact cost of new Work added or of previously required Work omitted, the Contractor shall obtain and furnish to the Architect bona fide proposals from recognized suppliers for furnishing any material included in such Work. Such estimates shall be furnished promptly so as to occasion no delay in the Work. The Contractor shall also state in the estimate any change in the Contract Time that would result from the change in the Work.

§ 7.2 Change Orders

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

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

§ 7.2.2 A Change Order executed by the Owner and the Contractor shall constitute a final settlement of all matters relating to the subject matter of the Change Order including, without limitation, compensation to be paid to the Contractor in connection with any change in the Work required by the Change Order (provided that the Work that is the subject of such change is performed in a manner consistent with the provisions of the Contract Documents and the applicable Change Order), including but not limited to all direct and indirect costs, profit, overhead, extended overhead, loss of productivity and general conditions associated with such change, and any and all adjustments to the Contract Sum, the Construction Schedule, and to the Contract Time

§ 7.2.3 Notwithstanding anything to the contrary set forth in these General Conditions, if the Agreement sets forth the methodology for calculating adjustments in the Contract Sum associated with a change in the Work, and if, under the terms of the Contract Documents, an adjustment in the Contract Sum would be required, then the adjustment will be based on such methodology unless otherwise mutually agreed by the parties. This paragraph shall be applicable in the case of a change in the Work effected by a Change Order as well as a Construction Change Directive.

§ 7.2.4 Unless otherwise instructed by the Owner, Change Orders shall be prepared on the form AIA G-701.

§ 7.3 Construction Change Directives

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

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

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

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

§ 7.3.3.1 Notwithstanding anything to the contrary contained in the foregoing provisions of this Section 7.3, in the case of a change in the Work for which the Contractor is entitled to an adjustment in the Contract Sum under the terms and conditions of the Contract Documents, such adjustment shall include the following:

- (i) For all changes involving additional Work, the Contractor shall be entitled to a 15% markup, which will include general conditions, overhead and profit, and additional bond and insurance costs on all costs including but limited to Contractor direct costs, Subcontractor costs and vendor costs. Notwithstanding the foregoing, Subcontractors and Sub-subcontractors shall be entitled to a 10% markup on their actual costs of the changed Work;
- (ii) When calculating a change involving additional Work, additional costs will be offset by credits for deleted work related to this change prior to calculating the markups denoted in (i); and
- (iii) Any Work deleted from the Project will be credited at cost without markup.

For change order Work that is the subject of Unit Prices under the Contract Documents, there will be no markup permitted on the applicable Unit Prices.

The Contractor shall include the markup limitations set forth in this Section 7.3.3.1 in all Subcontracts and require in all Subcontracts that the Subcontractors include such limitations in all lower tier Subcontracts.

§ 7.3.3.2 All Change Orders and Construction Change Directives shall provide itemized accounting that provides a detailed break-out of all materials and labor rates applicable thereto:

- (i) Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- (ii) Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- (iii) Fair market rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others provided, if rented from the Contractor, such rental and the rental rates have been approved by the Owner;
- (iv) Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work;
- (v) Additional costs of supervision and field office personnel directly attributable to the change to the extent permitted under the Contract Documents.

§ 7.3.3.3 The costs described in Section 7.3.3.2 shall not include any of the following:

- (i) Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically approved by the Owner;
- (ii) Expenses of the Contractor's principal office and offices other than the site office;
- (iii) Overhead and general expenses, except as may be expressly included in Section 7.3.3.1;
- (iv) The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- (v) Costs due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract Documents; or
- (vi) Any cost not described in Section 7.3.3.2.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement and subject to the limitations set forth in Section 7.3.3.1. In such case, and also under Section 7.3.3 (iii), the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs (not to exceed fair market rental costs) of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others provided, if rented from the Contractor, such rentals and the rental rates shall be the reasonable market rate.;
- .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 to the extent permitted under the Contract Documents.

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

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

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

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the actual costs incurred by the Contractor in the performance of the work under a Construction Change Directive which are substantiated to the reasonable satisfaction of the Architect; provided that such costs are of the type included in the cost of the Work as described in the Contract Documents and such Construction Change Directive is not made necessary by the negligent act or omission of the Contractor, a Subcontractor or anyone for whom any of them is responsible. This interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

§ 7.4 Minor Changes in the Work

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

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

§ 8.1.3 The date of Substantial Completion is the date Substantial Completion is achieved as provided in Section 9.8.1.

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

§ 8.2 Progress and Completion

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

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

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion of the Work in accordance with the Contract Documents and within the Contract Time.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work by the Owner which changes were not necessitated by the fault of the Contractor, a Subcontractor, a material or equipment supplier or anyone for whom any of them is responsible; (3) area-wide labor disputes not directed at the Contractor or any of its Subcontractors or by illegal labor actions or disputes; (4) fire, unusual and unanticipated delay in deliveries, unavoidable casualties, abnormally adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (5) by delay authorized by the Owner pending mediation and binding dispute resolution; or (6) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine provided that (i) any such delay has the effect of delaying completion of components of the Work on any critical path indicated in the Construction Schedule; (ii) any such delay is not caused by, or could not have been avoided by the exercise of reasonable efforts of the Contractor; (iii) any such delay could not be limited or avoided by the Contractor's timely notice to the Owner of the delay; and (iv) such delay has an impact of at least one (1) day. In the event the Contract Time is extended pursuant to this paragraph, Contractor shall also be entitled to payment by way of Change Order for any verifiable direct costs incurred as a result of such extension of the Contract Time plus the markup permitted for Change Orders under this Agreement.

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

§ 8.3.3 No Damage for Delay. Except as provided in Section 8.3.1 above, the Owner shall not be liable to the Contractor or any Subcontractor for Claims or damages of any nature caused by or arising out of delays. Except to the extent permitted by Section 8.3.1, the Contractor expressly agrees not to make and hereby waives any Claim for damages for any delay, including, but not limited to, those resulting from increased labor or material costs; directions given or not given by the Owner or Architect, including scheduling and coordination of the Work; the Architect's preparation of drawings and specifications or review of shop drawings and requests for instruction(s); or, on account of any delay, obstruction or hindrance for any cause whatsoever by the Owner, Architect, or any other contractor on the Project, whether or not foreseeable or anticipated. Except as provided in Section 8.3.1, the Contractor agrees that its sole right and remedy therefore shall be an extension of the Contract Time, if appropriate.

§ 8.3.4 It is expressly understood that notwithstanding anything to the contrary set forth in the Contract Documents, no Subcontractor shall be entitled to make any Claim for additional compensation, costs or damages against the Contractor (nor may the Contractor assert against Owner such Claims as pass-through claims of Subcontractor or otherwise) for delay. Unless otherwise agreed by Owner in writing, Contractor shall include in every Subcontract the same requirements set forth herein in Article 8.

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.

Intentionally Omitted.

(Paragraph deleted)

§ 9.2 Schedule of Values

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

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for submission of a final version of an Application for Payment pursuant to the Agreement, the Contractor shall submit to the Architect and the Owner for review and consideration a draft itemized Application for Payment prepared in accordance with the Contract Documents and the schedule of values, if required under Section 9.2, for completed portions of the Work. The Application shall be notarized, if required, and submitted along with all data, information and documentation substantiating the Contractor's right to payment under the Contract Documents and as may otherwise be required by the Owner or Architect (collectively, the "Supporting Documentation"). Subsequent to the Architect's and the Owner's review and comment, the Contractor shall make all necessary changes to the Application for Payment and resubmit a final version of the Application for Payment to the Architect and the Owner for payment.

§ 9.3.1.1 "Supporting Documentation" is defined to include an agreed upon lien waiver from each Subcontractor, Sub-subcontractor and supplier. As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

(Paragraph deleted)

§ 9.3.1.2 Applications for Payment shall reflect retainage as provided for in the Contract Documents.

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, or prohibited by the Agency providing funding for the Project, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. Contractor shall protect such stored materials and equipment from fire, theft, vandalism, weather and other damage and such items shall be available at all times for inspection by the Owner and the Architect.

§ 9.3.2.1 If approved in advance by the Owner, and not prohibited by the Agency providing funding for the Project, 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 (which insurance shall include coverage naming the Owner, and the Agency providing funding for the Project and such others as may be identified by the Owner from time to time) as additional insureds, and which shall specify and relate to the address where the stored materials and equipment are located including, if applicable, the Project Site), storage, and transportation to the site, for such materials and equipment stored off the site.

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

§ 9.3.4 Unless otherwise required by the Owner, Applications for Payment shall be on AIA documents G702 and G703.

§ 9.4 Certificates for Payment

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

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

§ 9.5 Decisions to Withhold Certification

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

may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 repeated failure to carry out the Work in accordance with the Contract Documents;
- .8 amounts previously paid to the Contractor in excess of amounts properly due the Contractor; or
- .9 failure of the Contractor to comply with any of the Contractor's indemnification obligations under the Contract Documents.

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

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

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. The Contractor will properly endorse any such joint checks upon Owner's request and, unless the Owner instructs otherwise, the Contractor shall thereafter promptly deliver the joint check(s) to the appropriate Subcontractors and suppliers. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

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

§ 9.6.2 Contractor shall use payments made under the Contract for the purpose of performance of the Work pursuant to the Contract Documents. Contractor shall pay for all labor and services performed and materials, equipment and machinery supplied by others in connection with the performance of the Work in accordance with the Contract Documents and as required by applicable Legal Requirements.

§ 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, and subject to the same requirements as are, 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 or applicable Legal Requirements.

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

§ 9.6.8 Any provision in the Contract Documents to the contrary notwithstanding, the Owner shall not be obligated to make payment to the Contractor hereunder to the extent that the Contractor has not performed the Work or supplied the materials, for which payment is requested, in accordance with the Contract Documents.

§ 9.7 Failure of Payment

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

§ 9.8 Substantial Completion

§ 9.8.1 The Work shall be considered to be "Substantially Complete(d)" or to have reached "Substantial Completion" on the date as determined by the Architect when (1) the entirety of the Work is sufficiently complete in accordance with the Contract Documents so that the Owner can utilize the Work for the use for which it is intended (subject only items on the Punch List, the completion of which can be accomplished within thirty (30) days without interfering with the actual use of the Work by the Owner or those claiming by, through or under the Owner), (2) the Contractor has obtained a temporary or permanent certificate of occupancy for the Work permitting the lawful occupancy of the entire Project along with any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy thereof (unless the same cannot be obtained for reasons beyond Contractor's control), and (3) the Architect has issued a Certificate of Substantial Completion for the entirety of the Work pursuant to Section 9.8.4 of these General Conditions.

Without limitation of the foregoing, Substantial Completion of the Work shall not be deemed to have occurred until construction and installation of all facilities and systems (including but not limited to instrumentation and controls) required to be completed by Contractor under the Contract Documents are complete in all respects as required for the issuance of all required use and occupancy permits and approvals by all applicable governmental authorities. Further, if and to the extent applicable given the Work to be performed hereunder, Substantial Completion shall require full commissioning and operation of all automatic systems, including but not limited to testing of individual system components and equipment and full operational startup and certification testing.

§ 9.8.2 When the Contractor considers that the Work is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment (the "Punchlist"). Failure to include an item on the Punchlist does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

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

§ 9.8.4 When the Work 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 remaining on the Punchlist accompanying the Certificate. Warranties required by the Contract

Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate.

§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. All warranties and guarantees required under or pursuant to the Contract Documents not previously delivered shall be assembled and delivered by the Contractor to the Owner and Architect as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Architect until all warranties and guarantees and all other close-out deliverables (including those set forth in Section 9.10.2 below) have been received and accepted by the Owner.

§ 9.10.2 The Contractor shall be required to submit the following to the Owner and the Architect as conditions to the issuance of a final Certificate for Payment and delivery of final payment: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect which shall include, without limitation, completed operations coverage for the six-year period following final completion, (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) all guaranties and warranties to which the Owner is entitled hereunder including documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) satisfactory proof that all claims, including taxes, arising out of the Work (including any claims of Subcontractors or suppliers) have been released or bonded and 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 including releases and final waivers of liens arising out of the Contract conditioned only upon receipt of final payment, the amount of which is consistent with the final Application for Payment, all, to the extent and in such form as may be designated by the Owner, (7) final permits, approvals (including, without limitation, the approval of the Owner's insurance company, if required and requested in a timely fashion) certificates (including, without limitation, certificates in respect of electrical systems and life safety systems) and authorizations for use and occupancy of the Project required by any

authority having jurisdiction, including any building permits, temporary and unconditioned permanent and full certificate of occupancy and any other necessary occupancy and use permits (unless the same cannot be obtained for reasons beyond Contractor's control), (9) formally prepared "as built" drawings, records and related data including all field notes of all the Work (such drawings shall be in the form of "mylar" reproducible drawings, or as otherwise called for in the Contract Documents), (10) the Operating and Maintenance Manual for the Project as provided below, (11) a final statement of accounting for all allowances in form satisfactory to the Owner, and (12) delivery of all spare parts required to be submitted pursuant to the Contract Documents.

§ 9.10.2.1 The "Operating and Maintenance Manual" for the Project shall contain, as applicable to the Work, (1) full information for each item of mechanical, electrical, or other operating equipment, copies of warranties therefor, schematic diagrams of control systems, circuit directories for each electric and communications panel board, and charts showing the tagging of all valves; and (2) complete keying schedules, paint color schedules, and paint color samples. Each volume of the manual shall be clearly indexed, and shall include a directory of all Subcontractors and maintenance contractors, indicating the area of responsibility of each, and the name and telephone number of the responsible member of each organization. The volumes shall be in both electronic and in bound book form.

§ 9.10.2.2. 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 no such bond is provided, the Owner may, without limiting its remedies under law, in equity, or under the Contract Documents, withhold the portion of final payment claimed to be due by the relevant Subcontractor or supplier until such lien, claim, security interest, or encumbrance is resolved. The Contractor shall refund to the Owner all money that the Owner may be compelled to pay in resolving such lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.2.2.1 If the final documentation submitted by the Contractor is not complete or if the Work incomplete in any respect, the Contractor shall promptly complete any such Work and shall promptly resubmit the final documentation.

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

§ 9.10.4

(Paragraphs deleted)
Intentionally Omitted.

§ 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 required by the applicable Legal Requirements, the Contract Documents or as reasonably requested by the Owner in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

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

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

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

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable Legal Requirements bearing on safety of persons or property or their protection from damage, injury, or loss. The Contractor shall provide to the Owner a Project Safety Plan with emergency contact information, directions to emergency medical facilities and provisions for daily jobsite safety.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible for all measures necessary to protect any property adjacent to the Project and improvements thereon. Any damage to such property or improvements shall be promptly repaired by the Contractor at its cost and expense

§ 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 obtain all necessary permits from regulating agencies, exercise utmost care and carry on such activities under supervision of properly qualified personnel.

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

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

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

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.2.9 In the event the Contractor identifies activities or conditions during performance of the Work or at the Project, which, in the Contractor's good faith opinion, pose an unreasonable risk of bodily injury or property damage, whether immediate or in the future, the Contractor shall have the right to immediately take steps to protect its personnel and Subcontractors and stop Work and remove its personnel from the affected area.

§ 10.2.10 The Contractor shall at all times provide protection against weather (rain, wind, storms or heat) so as to maintain all Work, materials, apparatus and fixtures free from damage. At the end of the day's work, all new Work likely to be damaged shall be reasonably protected against such weather.

§ 10.2.11 The Contractor shall provide adequate fire protection for all operations associated with the Work, and such protection must meet all applicable federal (including OSHA), State and municipal regulations.

§ 10.2.12 The Contractor shall remove and replace with new work, at the Contractor's own expense, any Work damaged by failure to provide protection pursuant to Sections 10.2.10 and 10.2.11.

§ 10.2.13 The Contractor shall be responsible, to the extent not covered by insurance, for damage, loss or liability due to theft or vandalism to the Work and stored materials whether the same occurs while work is in progress or not, and during the day or at night, or on weekdays, weekends or holidays.

§ 10.2.14 The Contractor shall protect and prevent damage to all finished and unfinished phases of the Work during the course of the Project.

§ 10.2.15 SECURING THE SITE

The Contractor is responsible for securing, and preventing access by unauthorized individuals to, the Project site from such date as the Contractor, Subcontractors, suppliers, consultants, or agents commence the Work until the date of Final Completion, unless the Owner and Contractor agree in writing to an earlier date.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, whether naturally occurring or manmade, that is hazardous, toxic, or words of similar import or regulatory effect, and any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation, and polychlorinated biphenyls (collectively, "Hazardous Materials"). If the Contractor believes its Work will disturb or otherwise implicate any actual or suspected Hazardous Material or encounters a Hazardous Material not addressed in the Contract Documents, the Contractor shall not disturb any such Hazardous Material, immediately report the condition to the Owner and the Architect in writing and take all necessary precautions to prevent release of and exposure to the Hazardous Materials and foreseeable bodily injury or death to persons resulting from such Hazardous Materials, or foreseeable bodily injury and death, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area.

§ 10.3.2 Upon receipt of the Contractor's notice pursuant to Section 10.3.1, of the existence of actual or suspect Hazardous Materials not addressed in the Contract Documents, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the Hazardous Material or substance reported by the Contractor and, in the event such Hazardous Material or substance is found to be present, to cause it to be rendered harmless or otherwise abated. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the Hazardous Material or substance has been rendered harmless and/or otherwise abated in accordance with all applicable Legal Requirements, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown and start-up.

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

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor, any Subcontractor or any materialman or supplier, or any entity for whom any of them is responsible, brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be

responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances or its failure to comply with the Contract Documents. 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 except to the extent required by the Contract Documents.

§ 10.3.5 To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner, its agents, officers, officials, governing boards, employees, and the lender for the Project, as applicable, against claims, damages, losses and expenses, including but not limited to attorney's fees, resulting from (1) an actual or suspected Hazardous Material the Contractor, or any party for whose acts the Contractor is responsible, brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the claims, damages, losses and expenses are due to the Owner's fault or negligence.

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

§ 10.3.7 The Contractor shall perform all required procedures necessary to insure that there will be no release, discharge, spillage, uncontrolled loss, seepage or filtration (each a "Release") of any Hazardous Material identified to the Contractor in writing on the site and caused by Contractor's negligence. The Contractor is responsible for any and all costs and liabilities associated with the investigation and remediation of any such Release, or as required by regulating authorities having jurisdiction under any of the applicable Legal Requirements, and holds the Owner, its employees and agents, and the fee owner of the Project site (if other than the Owner), harmless against any current or future liabilities resulting from such incidents.

§ 10.3.8 All material and equipment furnished under the Contract Documents shall be free of asbestos, lead based paint, and PCBs. Unless otherwise specified in the Contract Documents, any material or equipment containing these, and any other Hazardous Materials shall be considered defective and shall be removed by the Contractor at the Contractor's sole expense.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7. The Contractor shall promptly notify insurers as applicable, and the Architect and the Owner of the nature of the emergency. Immediately thereafter, the Contractor shall submit to the Architect and the Owner a written report including description of circumstances of the emergency and details of actions taken.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized and properly licensed to issue insurance in the jurisdiction where the Project is located. The Owner, the state agency providing funding for the Project, the Architect, Architect's consultants, and such other parties as are identified in the Contract Documents and such others as may be required by the Owner, shall be named as additional insureds under the Contractor's commercial general liability policy, automobile insurance policy and umbrella/excess insurance policy.

§ 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 and properly licensed 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. In the event of such suspension, the Contractor shall be responsible for, and shall not receive an extension of the Contract Time in connection with, the delay in the Work arising from the suspension. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as customarily maintained by the Owner.

§ 11.2.2 **Builder's Risk and Property Insurance.** If the Contractor is required under the Contract Documents to maintain the Builder's Risk insurance for the Project and fails to purchase and maintain such insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Contractor shall be responsible to the Owner for all of the Owner's costs and damages caused by, arising from or attributable thereto to the extent that such losses, costs and damages would have been covered by such insurance.

§ 11.2.3 **Notice of Cancellation or Expiration of Contractor's Required Property Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of the Builder's Risk insurance if required to be maintained by the Contractor under the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Owner, upon receipt of notice from the Contractor, 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. If the Owner purchases replacement coverage, the cost of the insurance shall be charged to the Contractor by an appropriate Change Order. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide required insurance or responsibility to the Owner pursuant to Section 11.2.2.

§ 11.3 Waivers of Subrogation

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by such Builder's Risk insurance or other insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. Such Builder's Risk policy 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 Intentionally Omitted.

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

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

§11.5 Adjustment and Settlement of Insured Loss

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

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

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

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

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

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

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

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

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to modify the Contractor's obligations under Section 3.5 or 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.

§ 12.2.6 AUDITS

Upon request of the Owner, the Contractor will cooperate, and secure the cooperation of all Subcontractors, suppliers and Sub-subcontractors, and assist the Owner during any audit of the Project conducted by the DECD and the Agencies (as that term is defined in the Agreement) at any time after Substantial Completion at no cost to the Owner. Such cooperation shall include providing the Owner with access to all records required for any audit relating to the Project.

§ 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 to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents that arise subsequent to the effective date of such assignment. 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 or in equity.

§ 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.

§ 13.3.3 No provision contained in the Contract Documents shall create or give to third parties any claim or right against the Owner or the Contractor except as specifically provided herein.

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

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

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense. If the inspections and tests conducted under Section 13.4.1 or this Section 13.4.2 reveal failure in a portion of the Work, the Owner may order the inspection and testing at the Contractor's expense of any and all portions of the Work that are identical or similar to the failing portion.

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

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

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

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest as provided in the Agreement.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or
- .3 Because the Owner has repeatedly defaulted, beyond any applicable notice and cure periods, in its payment obligations to the Contractor under the Contract Documents.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment pursuant to the Contract Documents for Work executed in accordance with the Contract Documents, along with direct costs incurred by the Contractor by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, supplier or their agents or employees or any other persons or entities performing portions of the Work by or on behalf of any of them because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important and critical 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.

§ 14.1.5 The notice of termination delivered pursuant to Section 14.1.3 or 14.1.4 must state with specificity the means by which the Owner may cure its nonperformance, and the Contractor shall not terminate the Contract if, within the applicable ten (10) day period, the Owner substantially takes such curative measures.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may, without prejudice and without waiving any other rights or remedies the Owner may have, terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents;
- .5 institutes proceedings or consent to proceedings requesting relief or arrangement under the Federal Bankruptcy Act or similar or applicable federal or state law, or a petition under any federal or state bankruptcy or insolvency law is filed against the Contractor and such petition is not dismissed within sixty (60) days from the date of said filing, or the Contractor admits in writing its inability to pay its debts as they become due, or it makes a general assignment for the benefit of its creditors, or a receiver, liquidator, trustee, or assignee is appointed, or a receiver of all or any substantial portion of the Contractor's properties is appointed;
- .6 abandons the Work;
- .7 submits an Application for Payment, sworn statement, waiver of lien, affidavit or document of any nature whatsoever which is intentionally falsified;
- .8 fails to make prompt payment to Subcontractors or for materials or labor in accordance with the respective subcontracts or otherwise breaches its obligations under any subcontract with a Subcontractor; or
- .9 if a mechanics or materialman's lien or notice of lien is filed against any part of the Work or the Project site and the lien and underlying claim are not promptly resolved as under 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 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, and without prejudice and without waiving any other rights or remedies the Owner may have, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

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

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

§ 14.4 Termination by the Owner for Convenience

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

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed in accordance with the Contract Documents, along with direct costs incurred by reason of the termination, including direct costs attributable to termination of Subcontracts.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

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

§ 15.1.2 Time Limits on Claims

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

§ 15.1.3 Notice of Claims

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

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

§ 15.1.4 Continuing Contract Performance

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

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

§ 15.1.5 Claims for Additional Cost

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

§ 15.1.6 Claims for Additional Time

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

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. No extension of the Contract Time will be granted for adverse weather conditions unless the number of days of inclement weather is substantially greater or conditions substantially more severe than the average for the calendar period as recorded by a recognized weather observation government agency.

§ 15.1.7 Waiver of Claims for Consequential Damages

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

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

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

§ 15.1.8 Notwithstanding anything to the contrary herein or in the Contract Documents, neither the Contract Sum nor the Contract Time shall be adjusted if the increased costs or delay underlying the Contractor's claim for adjustment stems from the negligent act or omission of the Contractor, its subcontractors of any tier, or of anyone for whose performance the Contractor is responsible to the Owner, or as a result of the error of any of the same or of the failure of any of the same to comply with, and fulfill their responsibilities under, the Contract Documents.

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within

30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

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

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

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

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

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

§ 15.3 Mediation

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

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

or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

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

§ 15.4 Arbitration

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

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

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

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

§ 15.4.4 Consolidation or Joinder

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

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

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

Additions and Deletions Report for AIA® Document A201® – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

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PAGE 1

Construction of new Senior Center
15 Louis Lane
Colchester, CT 06415

...

Town of Colchester, CT
127 Norwich Avenue
Colchester, CT 06415

...

Silver Petrucelli & Associates, Inc.
3190 Whitney Avenue
Hamden, CT 06518
Phone: 203-230-9007

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

...

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

...

§ 1.2.1 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. If the Contractor discovers any inconsistency within or among parts of the Contract Documents, or between the Contract

Documents and applicable standards, codes or ordinances, the Contractor shall promptly give notice to the Owner and the Architect of such inconsistency.

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

...

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will may use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

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~~§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who Owner's representative shall be the person designated as such in the Agreement, or a successor to such person designated by the Owner in writing from time to time, which person 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 authorization, other than the approval and execution of change orders and subject to such limitations as Owner may specify in writing to Contractor from time to time. Any action taken on Owner's behalf other than by the representative so designated by Owner will not be binding upon the Owner. The Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.~~

Intentionally Omitted.

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

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

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

...

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

§ 2.3.2 The Owner shall retain an architect ~~lawfully licensed to practice architecture, or an entity lawfully practicing architecture, (or engineer, as appropriate)~~ lawfully licensed to practice architecture (or engineering, as applicable), or an entity lawfully practicing architecture (or engineering, as applicable), 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. The Owner has also retained an Owner's Representative. Upon request, the Owner shall provide Contractor with a copy of the Owner's Representative Agreement. The Contractor is expected to familiarize itself with the duties, responsibilities and authority of the owner's Representative as set forth in said agreement.

§ 2.3.3 If the employment of the Architect ~~(or engineer, as applicable)~~ 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.

~~provided the services of the Architect (or engineer, as applicable) are still needed for the Project at the time of termination.~~ **§ 2.3.4** The Owner shall, if requested by the Contractor, furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. Project. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall such surveys but shall, in all cases, exercise proper precautions relating to the safe performance of the Work. Any other data provided by the Owner to the Contractor concerning the physical characteristics or measurements of the components that comprise the Project site; access to the Project site or staging and storing at the Project site; present obstructions and conditions of structures on or near the Project site; locations and depths of sewers, conduits, pipes, and gas lines on or near the Project site; positions of sidewalks, curbs and pavements on or near the Project site and other data concerning the conditions of the Project site and its surroundings (collectively, "Site Data"), have been obtained from sources the Owner believes to be reliable and Owner acknowledges that Contractor's price is based upon the Site Data being accurate.

§ 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 furnish such information and services with reasonable promptness after receiving the Contractor's written request for such information or services.

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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, and all deficiencies in the Work arising therefrom, with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the neglect and the deficiencies in the Work arising therefrom. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the Owner's reasonable cost of correcting the default or neglect and the deficiencies in the Work arising therefrom, including, without limitation, reasonable expenses, attorneys' fees, and compensation for the Architect's additional services made necessary by such default, neglect, failure and deficiencies. The Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure, necessary to pay the Owner the amounts due under this Section 2.5. 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. The right of the Owner to carry out the Work pursuant to this Section 2.5 shall not give rise to any duties on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. In performing any work pursuant to this Section 2.5, the Owner shall have the right to take possession of the site and of all materials and equipment to be incorporated into the Work.

§ 2.6 ADDITIONAL RIGHTS

§ 2.6.1 The rights stated in this Article 2 shall be in addition to, and not in limitation of, any other rights of the Owner provided in the Contract Documents, or as may be available to the Owner at law or in equity.

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§ 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 and subcontractors of all tiers shall be lawfully licensed to the extent and as required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

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§ 3.1.2.1 Unless explicit quality or standards for materials or workmanship are established in the Contract Documents for any portion of the Work with which the Contractor is obligated to comply, the Contractor shall perform such Work in a good and workman like manner, in a manner of good quality for the intended use, and consistent with the quality of the surrounding Work and of the construction of the Project generally.

§ 3.1.2.2 All manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the manufacturer's written or printed directions and instructions unless otherwise specifically indicated in the Contract Documents.

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.1.4 The Contractor shall comply, and shall cause Subcontractors of every tier to comply, with all accounting procedures and record retention policies reasonably requested by the Owner.

§ 3.1.5 NONRESIDENT CONTRACTOR

If the Contractor is a "nonresident contractor" as defined in Section 12-430(7)(A) of the Connecticut General Statutes, as revised, the Contractor shall provide evidence to the Owner prior to commencement of the Work that Contractor has complied fully with the provisions of Section 12-430(7). The Contractor is hereby notified that, if any subcontractor or supplier performing any part of the Work under the Contract Documents is a nonresident unverified contractor, the Contractor will withhold 5% of all payments to such subcontractor or supplier unless and until such subcontractor or supplier provides to the Contractor a Certificate of Compliance issued by the Connecticut Department of Revenue Services as defined in the Connecticut General Statutes §12-430(7). A nonresident unverified contractor is a contractor without an office in the State of Connecticut that is continuously maintained, occupied and used by the contractor's regular employees regularly in attendance to carry on the contractor's business in the contractor's own name and which contractor has not been verified pursuant to the requirements of the Connecticut Department of Revenue Services. The amount withheld pursuant to CGS §12-430(7) shall be in addition to, and not in lieu of, the retainage held by the Contractor under its subcontract with the subcontractor or supplier.

§ 3.1.6 Notwithstanding anything to the contrary in the Contract Documents, the Contractor shall attend such meetings and site-visits, and make such submissions, as are necessary to comply with applicable Legal; Requirements.

§ 3.1.7 Nondiscrimination

§ 3.1.7.1 Pursuant to the requirements of Connecticut General Statutes §4a-60:

(a)(1) The Contractor agrees and warrants that in the performance of the Contract the Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status as a veteran, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the state of Connecticut; and the Contractor further agrees to take affirmative action to ensure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status as a veteran, intellectual disability, mental disability or physical disability, including, but not limited to,

blindness, unless it is shown by such contractor that such disability prevents performance of the work involved;

(2) The Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission on Human Rights and Opportunities;

(3) The Contractor agrees to provide each labor union or representative of workers with which such contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the contractor's commitments under Connecticut General Statutes §4a-60, and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(4) The Contractor agrees to comply with each provision of Connecticut General Statutes §4a-60 and Connecticut General Statutes §§46a-68f and with each regulation or relevant order issued by said commission pursuant to sections 46a-56, 46a-68e, 46a-68f and 46a-86; and

(5) The Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the contractor as relate to the provisions of Connecticut General Statutes §4a-60 and Connecticut General Statutes §46a-56.

(b) If the Contract is a public works contract, municipal public works contract or contract for a quasi-public agency project, the Contractor agrees and warrants that he or she will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works or quasi-public agency project.

(c) The Contractor shall include the provisions of subsections (a) and (b) of this section 3.1.7.1 in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the state, and in every subcontract entered into in order to fulfill any obligation of a municipal public works contract or contract for a quasi-public agency project, and such provisions shall be binding on a subcontractor, vendor or manufacturer, unless exempted by regulations or orders of the Commission on Human Rights and Opportunities. The Contractor shall take such action with respect to any such subcontract or purchase order as the commission may direct as a means of enforcing such provisions, including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the commission regarding a state contract, the Contractor may request the state of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the state and the state may so enter.

(d) The Contractor agrees to comply with the regulations referred to in this Section 3.1.7.1 as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.

§ 3.1.7.2 Pursuant to the requirements of CGS §4a-60a:

(a)(1) The Contractor agrees and warrants that in the performance of the Contract the Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or of the state of Connecticut, and that employees are treated when employed without regard to their sexual orientation;

(2) The Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under Connecticut General Statutes §4a-60a, and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(3) The Contractor agrees to comply with each provision of Connecticut General Statutes §4a-60a and with each regulation or relevant order issued by said Commission on Human Rights and Opportunities pursuant to Connecticut General Statutes §46a-56; and

(4) The Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of Connecticut General Statutes §4a-60a and Connecticut General Statutes §46a-56.

(b) The Contractor shall include the provisions of subsection (a) of this section 3.1.7.2 in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the state, and in every subcontract entered into in order to fulfill any obligation of a municipal public works contractor contract for a quasi-public agency project, and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission on Human Rights and Opportunities. The Contractor shall take such action with respect to any such subcontract or purchase order as the commission may direct as a means of enforcing such provisions, including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided, if such contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the commission regarding a state contract, the Contractor may request the state of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the state and the state may so enter.

(c) The Contractor agrees to comply with the regulations referred to in this Section 3.1.7.2 as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.
§ 3.2 Review of Contract Documents and Field Conditions by Contractor

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has (i) visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents; (ii) taken all reasonable steps to ascertain the nature and location of the Work, and the general and reasonably observable conditions which can or may affect the Work and/or the cost thereof; (iii) evaluated and satisfied itself, and will cause its Subcontractors to satisfy themselves, as to the conditions and limitations under which the Work is to be performed, including, without limitation (1) the location, condition, layout and visible physical conditions of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, and (4) anticipated availability and costs of materials, tools and equipment. Failure by the Contractor to comply with this Section and to fully acquaint itself with conditions which may affect the Work and/or the cost thereof, including, but not limited to, conditions relating to transportation, handling, storage of materials, availability of labor, water, other known projects in the region, applicable provisions of law bearing on the performance of the Work, and the character and availability of equipment and facilities needed preliminary to and during the prosecution the Work, shall not relieve the Contractor of its responsibilities under the Contract Documents and shall not constitute a basis for extension of the Contract Time or any increase in the Contract Sum. Owner assumes no responsibility for any representations concerning representations made by any of its officers, or employees or representatives, prior to the execution of the Contract, unless such representations are expressly stated in the Contract Documents. The provisions of this Section 3.2.1 shall not be construed to limit the investigative and review responsibilities of the Contractor under any other provisions of the Contract Documents.

§ 3.2.1.1 The execution of the Contract shall constitute:

§ 3.2.1.1.1 A representation by the Contractor that the Contractor has carefully reviewed the Contract Documents, and that the Contract Documents are sufficiently detailed and complete to permit the Contractor, (i) to complete the Project for an amount not in excess of the Contract Sum; and (ii) complete the Work within the Contract Time and in accordance with the Contract Documents. The Contractor shall not perform any construction activity it knows constitutes a recognized error, inconsistency or omission. If the Contractor performs any construction activity knowing it involves a recognized error, inconsistency or omission in the Contract Documents without reporting the error, inconsistency or omission to the Architect, the Contractor shall assume appropriate responsibility for such performance and shall bear an appropriate amount of the costs of correction.

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§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section ~~45.1.7~~ 15.1.7 as would have been avoided if the Contractor had performed such ~~obligations~~ obligations and the Contractor shall be

responsible for associated delays and impacts. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.5 If the Contractor fails to fulfill its obligations to report to the Architect or Owner under this Article 3, such failure shall preclude the Contractor from any subsequent Claim arising from, or relating to the factors giving rise to the Contractor's obligation to make such report.

§ 3.2.6 During the performance of the Work, the Owner assumes no contractual liability or responsibility for safety of the Project site or of any improvements thereon. Except as set forth in Section 10.3, the Contractor shall be solely responsible for providing safe conditions for the performance of the Work.

§ 3.2.7 The Contractor shall give the Architect notice of any additional Drawings, Specification or instructions required to define the Work in greater detail, or to permit the proper progress of the Work. Requests for such information shall be made by the Contractor sufficiently in advance of the time such information is needed by the Contractor so as to permit the Architect a reasonable time for responding to such requests without affecting the progress of the Work.

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§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures. In no event shall the Contractor employ construction means, methods, techniques, sequences or procedures that violate (1) requirements of any warranties applicable to the Work; or (2) any Legal Requirements.

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§ 3.3.4 The Contractor shall furnish sufficient forces, plant and equipment as may be necessary to insure the progress of the Work in accordance with the Construction Schedule. If, in the reasonable opinion of the Owner, the Contractor has fallen behind the Construction Schedule, the Contractor shall submit its proposal demonstrating the manner in which the desired rate of progress may be achieved and Contractor shall take such steps as may be necessary to meet the Construction Schedule. Unless the Contractor has fallen behind schedule due to delays which entitle Contractor to an adjustment in the Contract Time in accordance with the terms and conditions of the Contract Documents, the taking of such steps shall be at the sole costs and expense of the Contractor.

§ 3.3.5 Contractor's coordination of Work shall include, without limitation, review of all shop drawings (including, without limitation, architectural, civil, structural, mechanical, and electrical shop drawings) submitted by Subcontractors for various trades or subdivisions of work, as indicated by Contractor's approval in accordance with Section 3.12.

§ 3.3.6 The Contractor shall be solely responsible for properly laying out the Work, and for all lines, elevations and measurements for all of the Work. Contractor shall verify the figures shown on the Drawings before laying out the Work and will be responsible for any errors or inaccuracies resulting from Contractor's failure to do so. In the event that the Contractor shall, while laying out the Work, become aware of: (1) any conflicts between (a) the Drawings, the Specifications or any Modification to the Drawings or the Specifications and (b) the actual layout of the Work, or (2) any conflicts or inconsistencies in the Drawings, the Specifications or any Modification to the Drawings or the Specifications themselves, Contractor shall promptly notify the Architect. If the Contractor proceeds without the

Architect's clarification and instruction on the matter, the Contractor shall proceed at Contractor's own risk.

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§ 3.4.3 All labor shall be performed by workmen skilled in their respective trades, and workmanship shall be of good quality so that first class work in accordance with the standards of construction set forth in the Contract Documents and the Contractor's Standard of Care will be achieved. The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.4.3.1 As required under Section 31-53 of the Connecticut General Statutes, the wages paid on an hourly basis to any person performing the work of any mechanic, laborer or worker on the work herein contracted to be done and the amount of payment or contribution paid or payable on behalf of each such person to any employee welfare fund, as defined in subsection (i) of Section 31-53 of the Connecticut General Statutes shall be at a rate equal to the rate customary or prevailing for the same work in the same trade or occupation in the town in which such public works project is being constructed. Any contractor who is not obligated by agreement to make such payment or contribution on behalf of such persons to any such employee welfare fund shall pay to each mechanic, laborer or worker as part of such person's wages the amount of payment or contribution for such person's classification on each pay day.

§ 3.4.3.2 As required pursuant to Connecticut General Statute Section 31-53b, the Contractor shall furnish proof, and shall cause its Subcontractors to furnish proof, with the weekly certified payroll form for the first week each employee begins work on the Project that any person performing the work of a mechanic, laborer or worker pursuant to the classifications of labor under section 31-53 on the Project, pursuant to such contract, has completed a course of at least ten hours in duration in construction safety and health approved by the federal Occupational Safety and Health Administration or, has completed a new miner training program approved by the Federal Mine Safety and Health Administration in accordance with 30 CFR 48 or, in the case of telecommunications employees, has completed at least ten hours of training in accordance with 29 CFR 1910.268 and that any plumber or electrician subject to the continuing education requirements of section 20-334d, who has completed a course of at least ten hours in duration in construction safety and health approved by the federal Occupational Safety and Health Administration five or more years prior to the date such electrician or plumber begins work on the Project, has completed a supplemental refresher training course of at least four hours in duration in construction safety and health taught by a federal Occupational Safety and Health Administration authorized trainer.

§ 3.4.3.3 To the extent consistent with any provision regarding residence requirements contained in a collective bargaining agreement to which the Contractor is a party, in the employment of labor to perform the work specified herein, preference shall be given to citizens of the United States, who are, and continuously for at least three months prior to the date hereof have been, residents of the labor market area, as established by the Labor Commissioner, in which such work is to be done, and if no such qualified person is available, then to citizens who have continuously resided in the county in which the work is to be performed for at least three months prior to the date hereof, and then to citizens of the state who have continuously resided in the state at least three months prior to the date hereof.

§ 3.4.4 If the Contractor desires to substitute a product or method in lieu of what has been specified or shown in the Contract Documents, the Contractor may propose to do so in a written request delivered to the Architect and the Owner in accordance with the Contract Documents. Any written request for a substitution by the Contractor shall be a representation by the Contractor to the Owner that: (1) the Contractor has investigated the product or method proposed to be substituted and found it to be equivalent to or better than the product or method specified in the Contract Documents, (2) except to the extent otherwise expressly stated in such request, the Contractor is waiving any Claim for additional costs related to such substitution; (3) the Contractor will provide the same warranty for the substitution that the Contractor would for that specified; (4) the substitution will not entail changes in detail and construction of related Work; and (5) the Contractor shall coordinate the installation of the accepted substitution, making such changes as may be required for the Work to be complete in all respects.

§ 3.4.5 Notwithstanding the fact that the Contract Documents may specify a particular brand or make of material or equipment "or equal", if the Contractor elects to utilize "equal" materials or equipment rather than the specified materials or equipment, the "equal" materials or equipment will be subject to the prior written approval of the Owner.

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§ 3.5.2 The Contractor shall procure and assign to the Owner at the time of Substantial Completion of the Work any and all Subcontractor, manufacturer and supplier warranties relating to any materials, equipment and labor incorporated in the Work. Such warranties shall supplement the warranties provided by the Contractor in Section 3.5.1.

§ 3.5.3 Substitutions not properly approved and authorized in accordance with the Contract Documents and work, materials or equipment which fail to perform under the proper use and normal wear for intended purposes may be deemed defective. If required by the Architect or the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment to be incorporated in the Work.

§ 3.5.4 The Contractor further agrees that each Subcontract shall contain a warranty of the portion of the Work performed thereunder in the same form as the above stated warranty of Contractor. Included in said warranty shall be the statement that it shall be enforceable directly by the Owner, if the Owner so elects. The warranty of any Subcontractor shall not relieve the Contractor of its warranty as set forth above and the Owner may look to the Contractor, directly, and in the first instance to correct any defects in the Work.

§ 3.5.6 The representations and warranties under this Section 3.5 shall be in addition to, and not a substitute for, any other rights of the Owner under the Contract Documents or existing in law or equity.

§ 3.5.7 The representations and warranties set forth in this Section 3.5 shall survive final payment and termination of the Contract.

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. Owner is exempt from the payment of sales, use and similar taxes. The Contractor shall be familiar with the current regulations of the Connecticut Department of Revenue Services and the sales or use tax on materials or supplies exempted by such regulations shall not be included in the Contract Sum. A sales tax certificate will be provided to the Contractor by the Owner upon request.

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§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, certifications and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded, required by applicable Legal Requirements as of the effective date of this Contract. The Contractor shall provide the Owner and Architect with reproductions of all permits, licenses, permissions, certifications and receipts for payments and, upon submission of the final Application for Payment, shall deliver all originals of such documents to the Owner with copies to the Architect. All permits shall be posted by the Contractor in accordance with Town of Colchester requirements.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. be responsible for performance of the Work in accordance with, and give notices required by all applicable local, state and federal laws, statutes, ordinances, codes, building codes, rules, regulations, permits, and orders enacted, promulgated, issued or ordered by any governmental body or public or quasi-public authority having jurisdiction over the Work, the Contractor and/ or the site of the Project (collectively, the "Legal Requirements"). Legal Requirements shall include, without limitation, those relating to equal opportunity, labor, wages and employment.

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

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§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site at all times 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. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed upon written request in each case.

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§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. The list of all supervisory personnel, including the project manager and superintendent that the Contractor intends to use on the Project shall be submitted to the Owner for approval prior to the commencement of the Work. The Contractor shall not engage supervisory personnel other than as approved by Owner in writing and shall not change such personnel without the prior written approval of the Owner, which shall not be unreasonably withheld.

...

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's ~~information a Contractor's approval, a proposed~~ construction schedule for the Work. ~~The schedule shall contain detail appropriate for the Project, including (1)-proposed construction schedule (i) shall comply with all of the applicable requirements of, and shall not exceed time limits current under, the Contract Documents, (ii) shall be in such form and detail and include such content as required by the Owner, (iii) shall be related to the entire Project to the extent required by the Contract Documents, (iv) shall provide for expeditious and practicable execution of the Work for completion within the time limits current under the Contract Documents; (v) shall include the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2)-required for Substantial Completion; and (vi) shall include an apportionment of the Work by construction activity; and (3)-activity and the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents.~~ If the Owner requires a precedence-style critical path method (CPM) schedule, the proposed construction schedule shall also: (a) provide a graphic representation of all activities and events that will occur during performance of the Work; (b) identify each phase of construction and occupancy (if applicable); and (c) set forth dates that are critical in ensuring the timely and orderly completion of the Work (hereinafter referred to as "Milestone Dates"). If the proposed construction schedule is not accepted by the Owner, the Contractor shall promptly modify the proposed construction schedule in accordance with the recommendations of the Owner and the Architect and resubmit the revised schedules for acceptance. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

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§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent ~~schedules submitted to the Owner and Architect~~ construction schedules submitted to and approved by the Owner and Architect (as so approved, the "Construction Schedule").

§ 3.10.4 The Contractor shall monitor the progress of the Work for conformance with the requirements of the Construction Schedule and shall promptly advise the Owner of any delays or potential delays. The Construction Schedule shall be updated to reflect actual conditions ("Progress Reports") (which updated schedule shall be subject to the approval of the Owner and the Architect) at appropriate intervals as determined by the Contractor and as required by the conditions of the Work and the Project (but in no event less frequently than monthly) or as otherwise requested by the Owner. In the event any Progress Report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any Progress Report constitute an adjustment in the Contract Time, any Milestone Date or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to a Change Order.

§ 3.10.5 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, but not the obligation, to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, (1) working additional shifts or overtime, (2) supplying additional manpower, equipment, and facilities, and (3) other similar measures (hereinafter referred to collectively 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 purposes of ensuring the Contractor's compliance with the accepted construction schedule as adjusted for time extensions granted pursuant to Section 8.3. Except as provided in Section 8.3, the Contractor shall not be

entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner pursuant to this Section 3.10.5. The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.10.5 as frequently as the Owner deems necessary to ensure that that Contractor's performance of the Work will comply with any Milestone Date or the Substantial Completion Date, as the same may be extended by Change Order.

§ 3.10.6 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the Owner's operations. Any postponement, rescheduling or performance of the Work under this Section 3.10.6 may be grounds for an extension of the Contract Time, if permitted under Section 8.3, and an equitable adjustment in the Contract Sum, to the extent permitted under the Contract Documents, if: (1) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents and (2) such rescheduling or postponement is requested by or required for the convenience of the Owner. Without limiting the foregoing, the Contractor will not be entitled to an extension of the Contract Time or an adjustment of the Contract Sum to the extent the interfering Work so interferes as a result of the negligent act or omission of the Contractor or any Subcontractor or Sub-subcontractor or the failure of any of the same to perform the Work in a manner consistent with the Contract Documents, including Section 3.10.3 hereof.

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The Contractor shall make available, at the Project site, the Contract Documents, including a record set of Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. The record set of documents shall reflect all deviations from the Drawings and Specifications and shall be updated in detail from time to time to reflect the actual progress of the Work. The Owner and the Architect shall have free and complete access to such documents during the construction of the Work. Upon Substantial Completion of the Work, the Contractor shall furnish to the Owner through the Architect one set of "as built" plans in such form as the Owner shall require. Such plans shall completely record all Work in place and serve as a record of the Work as constructed. These shall be in electronic form ~~or~~ and paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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§ 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. Submittals shall be marked as reviewed by the Contractor for compliance with the Contract Documents and approved by the Contractor. Those that are not so marked may be returned by the Architect without action. The Contractor shall meet with the Architect in a timely fashion to discuss the schedule of submittals required under Section 3.10.2 and shall thereafter timely prepare and submit for approval by the Architect a schedule of submittals for the Work.

...

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, who has been approved by the Owner and that carries such professional liability insurance coverage as required by the Owner and whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals

only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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~~The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.~~ § 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable Legal Requirements and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. Prior to mobilization at the Project site, the Contractor shall submit for approval by the Architect and Owner a site logistics plan depicting the location of jobsite trailers, materials storage, parking, dumpster location, port-a-john locations and such other items as may be located on the Project site.

§ 3.13.2 The Contractor shall locate, protect and save from damage or disruption utilities and utility services lines of all kinds, either above or below grade found in the areas affected by the Work. The Contractor shall be responsible for all damage caused to such utilities by the operation of equipment or machinery, the delivery of materials, or as the direct or indirect result of any of the Work, and shall repair all such damage at its expense and as part of the Work included in the Contract Documents.

...

§ 3.14.3 Unless authorized in writing by the Owner and the Architect, structural elements of the Work shall not be cut, patched, or otherwise altered or repaired. Existing work that is cut, damaged, disturbed or otherwise interfered with by the Contractor, a Subcontractor, or anyone for whom any of them is responsible shall be fully, properly and carefully repaired by the responsible Contractor or Subcontractor. All such repairs shall be completed to the satisfaction of the Architect, and shall match similar existing adjoining work.

§ 3.15.1 The Contractor shall, on a daily basis, keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At the end of each work day, the Contractor shall leave the site in "broom-clean" condition with materials and tools safely and neatly stored. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

...

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

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§ 3.18.1 To the fullest extent permitted by law, the Contractor shall ~~indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them~~ indemnify, defend and hold harmless the Owner, the Owner's designated representative, the Town of Colchester, the Architect, the Architect's consultants, and all of their respective directors, members of governing boards, officials, officers, partners, employees, shareholders, members, managers, beneficiaries, agents and representatives (each an "Indemnatee") from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent but only to the extent caused by the negligent acts or omissions, violations of Legal Requirements bearing on performance of the Work, or breach of contract by the Contractor, a Subcontractor, Sub-subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable. The obligations of the Contractor under the foregoing indemnity shall include, without limitation, to the fullest extent permitted by law, any and all claims (including attorneys' fees resulting therefrom) against an Indemnatee caused by the negligent acts or omissions of Contractor, violations of Legal Requirements bearing on performance of the Work, or breach of contract by the

Contractor, a Subcontractor, Sub-subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be directly or indirectly arising or alleged to arise (1) out of the performance of or the failure to perform the Work or damage caused by Contractor in the performance of the Work to the job site, adjoining land or driveways, or streets or alleys, and from any and all claims against an Indemnitee by workmen, suppliers or Subcontractors who are involved in the performance of the Work, and (2) under any scaffolding, structural work or safe place law or any law with respect to the protection of adjacent landowners. These indemnification obligations are not intended to include liability for damage arising out of bodily injury to person or damage to property to the extent caused by or resulting from the negligence of the Indemnitee, such Indemnitee's agents or employees, nor shall such obligations be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

...

§ 3.18.3 To the fullest extent permitted by law, the Contractor shall further indemnify, defend and hold harmless each Indemnitee from and against (1) all claims for payment by any Subcontractor or supplier of any tier, (2) any and all actions, lawsuits, claims and proceedings brought against the Indemnitee as a result of liens filed against the Work, the Project site or any improvements thereon (referred to collectively as "Liens") by the Contractor, any Subcontractor, Sub-subcontractor or anyone claiming by, through or under them, and (3) 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. The Contractor 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 approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the Lien or other claim for payment has been asserted. The Contractor's obligations under this Section 3.18.3 are conditioned upon Owner having fulfilled its payment obligations to the Contractor with respect to the Work that is the subject of the Lien or claim and for which indemnification is sought.

§ 3.18.4 The Contractor shall bear any and all reasonable expenses incurred by any Indemnitee because of any claim or other matter indemnified against under this Section 3.18, including without limitation, attorneys' and consultants' fees and expenses, court costs, and costs related to the defense of, or preparing for the defense against, any such claim. If any such claim has not been settled or discharged or bonded at the time of final completion of the Work, and if such claim is not covered in full by a policy of insurance then in effect from a reputable and financially sound insurance company which has not declined or reserved the right to decline coverage of such claim, the Owner may withhold an amount equal to two hundred percent (200%) of the outstanding claim until any such claim is paid or settled or the Contractor provides a bond, acceptable to the Owner, to satisfy such claim.

§ 3.19 MEETINGS

§ 3.19.1 A qualified representative of the Contractor shall attend periodic progress meetings held at such time and as such place as the Architect or the Owner shall designate.

§ 3.19.2 The Contractor shall schedule and conduct progress meetings at the Project site on a weekly basis. Attendance is required of each Subcontractor, supplier or other entity whose portion of the Work is currently the subject of concern or discussion or planning of future construction activities. Contractor shall provide the Owner, Owner's Representative and Architect with forty-eight (48) hours prior notice of each such progress meeting and be permitted to attend and participate in the meetings.

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

§ 4.2.9 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 Documents and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

...

§ 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-site and, unless expressly provided otherwise, refers to subcontractors or any and all tiers other than Subcontractors.~~ 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.

...

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

§ 5.2.1.1 If requested by the Owner, the Contractor shall provide to the Owner copies of all subcontracts and supply agreements entered into by the Contractor for the Work, with all pricing information redacted.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum ~~or~~ and 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. If the Contractor wishes to substitute a different person or entity for a person or entity previously selected and approved as a Subcontractor pursuant to this Section 5.2, the procedure set forth in this Section 5.2 and as may be provided in the Agreement shall be followed.

...

~~By appropriate written agreement, the Contractor shall require~~ Any part of the Work performed by a Subcontractor shall be pursuant to a written Subcontract between the Contractor and Subcontractor. All Subcontracts shall provide that each Subcontractor, to the extent of the Work to be performed by the Subcontractor, ~~to be bound to the Contractor by the terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect.~~ Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the

Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

...

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

- .1 assignment is effective only after termination of the Contract by the Owner ~~for cause pursuant to and in accordance with~~ Section 14.2 of these General Conditions and only for those subcontract and supply agreements that the Owner accepts by notifying the Subcontractor or supplier and Contractor; and

...

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations ~~under the subcontract~~ the subcontract to the extent such rights and obligations arise subsequent to Owner's acceptance of the assignment. The Contractor agrees to execute any and all other documents required to effect this assignment.

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

...

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, disruption of the work of such Separate Contractor, improperly timed activities or defective construction. The Owner shall have the right to off-set such costs against any amounts owed to the Contractor by the Owner. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, Separate Contractor's disruption of the Work, improperly timed activities, damage to the Work or defective construction provided that the Contractor promptly notifies the Owner of such delays, disruption, activities, damage or defective construction.

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§ 6.2.6 Upon the Owner's request, the Contractor shall defend any proceedings brought against the Owner by any Separate Contractor on account of any damage alleged to have been caused by the Contractor which arises from the Contractor's failure to comply with the terms and conditions of Sections 6.1 and 6.2.

...

§ 7.1.4 In the case of a change in the Work proposed by the Owner or a proposed Change Order submitted to the Owner and the Architect by the Contractor, the Contractor shall submit to the Architect, in such form as the Architect may require, an accurate written estimate of the cost of any proposed extra Work or change in the Work. Such estimates shall be provided without cost to the Owner. The Contractor's estimate shall indicate the description, quantity and unit cost of each item of material, and the number of hours of work and hourly rate for each class of labor, as well as all other costs chargeable under the terms of this Article. Unit labor costs for the installation of each item of materials shall be provided if required by the Architect. The Contractor shall promptly revise and resubmit such estimate if the Architect determines that it is not in compliance with the requirements of this Section, or that it contains errors of fact or mathematical errors. If required by the Architect, in order to establish the exact cost of new Work added or of previously required Work omitted, the Contractor shall obtain and furnish to the Architect bona fide proposals from recognized suppliers for furnishing any material included in such Work. Such estimates shall be furnished promptly so as to occasion no delay in the Work. The Contractor shall also state in the estimate any change in the Contract Time that would result from the change in the Work.

...

§ 7.2.2 A Change Order executed by the Owner and the Contractor shall constitute a final settlement of all matters relating to the subject matter of the Change Order including, without limitation, compensation to be paid to the Contractor in connection with any change in the Work required by the Change Order (provided that the Work that is the subject of such change is performed in a manner consistent with the provisions of the Contract Documents and the applicable Change Order), including but not limited to all direct and indirect costs, profit, overhead, extended overhead, loss of productivity and general conditions associated with such change, and any and all adjustments to the Contract Sum, the Construction Schedule, and to the Contract Time

§ 7.2.3 Notwithstanding anything to the contrary set forth in these General Conditions, if the Agreement sets forth the methodology for calculating adjustments in the Contract Sum associated with a change in the Work, and if, under the terms of the Contract Documents, an adjustment in the Contract Sum would be required, then the adjustment will be based on such methodology unless otherwise mutually agreed by the parties. This paragraph shall be applicable in the case of a change in the Work effected by a Change Order as well as a Construction Change Directive.

§ 7.2.4 Unless otherwise instructed by the Owner, Change Orders shall be prepared on the form AIA G-701.

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

§ 7.3.3.1 Notwithstanding anything to the contrary contained in the foregoing provisions of this Section 7.3, in the case of a change in the Work for which the Contractor is entitled to an adjustment in the Contract Sum under the terms and conditions of the Contract Documents, such adjustment shall include the following:

(i) For all changes involving additional Work, the Contractor shall be entitled to a 15% markup, which will include general conditions, overhead and profit, and additional bond and insurance costs on all costs including but limited to Contractor direct costs, Subcontractor costs and vendor costs. Notwithstanding the foregoing, Subcontractors and Sub-subcontractors shall be entitled to a 10% markup on their actual costs of the changed Work;

(ii) When calculating a change involving additional Work, additional costs will be offset by credits for deleted work related to this change prior to calculating the markups denoted in (i); and

(iii) Any Work deleted from the Project will be credited at cost without markup.

For change order Work that is the subject of Unit Prices under the Contract Documents, there will be no markup permitted on the applicable Unit Prices.

The Contractor shall include the markup limitations set forth in this Section 7.3.3.1 in all Subcontracts and require in all Subcontracts that the Subcontractors include such limitations in all lower tier Subcontracts.

§ 7.3.3.2 All Change Orders and Construction Change Directives shall provide itemized accounting that provides a detailed break-out of all materials and labor rates applicable thereto:

- (i) Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- (ii) Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

- (iii) Fair market rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others provided, if rented from the Contractor, such rental and the rental rates have been approved by the Owner;
- (iv) Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work;
- (v) Additional costs of supervision and field office personnel directly attributable to the change to the extent permitted under the Contract Documents.

§ 7.3.3.3 The costs described in Section 7.3.3.2 shall not include any of the following:

- (i) Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically approved by the Owner;
- (ii) Expenses of the Contractor's principal office and offices other than the site office;
- (iii) Overhead and general expenses, except as may be expressly included in Section 7.3.3.1;
- (iv) The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- (v) Costs due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract Documents; or
- (vi) Any cost not described in Section 7.3.3.2.

§ 7.3.4 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, ~~or if no such amount is set forth in the Agreement, a reasonable amount.~~ Agreement and subject to the limitations set forth in Section 7.3.3.1. In such case, and also under Section 7.3.3.3, Section 7.3.3 (iii), the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

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- .3 Rental costs (not to exceed fair market rental costs) of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or ~~others~~; others provided, if rented from the Contractor, such rentals and the rental rates shall be the reasonable market rate.;

...

- .5 Costs of supervision and field office personnel directly attributable ~~to the change to the change to the~~ extent permitted under the Contract Documents.

...

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

...

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment ~~the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's actual costs incurred by the Contractor in the performance of the work under a Construction Change Directive which are substantiated to the reasonable satisfaction of the Architect; provided that such costs are of the type included in the cost of the Work as described in the Contract Documents and such Construction Change Directive is not made necessary by the negligent act or omission of the Contractor, a~~

Subcontractor or anyone for whom any of them is responsible. This interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8. Substantial Completion is achieved as provided in Section 9.8.1.

...

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion of the Work in accordance with the Contract Documents and within the Contract Time.

...

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, Work by the Owner which changes were not necessitated by the fault of the Contractor, a Subcontractor, a material or equipment supplier or anyone for whom any of them is responsible; (3) area-wide labor disputes not directed at the Contractor or any of its Subcontractors or by illegal labor actions or disputes; (4) fire, unusual and unanticipated delay in deliveries, unavoidable casualties, abnormally adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4)-(5) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5)-(6) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. determine provided that (i) any such delay has the effect of delaying completion of components of the Work on any critical path indicated in the Construction Schedule; (ii) any such delay is not caused by, or could not have been avoided by the exercise of reasonable efforts of the Contractor; (iii) any such delay could not be limited or avoided by the Contractor's timely notice to the Owner of the delay; and (iv) such delay has an impact of at least one (1) day. In the event the Contract Time is extended pursuant to this paragraph, Contractor shall also be entitled to payment by way of Change Order for any verifiable direct costs incurred as a result of such extension of the Contract Time plus the markup permitted for Change Orders under this Agreement.

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§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. No Damage for Delay. Except as provided in Section 8.3.1 above, the Owner shall not be liable to the Contractor or any Subcontractor for Claims or damages of any nature caused by or arising out of delays. Except to the extent permitted by Section 8.3.1, the Contractor expressly agrees not to make and hereby waives any Claim for damages for any delay, including, but not limited to, those resulting from increased labor or material costs; directions given or not given by the Owner or Architect, including scheduling and coordination of the Work; the Architect's preparation of drawings and specifications or review of shop drawings and requests for instruction(s); or, on account of any delay, obstruction or hindrance for any cause whatsoever by the Owner, Architect, or any other contractor on the Project, whether or not foreseeable or anticipated. Except as provided in Section 8.3.1, the Contractor agrees that its sole right and remedy therefore shall be an extension of the Contract Time, if appropriate.

§ 8.3.4 It is expressly understood that notwithstanding anything to the contrary set forth in the Contract Documents, no Subcontractor shall be entitled to make any Claim for additional compensation, costs or damages against the Contractor (nor may the Contractor assert against Owner such Claims as pass-through claims of Subcontractor or otherwise) for delay. Unless otherwise agreed by Owner in writing, Contractor shall include in every Subcontract the same requirements set forth herein in Article 8.

...

Intentionally Omitted.

§ 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.

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

...

§ 9.3.1 At least ten days before the date established for each progress payment, submission of a final version of an Application for Payment pursuant to the Agreement, the Contractor shall submit to the Architect and the Owner for review and consideration a draft itemized Application for Payment prepared in accordance with the Contract Documents and the schedule of values, if required under Section 9.2, for completed portions of the Work. The application Application shall be notarized, if required, and supported by all data submitted along with all data, information and documentation substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents under the Contract Documents and as may otherwise be required by the Owner or Architect (collectively, the "Supporting Documentation"). Subsequent to the Architect's and the Owner's review and comment, the Contractor shall make all necessary changes to the Application for Payment and resubmit a final version of the Application for Payment to the Architect and the Owner for payment.

§ 9.3.1.1 "Supporting Documentation" is defined to include an agreed upon lien waiver from each Subcontractor, Sub-subcontractor and supplier. As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

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

§ 9.3.1.2 Applications for Payment shall reflect retainage as provided for in the Contract Documents.

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, or prohibited by the Agency providing funding for the Project, 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. Contractor shall protect such stored materials and equipment from fire, theft, vandalism, weather and other damage and such items shall be available at all times for inspection by the Owner and the Architect.

§ 9.3.2.1 If approved in advance by the Owner, and not prohibited by the Agency providing funding for the Project, 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 (which insurance shall include coverage naming the Owner, and the Agency providing funding for the Project and such others as may be identified by the Owner from time to time) as additional insureds, and which shall specify and relate to the address

where the stored materials and equipment are located including, if applicable, the Project Site), storage, and transportation to the site, for such materials and equipment stored off the site.

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§ 9.3.4 Unless otherwise required by the Owner, Applications for Payment shall be on AIA documents G702 and G703.

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

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data in the Application for Payment, Payment and Supporting Documentation submitted therewith, 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.

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- .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;
- .8 amounts previously paid to the Contractor in excess of amounts properly due the Contractor; or
- .9 failure of the Contractor to comply with any of the Contractor's indemnification obligations under the Contract Documents.

...

§ 9.5.4 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. The Contractor will properly endorse any such joint checks upon Owner's request and, unless the Owner instructs otherwise, the Contractor shall thereafter promptly deliver the joint check(s) to the appropriate Subcontractors and suppliers. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Contractor shall reflect such payment on its next Application for Payment.

...

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Contractor shall use payments made under the Contract for the purpose of performance of the Work pursuant to the Contract Documents. Contractor shall pay for all labor and services performed and materials, equipment and machinery supplied by others in connection with the performance of the Work in accordance with the Contract Documents and as required by applicable Legal Requirements.

...

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to ~~that~~ that, and subject to the same requirements as are, 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.~~ Documents or applicable Legal Requirements.

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§ 9.6.8 ~~Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted. Any provision in the Contract Documents to the contrary notwithstanding, the Owner shall not be obligated to make payment to the Contractor hereunder to the extent that the Contractor has not performed the Work or supplied the materials, for which payment is requested, in accordance with the Contract Documents.~~

...

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

...

§ 9.8.1 ~~Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof~~ The Work shall be considered to be "Substantially Complete(d)" or to have reached "Substantial Completion" on the date as determined by the Architect when (1) the entirety of the Work is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. utilize the Work for the use for which it is intended (subject only items on the Punch List, the completion of which can be accomplished within thirty (30) days without interfering with the actual use of the Work by the Owner or those claiming by, through or under the Owner), (2) the Contractor has obtained a temporary or permanent certificate of occupancy for the Work permitting the lawful occupancy of the entire Project along with any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy thereof (unless the same cannot be obtained for reasons beyond Contractor's control), and (3) the Architect has issued a Certificate of Substantial Completion for the entirety of the Work pursuant to Section 9.8.4 of these General Conditions.

Without limitation of the foregoing, Substantial Completion of the Work shall not be deemed to have occurred until construction and installation of all facilities and systems (including but not limited to instrumentation and controls) required to be completed by Contractor under the Contract Documents are complete in all respects as required for the issuance of all required use and occupancy permits and approvals by all applicable governmental authorities. Further, if and to the extent applicable given the Work to be performed hereunder, Substantial Completion shall require full commissioning and operation of all automatic systems, including but not limited to testing of individual system components and equipment and full operational startup and certification testing.

§ 9.8.2 ~~When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately,~~ Work is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive

list of items to be completed or corrected prior to final ~~payment~~ payment (the "Punchlist"). Failure to include an item on ~~such list~~ the Punchlist does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

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

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

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

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

...

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. All warranties and guarantees required under or pursuant to the Contract Documents not previously delivered shall be assembled and delivered by the Contractor to the Owner and Architect as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Architect until all warranties and guarantees and all other close-out deliverables (including those set forth in Section 9.10.2 below) have been received and accepted by the Owner.

§ 9.10.2 ~~Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect. The Contractor shall be required to submit the following to the Owner and the Architect as conditions to the issuance of a final Certificate for Payment and delivery of final payment:~~ (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied,

(2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, ~~effect which shall include, without limitation, completed operations coverage for the six-year period following final completion,~~ (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) ~~all guaranties and warranties to which the Owner is entitled hereunder including~~ documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) ~~if required by the Owner, satisfactory proof that all claims, including taxes, arising out of the Work (including any claims of Subcontractors or suppliers) have been released or bonded and 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, arising out of the Contract including releases and final waivers of liens arising out of the Contract conditioned only upon receipt of final payment, the amount of which is consistent with the final Application for Payment, all, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.~~ Owner, (7) final permits, approvals (including, without limitation, the approval of the Owner's insurance company, if required and requested in a timely fashion) certificates (including, without limitation, certificates in respect of electrical systems and life safety systems) and authorizations for use and occupancy of the Project required by any authority having jurisdiction, including any building permits, temporary and unconditioned permanent and full certificate of occupancy and any other necessary occupancy and use permits (unless the same cannot be obtained for reasons beyond Contractor's control), (9) formally prepared "as built" drawings, records and related data including all field notes of all the Work (such drawings shall be in the form of "mylar" reproducible drawings, or as otherwise called for in the Contract Documents), (10) the Operating and Maintenance Manual for the Project as provided below, (11) a final statement of accounting for all allowances in form satisfactory to the Owner, and (12) delivery of all spare parts required to be submitted pursuant to the Contract Documents.

§ 9.10.2.1 The "Operating and Maintenance Manual" for the Project shall contain, as applicable to the Work, (1) full information for each item of mechanical, electrical, or other operating equipment, copies of warranties therefor, schematic diagrams of control systems, circuit directories for each electric and communications panel board, and charts showing the tagging of all valves; and (2) complete keying schedules, paint color schedules, and paint color samples. Each volume of the manual shall be clearly indexed, and shall include a directory of all Subcontractors and maintenance contractors, indicating the area of responsibility of each, and the name and telephone number of the responsible member of each organization. The volumes shall be in both electronic and in bound book form.

§ 9.10.2.2. 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 no such bond is provided, the Owner may, without limiting its remedies under law, in equity, or under the Contract Documents, withhold the portion of final payment claimed to be due by the relevant Subcontractor or supplier until such lien, claim, security interest, or encumbrance is resolved. The Contractor shall refund to the Owner all money that the Owner may be compelled to pay in resolving such lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.2.2.1 If the final documentation submitted by the Contractor is not complete or if the Work incomplete in any respect, the Contractor shall promptly complete any such Work and shall promptly resubmit the final documentation.

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

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from
1 — liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
2 — failure of the Work to comply with the requirements of the Contract Documents;
3 — terms of special warranties required by the Contract Documents; or
4 — audits performed by the Owner, if permitted by the Contract Documents, after final payment. Intentionally Omitted.

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The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs required by the applicable Legal Requirements, the Contract Documents or as reasonably requested by the Owner in connection with the performance of the Contract.

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§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, Legal Requirements bearing on safety of persons or property or their protection from damage, injury, or loss. The Contractor shall provide to the Owner a Project Safety Plan with emergency contact information, directions to emergency medical facilities and provisions for daily jobsite safety.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The Contractor shall also be responsible for all measures necessary to protect any property adjacent to the Project and improvements thereon. Any damage to such property or improvements shall be promptly repaired by the Contractor at its cost and expense

§ 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 obtain all necessary permits from regulating agencies, exercise utmost care and carry on such activities under supervision of properly qualified personnel.

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

...

§ 10.2.9 In the event the Contractor identifies activities or conditions during performance of the Work or at the Project, which, in the Contractor's good faith opinion, pose an unreasonable risk of bodily injury or property damage, whether immediate or in the future, the Contractor shall have the right to immediately take steps to protect its personnel and Subcontractors and stop Work and remove its personnel from the affected area.

§ 10.2.10 The Contractor shall at all times provide protection against weather (rain, wind, storms or heat) so as to maintain all Work, materials, apparatus and fixtures free from damage. At the end of the day's work, all new Work likely to be damaged shall be reasonably protected against such weather.

§ 10.2.11 The Contractor shall provide adequate fire protection for all operations associated with the Work, and such protection must meet all applicable federal (including OSHA), State and municipal regulations.

§ 10.2.12 The Contractor shall remove and replace with new work, at the Contractor's own expense, any Work damaged by failure to provide protection pursuant to Sections 10.2.10 and 10.2.11.

§ 10.2.13 The Contractor shall be responsible, to the extent not covered by insurance, for damage, loss or liability due to theft or vandalism to the Work and stored materials whether the same occurs while work is in progress or not, and during the day or at night, or on weekdays, weekends or holidays.

§ 10.2.14 The Contractor shall protect and prevent damage to all finished and unfinished phases of the Work during the course of the Project.

§ 10.2.15 SECURING THE SITE

The Contractor is responsible for securing, and preventing access by unauthorized individuals to, the Project site from such date as the Contractor, Subcontractors, suppliers, consultants, or agents commence the Work until the date of Final Completion, unless the Owner and Contractor agree in writing to an earlier date.

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent any material, substance, chemical, waste, product, derivative, compound, mixture, solid, liquid, mineral or gas, whether naturally occurring or manmade, that is hazardous, toxic, or words of similar import or regulatory effect, and any petroleum or petroleum-derived products, radon, radioactive materials or wastes, asbestos in any form, lead or lead-containing materials, urea formaldehyde foam insulation, and polychlorinated biphenyls (collectively, "Hazardous Materials"). If the Contractor believes its Work will disturb or otherwise implicate any actual or suspected Hazardous Material or encounters a Hazardous Material not addressed in the Contract Documents, the Contractor shall not disturb any such Hazardous Material, immediately report the condition to the Owner and the Architect in writing and take all necessary precautions to prevent release of and exposure to the Hazardous Materials and foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the such Hazardous Materials, or foreseeable bodily injury and death, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition area.

§ 10.3.2 Upon receipt of the Contractor's notice, notice pursuant to Section 10.3.1, of the existence of actual or suspect Hazardous Materials not addressed in the Contract Documents, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material Hazardous Material or substance reported by the Contractor and, in the event such material Hazardous Material or substance is found to be present, to cause it to be rendered harmless, harmless or otherwise abated. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Hazardous Material or substance has been rendered harmless and/or otherwise abated in accordance with all applicable Legal Requirements, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, shutdown and start-up.

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§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor-Contractor, any Subcontractor or any materialman or supplier, or any entity for whom any of them is responsible, brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances materials or substances or its failure to comply with the Contract Documents. 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 except to the extent required by the Contract Documents.

§ 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~~ To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner, t and its respective agents, officers, officials, governing boards, employees, and the lender for the Project, as applicable, against claims, damages, losses and expenses, including but not limited to attorney's fees, resulting from (1) an actual or suspect Hazardous Material the Contractor, or any party for whose acts the Contractor is responsible, brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense claims, damages, losses and expenses are due to the Owner's fault or negligence.

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

§ 10.3.7 The Contractor shall perform all required procedures necessary to insure that there will be no release, discharge, spillage, uncontrolled loss, seepage or filtration (each a "Release") of any Hazardous Material identified to the Contractor in writing on the site and caused by Contractor's negligence. The Contractor is responsible for any and all costs and liabilities associated with the investigation and remediation of any such Release, or as required by regulating authorities having jurisdiction under any of the applicable Legal Requirements, and holds the Owner, its employees and agents, and the fee owner of the Project site (if other than the Owner), harmless against any current or future liabilities resulting from such incidents.

§ 10.3.8 All material and equipment furnished under the Contract Documents shall be free of asbestos, lead based paint, and PCBs. Unless otherwise specified in the Contract Documents, any material or equipment containing these, and any other Hazardous Materials shall be considered defective and shall be removed by the Contractor at the Contractor's sole expense.

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In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7. The Contractor shall promptly notify insurers as applicable, and the Architect and the Owner of the nature of the emergency. Immediately thereafter, the Contractor shall submit to the Architect and the Owner a written report including description of circumstances of the emergency and details of actions taken.

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§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized and properly licensed to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants the state agency providing funding for the Project, the Architect, Architect's consultants, and such other parties as are identified in the Contract Documents and such others as may be required by the Owner, shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents-policy, automobile insurance policy and umbrella/excess insurance policy.

§ 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 and properly licensed to issue surety bonds in the jurisdiction where the Project is located.

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§ 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. In the event of such suspension, the Contractor shall be responsible for, and shall not receive an extension of the Contract Time in connection with, the delay in the Work arising from the suspension. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

...

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

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

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§ 11.2.3 Notice of Cancellation or Expiration of Owner's Contractor's Required Property Insurance. Within three (3) business days of the date the ~~Owner Contractor~~ 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 the~~ **Builder's Risk insurance if required to be maintained by the Contractor under the Contract Documents, the Contractor shall provide notice to the Owner** 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, Owner, upon receipt of notice from the Owner, the Contractor, 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 Contractor.~~ If the Owner purchases replacement coverage, the cost of the insurance shall be charged to the ~~Owner Contractor~~ by an appropriate Change Order. The furnishing of notice by the ~~Owner Contractor~~ shall not relieve the ~~Owner Contractor~~ of any contractual obligation to provide required ~~insurance insurance or responsibility to the Owner pursuant to Section 11.2.2.~~

...

§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by ~~property insurance required by the Agreement or other property such~~ **Builder's Risk insurance or other insurance** applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. ~~The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 Such Builder's Risk policy 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.~~Intentionally Omitted.

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

§ 11.5.2 Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have ~~14~~seven 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~~may 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.

...

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

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§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to modify the Contractor's obligations under Section 3.5 or 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.

§ 12.2.6 AUDITS

Upon request of the Owner, the Contractor will cooperate, and secure the cooperation of all Subcontractors, suppliers and Sub-subcontractors, and assist the Owner during any audit of the Project conducted by the DECD and the Agencies (as that term is defined in the Agreement) at any time after Substantial Completion at no cost to the Owner. Such cooperation shall include providing the Owner with access to all records required for any audit relating to the Project.

...

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

...

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

...

§ 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-law or in equity.~~

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§ 13.3.3 No provision contained in the Contract Documents shall create or give to third parties any claim or right against the Owner or the Contractor except as specifically provided herein.

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Legal Requirements. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The-Unless otherwise provided in the Contract Documents, the Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

...

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense. If the inspections and tests conducted under Section 13.4.1 or this Section 13.4.2 reveal failure in a portion of the Work, the Owner may order the inspection and testing at the Contractor's expense of any and all portions of the Work that are identical or similar to the failing portion.

...

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

...

- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped; or
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2-Owner has repeatedly defaulted, beyond any applicable notice and cure periods, in its payment obligations to the Contractor under the Contract Documents.

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

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

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, supplier or their agents or employees or any other persons or entities performing portions of the Work by or on behalf of any of them because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important and critical 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.

§ 14.1.5 The notice of termination delivered pursuant to Section 14.1.3 or 14.1.4 must state with specificity the means by which the Owner may cure its nonperformance, and the Contractor shall not terminate the Contract if, within the applicable ten (10) day period, the Owner substantially takes such curative measures.

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§ 14.2.1 The Owner may, without prejudice and without waiving any other rights or remedies the Owner may have, terminate the Contract if the Contractor

...

- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents;
- .5 institutes proceedings or consent to proceedings requesting relief or arrangement under the Federal Bankruptcy Act or similar or applicable federal or state law, or a petition under any federal or state bankruptcy or insolvency law is filed against the Contractor and such petition is not dismissed within sixty (60) days from the date of said filing, or the Contractor admits in writing its inability to pay its debts as they become due, or it makes a general assignment for the benefit of its creditors, or a receiver, liquidator, trustee, or assignee is appointed, or a receiver of all or any substantial portion of the Contractor's properties is appointed;
- .6 abandons the Work;
- .7 submits an Application for Payment, sworn statement, waiver of lien, affidavit or document of any nature whatsoever which is intentionally falsified;
- .8 fails to make prompt payment to Subcontractors or for materials or labor in accordance with the respective subcontracts or otherwise breaches its obligations under any subcontract with a Subcontractor; or
- .9 if a mechanics or materialman's lien or notice of lien is filed against any part of the Work or the Project site and the lien and underlying claim are not promptly resolved as under the Contract

...

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

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§ 14.3.1 The Owner may, without cause, ~~and without prejudice and without waiving any other rights or remedies the Owner may have,~~ order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

...

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

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§ 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 Work and its obligations under the Contract Documents and the Owner shall continue to make payments in accordance with the Contract Documents.

...

§ 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 the~~ probable effect of the delay on the progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. No extension of the Contract Time will be granted for adverse weather conditions unless the number of days of inclement weather is substantially greater or conditions substantially more severe than the average for the calendar period as recorded by a recognized weather observation government agency.

...

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

...

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

§ 15.1.8 Notwithstanding anything to the contrary herein or in the Contract Documents, neither the Contract Sum nor the Contract Time shall be adjusted if the increased costs or delay underlying the Contractor's claim for adjustment stems from the negligent act or omission of the Contractor, its subcontractors of any tier, or of anyone for whose performance the Contractor is responsible to the Owner, or as a result of the error of any of the same or of the failure of any of the same to comply with, and fulfill their responsibilities under, the Contract Documents.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 17:12:11 ET on 02/01/2023 under Order No. 2114342630 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)