



CITY OF STAMFORD, CONNECTICUT
INTER-OFFICE CORRESPONDENCE

June 3, 2019

To: Mayor David R. Martin

From: Chris Dellaselva
Assistant Corporation Counsel

Re: **Viking Construction, Inc.**
Construction Manager as Constructor
Mold Task Force – School Mold Remediation Projects

Dear Mayor Martin,

Following this cover is a copy of the City's AIA A134 Construction Manager as Constructor Agreement with Viking Construction, Inc., which was chosen to provide construction administration services and construction work by the City's Mold Task Force (bid waiver) for its school mold remediation project. All work will be billed on a Time & Materials basis until such time as the construction work is converted to capital projects. Viking's rates for the T&M work are consistent with Bismark Construction Company, Inc. rates for the same work.

As you know, this contract has already been approved as to form by me, approved as to insurance by David Villalva and signed by you. This is allowable before Board approvals because the contract has a not-to-exceed fee limit of \$100k. We will give an additional Notice to Proceed to Viking if/when the contract is approved by the Boards.

Therefore, please now forward this contract to the Board of Finance and Board of Representatives, in that order, for approval pursuant to City Purchasing Ordinance Sec. 23-18.4.B, as the value of the contract will most certainly exceed \$100,000.00. Mike Handler (MTF) should be invited to those Board meetings.

Thank you in advance for your prompt attention to this matter. You may, of course, contact me at your convenience if I may be of any further assistance to you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chris Dellaselva", written over a horizontal line.

Chris Dellaselva
Assistant Corporation Counsel

AIA® Document A134™ – 2009

Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price

AGREEMENT effective as of the 1st day of February in the year 2019
(In words, indicate day, month and year.)

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

City of Stamford
888 Washington Boulevard
Stamford, CT 06901

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

Viking Construction, Inc. a/k/a "Contractor" in A201(Exhibit A)
1387 Seaview Avenue
Bridgeport, CT 06607

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

Mold Task Force
Investigation Re: Construction

The Architect:
(Name, legal status and address)

and/or Engineer shall be at Owner's instruction per project. Architect = Engineer in this Agreement and A201 (Exhibit A).

The Owner's Designated Representative:
(Name, address and other information)

Michael Handler, CFO
City of Stamford
888 Washington Avenue
Stamford, CT 06901
(203) 977-4182
MHandler@StamfordCT.Gov

The Construction Manager's Designated Representative:
(Name, address and other information)

Anthony Gaglio, Sr.
President
Viking Construction, Inc.
1387 Seaview Avenue

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.

AIA Document A201™–2007, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Bridgeport, CT 06607
(203) 353-0260
anthony.gaglio@vikingconstruction.net

The Architect's Designated Representative:
(Name, address and other information)

At Owner's instruction per project

The Owner and Construction Manager agree as follows.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to the execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's approval of the Control Estimate, the Contract Documents will also include the documents described in Section 2.2.4 and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.5. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

§ 1.2 Relationship of the Parties

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

§ 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, as amended by Owner, which document is attached hereto as Exhibit A and incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

§ 1.4 Contract Sum, Contract Time and Changes in the Work

The Contract Sum is the actual Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee as defined in Section 5.1. The Contract Time is the period of time, including authorized adjustments, allotted in the

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Contract Documents for Substantial Completion of the Work as certified by the Architect in accordance with Section 9.8 of AIA Document A201–2007. The Contract Time shall be measured from the date of commencement of the Construction Phase as established pursuant to Section 2.3.1.2 of this Agreement. The Owner shall have the right to direct the Construction Manager with regard to days and hours of work performance on City property. Changes in the Work shall be governed by Section 5.2 of this Agreement and not by Article 7 of A201–2007. If, however, the Contract Time has been established in accordance with Section 2.2.4.5, Article 7 of A201–2007 shall control adjustments to the Contract Time. Construction Manager's sole remedy for Owner delays, if any, shall be an extension of time to complete the work and Construction Manager hereby waives any claims for consequential damages, including, but not limited to, principal office expense, loss of financing, reputation and/or lost profit.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

§ 2.1 Preconstruction Phase

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

§ 2.1.2 Consultation

The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Construction Manager shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Construction Manager shall also provide recommendations consistent with the Project requirements to the Owner and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Control Estimate; the components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

§ 2.1.4 Phased Construction

The Construction Manager shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

§ 2.1.5 Preliminary Cost Estimates

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

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Construction Manager submits a Control Estimate for the Work, pursuant to Section 2.2. Such estimates shall be provided for the Architect's review and the

Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

§ 2.1.6 Subcontractors and Suppliers

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

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

§ 2.1.8 Extent of Responsibility

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules, including the Control Estimate and the estimated date of Substantial Completion, except as provided in Section 2.2.4.5. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

§ 2.1.9 Notices and Compliance with Laws

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

§ 2.2 Control Estimate

§ 2.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Control Estimate for the Owner's review and acceptance. The Control Estimate shall be the sum of the Construction Manager's estimate of the Cost of the Work and the Construction Manager's Fee and shall include those items set forth in Section 2.2.4 below. When the Control Estimate is acceptable to the Owner, the Owner shall acknowledge it in writing.

§ 2.2.2 The Construction Manager shall develop and implement a detailed system of cost control that will provide the Owner and Architect with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Construction Manager's first Application for Payment and shall be revised and submitted with each Application for Payment.

§ 2.2.3 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Control Estimate for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated in a revised Control Estimate by mutual agreement of the parties.

§ 2.2.4 The Control Estimate shall include

- .1 a list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 a list of the clarifications and assumptions made by the Construction Manager in the preparation of the Control Estimate, including assumptions under Section 2.2.3, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, and the Construction Manager's Fee;

- .4 the anticipated date of Substantial Completion upon which the Control Estimate is based, and a schedule for the issuance dates of the Construction Documents upon which the anticipated Substantial Completion date relies; and
- .5 a statement as to whether or not the duration from the stated date of commencement of the Construction Phase to the estimated date of Substantial Completion shall become the Contract Time and be subject to the provisions of Article 8 of A201–2007.

§ 2.2.5 The Owner shall authorize the Architect to incorporate the agreed-upon assumptions and clarifications contained in the Control Estimate. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Control Estimate and the revised Drawings and Specifications.

§ 2.3 Construction Phase

§ 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's approval of the Control Estimate or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

§ 2.3.1.3 Prior to commencement of the Construction Phase, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work.

§ 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.1.1 The Construction Manager shall provide the Owner fully executed copies of the City of Stamford State of Connecticut Contractor Verification (in accordance with CT PA 16-67) Compliance Affidavits (Exhibit D) for itself and all proposed subcontractors.

§ 2.3.2.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.3 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

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

§ 2.3.2.5 Upon the Owner's approval of the Control Estimate, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

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

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

§ 2.4 Professional Services

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 Hazardous Materials

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 Information and Services Required of the Owner

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

§ 3.1.2 Prior to the Owner's approval of the Control Estimate, or within seven days of receiving the Owner's written acknowledgment required by Section 2.2.1, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

§ 3.1.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

§ 3.1.4 Structural and Environmental Tests, Surveys and Reports. During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

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

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations

of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

§ 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™-2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

§ 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows: All preconstruction investigative work to be performed per hourly rates based on staffing rates listed on Exhibit C (management team) plus 7% overhead and Profit, Construction Manager will add management individuals, with Owner's approval, based on Mold Task Force work load by school. Notwithstanding the foregoing, Construction Manager's compensation shall not exceed Ninety Nine Thousand Nine Hundred Ninety Nine (\$99,999.00) Dollars without an additional, written Notice to Proceed from Owner, which Notice to Proceed shall be given only after Construction Manager's submission of increased Performance and Payment bonds, if necessary.

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:
(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within () months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

§ 4.2 Payments

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

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid forty-five (45) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.
(Insert rate of monthly or annual interest agreed upon.)

1.5 % One and one half percent per month.

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ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:

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

Seven (7%) Percent of the Field Office Staff Services based on the rates set forth in Exhibit C (Stamford Mold Task Force Project Management Staffing);

Twelve (12%) Percent overhead and profit, combined, on direct field labor per § 6.2.1; and

Seven (7%) Percent overhead and profit, combined, on payments made to subcontractors per § 6.3. Beginning June 1, 2019, Seven (7%) Percent overhead and profit, combined, on payments made to subcontractors/vendors per §§6.3 through 6.7.

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

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work: Construction Manager will contract with subcontractors / vendors for corrective work on a Time and Material bases with notification prior to scheduling the work.

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed seven percent (7 %) of the standard rate paid at the place of the Project.

§ 5.1.5 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
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§ 5.2 Changes in the Work

§ 5.2.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201–2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work. The Construction Manager shall incorporate all changes in the Work and Contract Time as separate entries in the Control Estimate.

§ 5.2.2 Increased costs for the items set forth in Sections 6.1 through 6.7 that result from changes in the Work shall become part of the Cost of the Work, and the Construction Manager's Fee shall be adjusted as provided in Section 5.1.2.

§ 5.2.3 If the Construction Manager receives any Drawings, Specifications, interpretations or instructions from the Owner or Architect which are inconsistent with the Contract Documents, or encounters unanticipated conditions, any of which will result in a significant change in the Cost of the Work or estimated date of Substantial Completion in comparison with the Control Estimate, the Construction Manager shall promptly notify the Owner and Architect in writing and shall not proceed with the affected Work until the Construction Manager receives further written instructions from the Owner and Architect.

§ 5.2.4 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment

provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost.

§ 6.2 Labor Costs

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops. Direct labor if required will be billed per hourly rates (Exhibit B). All direct Field labor (self-Performed) under Viking Construction as listed plus 12% for Overhead and profit, combined. No Overhead or profit shall be paid on Owner's Custodians or Trade Staff directed by the Construction Manager, with Owner's consent, to perform the construction of the work at the site.

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

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

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

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 6.3 Subcontract Costs

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts plus seven (7%) percent overhead and profit, combined. No Overhead or profit shall be paid on Owner's Custodians or Trade Staff directed by Construction Manager, with Owner's consent, to perform the construction of the work at the site.

§ 6.4 Costs of Materials and Equipment Incorporated in the Completed Construction

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

§ 6.4.2 Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

§ 6.5.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of

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materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

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

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

§ 6.5.4 Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

§ 6.5.5 That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

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

§ 6.6 Miscellaneous Costs

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. Rate for insurance attributed to this contract is one percent (1.0%) of all work and compensation.

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

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

§ 6.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

§ 6.6.5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201-2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work, billed at three percent (3.0%) of Management Staffing cost, with the Owner's prior approval.

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

§ 6.6.8 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

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

§ 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

§ 6.7.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Construction Manager and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

§ 6.8 Costs Not to Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 through 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 through 6.7; and
- .7 Costs for services incurred during the Preconstruction Phase.

§ 6.9 Discounts, Rebates and Refunds

§ 6.9.1 Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

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

incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

§ 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work, alleged breaches of this Agreement, settlement of claims and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

§ 7.1 Progress Payments

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

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

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the 30th day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 45 days thereafter. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than forty five (45) days after the Architect receives the Application for Payment.
(Federal, state or local laws may require payment within a certain period of time.)

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

§ 7.1.5 Applications for Payment shall show the Cost of the Work actually incurred by the Construction Manager through the end of the period covered by the Application for Payment and for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment.

§ 7.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take the Cost of the Work as described in Section 6.1.1;
- .2 Add the Construction Manager's Fee, less retainage of five percent (5 %) if the work is a capital project, but no retainage held on professional services billed at Time & Materials. The Construction Manager's Fee shall be computed upon the Cost of the Work described in the preceding Section 7.1.6.1 at the rate stated in Section 5.1.1; or if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract retainage of five percent (5 %) from that portion of the Work that the Construction Manager self-performs if the work is a capital project;
- .4 Subtract the aggregate of previous payments made by the Owner;

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- .5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Architect has withheld or withdrawn a Certificate for Payment as provided in the Contract Documents.
- .7 Retainage associated with each Application for Payment shall be released no later than Ninety (90) Days after Substantial Completion of Capital Work.

§ 7.1.7 The Owner and Construction Manager shall agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

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

§ 7.1.9 In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 7.2 Final Payment

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

- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

§ 7.2.3 If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

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§ 7.2.4 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment.

ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager and the Owner shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
See Article 11 of A201 (Exhibit A)	

ARTICLE 9 DISPUTE RESOLUTION

§ 9.1 Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

§ 9.2 For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201-2007, the method of binding dispute resolution shall be as follows:

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

☒ [X] Arbitration pursuant to Section 15.4 of AIA Document A201-2007

☐ [] Litigation in a court of competent jurisdiction

☐ [] Other: *(Specify)*

§ 9.3 Initial Decision Maker

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

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

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 Termination Prior to Owner's Approval of the Control Estimate

§ 10.1.1 Prior to the Owner's approval of the Control Estimate, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201-2007.

§ 10.1.2 In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no

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event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

§ 10.1.3 In the event of termination of this Agreement pursuant to Section 10.1.1, after the commencement of the Construction Phase but prior to the Owner's approval of the Control Estimate, the Owner shall pay to the Construction Manager under Section 10.1.2 an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

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

§ 10.2 Termination Subsequent to the Owner's Approval of the Control Estimate

§ 10.2.1 Subsequent to the Owner's approval of the Control Estimate, the Contract may be terminated as provided in Sections 14.1.1, 14.1.2 and 14.2.1 of A201–2007. The provisions of Article 14 of A201–2007 do not otherwise apply to this Section 10.2.

§ 10.2.2 In the event of such termination by the Owner, the amount payable to the Construction Manager shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.2 and 10.1.3 of this Agreement, less any compensation that may be awarded to the Owner pursuant to Article 9.

§ 10.2.3 In the event of such termination by the Construction Manager, the amount payable to the Construction Manager shall be in accordance with Sections 10.1.2 and 10.1.3 of this Agreement, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.2.4 In addition to the Owner's right to terminate this Agreement for cause as provided in Section 14.2.1 of A201–2007, the Owner may terminate this Agreement for convenience as provided in Section 14.4; however, the Owner shall then only pay the Construction Manager an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner.

§ 10.3 Suspension

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Control Estimate and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.2.4 of this Agreement.

ARTICLE 11 MISCELLANEOUS PROVISIONS

§ 11.1 Terms in this Agreement shall have the same meaning as those in A201–2007.

§ 11.2 Ownership and Use of Documents

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

§ 11.3 Governing Law

This Agreement shall be governed by the laws of the State of Connecticut and the parties hereby waive any choice of law provisions contained therein.

§ 11.4 Assignment

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 11.5 Other provisions:

.1 **Contract Extras.** Pursuant to The City's Code of Ordinances, Section 23-18.4 C., it is specifically understood and agreed by the Construction Manager that all contract extras regarding this Agreement shall be governed by The City of Stamford Charter and/or Code of Ordinances. The Owner shall not be liable for payment of any additional costs, except as otherwise expressly set forth in this Agreement, unless the provisions of The City of Stamford Charter and/or Code of Ordinances are fully complied with. The City of Stamford Charter and Code of Ordinances can be found at www.stamfordct.org.

.2 **Compliance With City of Stamford Code Provisions.** The Construction Manager hereby agrees to fully comply with the requirements of The City of Stamford Code of Ordinances, Sections 103-1 through 103-10, regarding consultants in general. The provisions of the City Code can be found at www.stamfordct.org.

.3 **Confidentiality.** During and after the term of this Agreement, Construction Manager, including, without limitation, its employees, agents, servants and representatives, shall not directly or indirectly disclose or make available to any person, firm, corporation, association or other entity for any reason or purpose whatsoever, or use or cause to be used in any manner adverse to the interest of the Owner, any financial, administrative or other confidential business information, except as require by law.

.4 **Gifts:** During the term of this Agreement, including any extensions, The Construction Manager shall refrain from making gifts of money, goods, real or personal property or services to any appointed or elected official or employee of The City of Stamford or the Stamford Board of Education or any appointed or elected official or employee of their Boards, Commissions, Departments, Agencies or Authorities. All references to the Construction Manager shall include its members, officers, directors, employees, and owners of more than 5% equity in the Construction Manager.

.5 **Code of Ethics.** The Construction Manager shall comply with the City of Stamford Municipal Code of Ethics as codified in Chapter 19 of the City of Stamford Code of Ordinances and shall be considered an "employee", as defined in that Chapter, strictly for the purpose of compliance thereto. The Construction Manager is prohibited from using its status as a consultant to the Owner to derive any interest(s) or benefit(s) from other individuals or organizations.

.6 Set-Off. Pursuant to Section 23-18.4.1 of the City of Stamford Code of Ordinances, the Construction Manager agrees that the Owner shall have the right to set-off or withhold any payment, or portion thereof, due the Construction Manager under this Agreement, for and up to the amount of any taxes, penalties, lien fees and delinquent interest that have been levied by the Owner against any property of the Construction Manager, both real and personal, provided such taxes owed by the Construction Manager are delinquent and have been so delinquent for a period of not less than one year.

.7 Responsible Employer Obligation. Pursuant to Sec. 103-10 of the City of Stamford Code of Ordinances, the Construction Manager shall comply with, and shall be responsible for the compliance of its subcontractors with:

1. the requirements of the 1996 Stamford Construction Jobs Agreement that contractors make every effort to employ qualified residents of Stamford at a targeted goal of twenty nine percent (29%) of the project's workforce, when available, which shall include a goal of that targeted percentage of one third (1/3) minorities and/or women;
2. all state and federal laws and regulations regarding prevailing wages;
3. all applicable state and federal laws and regulations, and the provisions of the Stamford Jobs Construction Agreement, regarding maintenance and participation in apprenticeship training programs;
4. all applicable state laws concerning employee health insurance;
5. All state and federal laws concerning classification of employees as employees rather than independent contractors; workers' compensation; unemployment taxes; and social security and income tax withholdings.

Failure to comply with subsections 1 through 5 of this Paragraph shall be subject the Construction Manager to one or more of the following sanctions:

1. Cessation of work on the project until compliance is obtained;
2. Permanent removal from any further work on the project;
3. Withholding of payment due under any contract or subcontract;
4. Liquidated damages to the Owner in the amount of five percent (5%) of the dollar value of the contract; and/or

Exclusion from the performance of future work or behalf of the City of Stamford.

.8 Acceptance or Rejection of Contract Work. Pursuant to Section 103-9 of the City of Stamford Code or Ordinances, as a condition precedent to the release of any performance bond required hereunder, immediately following the inspection of contract work the Construction Manager shall submit to the Owner an affidavit setting forth either acceptance of the work performed under this Agreement or an itemized list of work to be corrected, repaired, or replaced.

.9 Proof of Payments to Subcontractors. Upon receipt of any payment from the Owner, the Construction Manager shall pay each subcontractor and material supplier in proportion to the percentage of work completed by each subcontractor and material supplier. If for any reason, the Construction Manager receives less than the full payment due from the Owner, the Construction Manager shall be obligated to disburse on a pro rata basis those funds received, such that the Construction Manager, subcontractors and material suppliers each receive a prorated portion based upon the amount of the payment.

Within thirty (30) calendar days of the receipt of any payment from the Owner, the Construction Manager shall be required to submit a completed form, attached hereto as Exhibit E, entitled "Statement of Payments made by General Contractors to Subcontractors" to the Owner's Clerk of the Works, Staff Engineer, or other City employee or official directly supervising the work of the Construction Manager. Failure to timely submit such form to the Owner shall entitle Owner to withhold future payments to the Construction Manager until such time as the form has been submitted to the Owner.

.10 Prohibition of Wastes Generated from Oil & Gas Drilling and Extraction Activities. Pursuant to City of Stamford Ordinance No 1241 Supplemental, Prohibiting Wastes Generated from Oil and Gas Drilling and Extraction Activities, the Construction Manager warrants and represents (Certification Re Prohibition of Fracking Waste – Exhibit F) that no materials containing natural gas or oil waste shall be purchased, acquired or utilized in any way in the construction or maintenance of any publically owned and/or maintained road or real property within the City of Stamford and the Construction Manager further warrants and represents that no materials containing natural gas or oil waste shall be provided to the Owner.

.11 City of Stamford Charter and Code Sections 47-14 thru 47-16

https://library.municode.com/ct/stamford/codes/code-of-ordinances?nodeId=COOR_CH47PT16_47-14-47-16

Sec. 47-14. - Hiring preferences.

A. In the employment of labor to perform the work specified in § 47-16A herein, preference shall be given to legal residents of the United States who are and continuously for at least three (3) months prior to their date of hire have been residents of the labor market area for the City of Stamford as established by the State Labor Commission under Section 31-52(b) of the Connecticut General Statutes, and if no such qualified person is available, then to legal residents who have continuously resided in the county in which the work is to be performed for at least three (3) months prior to their date of hire, and then to legal residents of the state who have continuously resided in the state at least three (3) months prior to their date of hire. Any contractor who knowingly and willfully employs any person in violation of any provision of this subsection shall be fined one hundred dollars (\$100.00) for each week or fraction of a week such person is employed.

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B. Each contract specified in § 47-16A herein shall contain the following provisions: "In the employment of labor to perform the work specified herein, preference shall be given to legal residents of the United States who are and continuously for at least three (3) months prior to their date of hire have been residents of the labor market area for the City of Stamford as established by the State Labor Commission under Section 31-52(b) of the Connecticut General Statutes, and if no such qualified person is available, then to legal residents who have continuously resided in the county in which the work is to be performed for at least three (3) months prior to their date of hire, and then to citizens of the state who have continuously resided in the state at least three (3) months prior to their date of hire."

Sec. 47-15. - Compliance with provisions.

A. Every person or employer with three (3) or more persons in his employ, contracting with the City of Stamford for public or publicly aided construction as defined in section 47-16A, shall be deemed to have accepted the provisions of this section, and these provisions shall thereupon become part of the contract documents and shall be incorporated therein. In particular, during the performance of this contract, the contractor shall be deemed to agree as follows:

- (1) The contractor, by itself or its agent, will not discriminate against any employee or applicant for employment because of race, color, religious creed, age, sex, marital status, national origin, ancestry or physical disability, except in the case of a bona fide occupational qualification or need.

(2) The contractor will take affirmative action to make known that company's policy in this regard and to recruit and encourage all qualified persons to seek employment based on individual merit and to ensure that all qualified applicants are given employment and that employees are treated equally during employment without regard to their race, color, religious creed, age, sex, marital status, sexual orientation, gender identity or expression, national origin, ancestry or physical disability. Such affirmative action and nondiscrimination shall be in respect to but not limited to the following: employment; terms and conditions of employment; upgrading, demolition or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in form to be approved by the Commission on Human Rights of the City of Stamford, setting forth the provisions of this nondiscrimination clause.

(3) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, age, sex, marital status, sexual orientation, gender identity or expression, national origin, ancestry or physical disability.

B. Each labor organization supplying labor to or having a labor contract with a person covered by Subsection A of this section shall be deemed to have accepted the provisions of this section. In particular, such union shall be deemed to agree as follows:

(1) The union will not discriminate against any union member or employee or applicant for union membership or employment because of race, color, religious creed, age, sex, marital status, sexual orientation, gender identity or expression, national origin, ancestry or physical disability, unless such action is based on a bona fide occupational qualification.

(2) The union will take affirmative action to make known its policy in this regard and to encourage and recruit all qualified persons to seek union membership and employment based on individual merit and to ensure that all qualified applicants are given union membership and employment and that members and employees are treated equally during union membership and employment without regard to their race, color, religious creed, age, sex, marital status, sexual orientation, gender identity or expression, national origin, ancestry or physical disability. Such affirmative action and nondiscrimination shall be in respect to but not be limited to the following: union membership; employment; terms and conditions of employment; upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training, including apprenticeship; and the benefits of collective bargaining rights. The union agrees to post in conspicuous places, available to employees, its members and applicants for employment or union membership, notices in form approved by the Commission on Human Rights of the City of Stamford, setting forth the provisions of this nondiscrimination clause.

C. The Commission on Human Rights and/or the Director of Operations shall have the right to inspect and obtain copies of personnel, employment and other relevant records of contractors and membership and other relevant records of unions subject to this Article for the purpose of investigation to determine compliance. The Owner shall provide Notice to the Construction Manager when State of Connecticut funding is applicable to the Work.

D. Upon due notice to a contractor or a union concerning which there is reasonable cause to believe noncompliance has occurred or is occurring, the Commission on Human Rights is empowered to hold a public hearing to determine whether or not any of the provisions of this section have been violated. In the event it is found that a contractor has not complied with this section or with the nondiscrimination and affirmative action clauses of his contract, the Commission on Human Rights may cancel, terminate or suspend such contract in whole or in part and the contractor may be declared ineligible for further city contracts until such time as the Commission shall certify that the contractor is in compliance, and such other sanctions may be imposed and remedies invoked as provided by law or rule or regulation promulgated thereunder. In the event it is found that a union has not complied with this section, the Commission may direct it to take steps to achieve compliance

or be disqualified from furnishing labor to contractors subject to this section, or such other sanctions may be imposed and remedies invoked as provided by law or by rule or regulation promulgated thereunder.

E. The Commission on Human Rights is hereby authorized to adopt, publish, amend and rescind rules and regulations, consistent with and in furtherance of the provisions of this section, to subpoena witnesses and require the production of documents to the same extent as is authorized by Section 31-125 of the Connecticut General Statutes, as the same may be, from time to time, amended.

.12 Clayton Act. The Construction Manager offers and agrees to assign to the Owner all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act, 15 U.S.C. and Sec. 15, or under Chapter 624 of the General Statutes of Connecticut, arising out of the purchase of services, property or intangibles of any kind pursuant to a public purchase contract or subcontract. This assignment shall be made and become effective at the time the purchasing body awards or accepts such contract without further acknowledgment by the parties.

.13 Non-Discrimination and Affirmative Action.

Minority Business Enterprises.

1) The Construction Manager agrees and warrants that in the performance of the contract, it 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, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Construction Manager 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 Construction Manager 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, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Construction Manager that such disability prevents performance of the work involved.

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

(3) The Construction Manager agrees to provide each labor union or representative of workers with which the Construction Manager 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, advising the labor union or workers' representative of the Construction Manager's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Construction Manager agrees to comply with each provision of Connecticut General Statutes Sections 46a-60 and 46a-60a, and with each regulation or relevant order issued by the Commission pursuant to the Connecticut General Statutes.

(b) The Construction Manager agrees and warrants that it will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on this public works project.

"Minority business enterprise" means any small contractor or supplier of materials fifty-one per cent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) Who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes Section 32-9n; and "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations. "Good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or

Init.

substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements.

Determination of the Construction Manager's good faith efforts shall include but shall not be limited to the following factors: the Construction Manager's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

Nondiscrimination on the Basis of Sexual Orientation

(1) The Construction Manager agrees and warrants that in the performance of the contract, it 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 those employees is treated when employed without regard to their sexual orientation;

(2) The Construction Manager agrees to provide each labor union or representative of workers with which the Construction Manager has a collective bargaining agreement or other contract or understanding and each vendor with which the Construction Manager has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities ["the Commission"] advising the labor union or workers' representative of the Construction Manager's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(3) The Construction Manager agrees to comply with each provision of Connecticut General Statutes Section 4a-60a and with each regulation or relevant order issued by said Commission pursuant to the Connecticut General Statutes.

Administrative Reconsideration (26.53(d)).

Within thirty (30) days of being informed by the Owner that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. The Construction Manager should make this request in writing to the following Reconsideration Official:

Director of Administration
City of Stamford
888 Washington Boulevard
Stamford, CT 06901

The Reconsideration official will not have played any role in the original determination that the Construction Manager did not document sufficient good faith efforts.

14. Limitation of Liability. The Liability on the part of the Construction Manager shall be limited to the applicable insurance coverages required by this Agreement.

ARTICLE 12 SCOPE OF THE AGREEMENT

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

§ 12.2 The following documents comprise the Agreement and are listed in order of priority:

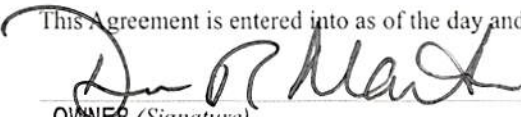
- .1 AIA Document A134-2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price

Init.

- .2 AIA Document A201–2007, General Conditions of the Contract for Construction, as amended by Owner (Exhibit A)
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
- .4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
- .5 Other documents:
(List other documents, if any, forming part of the Agreement.)

Exhibit B – Viking Construction, Inc. Hourly Rates
Exhibit C – Stamford Mold Task Force Project Management Staffing
Exhibit D – Contractor Affidavit Re CT Public Act 16-67
Exhibit E – Statement of Payments made by General Contractors to Subcontractors
Exhibit F – Certification Re Prohibition of Fracking Waste
Exhibit G – Optional Staffing Rates and Equipment Costs

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


OWNER (Signature)

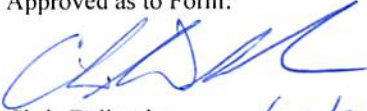

CONSTRUCTION MANAGER (Signature)

Init.

David R. Martin, Mayor
City of Stamford
(Printed name and title)

Anthony Gaglio, Sr., President
Viking Construction, Inc.
(Printed name and title)

Approved as to Form:


Chris Dellaselva
City of Stamford
Assistant Corporation Counsel
5/29/2019

Approved as to Insurance:


David Villalva
City of Stamford
Acting Risk Manager
5/02/2019

Init.

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Additions and Deletions Report for

AIA® Document A134™ – 2009

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.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 11:52:02 ET on 05/29/2019.

PAGE 1

AGREEMENT ~~made effective~~ as of the 1st day of February in the year 2019

...

City of Stamford
888 Washington Boulevard
Stamford, CT 06901

...

Viking Construction, Inc. a/k/a "Contractor" in A201(Exhibit A)
1387 Seaview Avenue
Bridgeport, CT 06607

...

Mold Task Force
Investigation Re: Construction

...

and/or Engineer shall be at Owner's instruction per project. Architect = Engineer in this Agreement and A201 (Exhibit A).

...

Michael Handler, CFO
City of Stamford
888 Washington Avenue
Stamford, CT 06901
(203) 977-4182
MHandler@StamfordCT.Gov

...

Anthony Gaglio, Sr.
President
Viking Construction, Inc.
1387 Seaview Avenue
Bridgeport, CT 06607
(203) 353-0260

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User Notes:

(963535717)

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Chris Dellaselva, 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 11:52:02 ET on 05/29/2019 under Order No. 5874476543 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A134™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee without a Guaranteed Maximum Price, 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)

Approved as to Form:

Chris Dellaselva
City of Stamford
Assistant Corporation Counsel

Approved as to Insurance:

David Villalva
City of Stamford
Acting Risk Manager

- .2 AIA Document A201–2007, General Conditions of the Contract for Construction, as amended by Owner (Exhibit A)

...

(List other documents, if any, forming part of the Agreement.)

Exhibit B – Viking Construction, Inc. Hourly Rates

Exhibit C – Stamford Mold Task Force Project Management Staffing

Exhibit D – Contractor Affidavit Re CT Public Act 16-67

Exhibit E – Statement of Payments made by General Contractors to Subcontractors

Exhibit F – Certification Re Prohibition of Fracking Waste

Exhibit G – Optional Staffing Rates and Equipment Costs

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David R. Martin, Mayor
City of Stamford

Anthony Gaglio, Sr., President
Viking Construction, Inc.

...

"Minority business enterprise" means any small contractor or supplier of materials fifty-one per cent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) Who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes Section 32-9n; and "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations. "Good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements.

Determination of the Construction Manager's good faith efforts shall include but shall not be limited to the following factors: the Construction Manager's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.

Nondiscrimination on the Basis of Sexual Orientation

(1) The Construction Manager agrees and warrants that in the performance of the contract, it 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 those employees is treated when employed without regard to their sexual orientation;

(2) The Construction Manager agrees to provide each labor union or representative of workers with which the Construction Manager has a collective bargaining agreement or other contract or understanding and each vendor with which the Construction Manager has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities ["the Commission"] advising the labor union or workers' representative of the Construction Manager's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment;

(3) The Construction Manager agrees to comply with each provision of Connecticut General Statutes Section 4a-60a and with each regulation or relevant order issued by said Commission pursuant to the Connecticut General Statutes.

Administrative Reconsideration (26.53(d)).

Within thirty (30) days of being informed by the Owner that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. The Construction Manager should make this request in writing to the following Reconsideration Official:

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The Reconsideration official will not have played any role in the original determination that the Construction Manager did not document sufficient good faith efforts.

14. Limitation of Liability. The Liability on the part of the Construction Manager shall be limited to the applicable insurance coverages required by this Agreement.

PAGE 22

§ 12.2 The following documents comprise the Agreement: Agreement and are listed in order of priority:

PAGE 23

have been violated. In the event it is found that a contractor has not complied with this section or with the nondiscrimination and affirmative action clauses of his contract, the Commission on Human Rights may cancel, terminate or suspend such contract in whole or in part and the contractor may be declared ineligible for further city contracts until such time as the Commission shall certify that the contractor is in compliance, and such other sanctions may be imposed and remedies invoked as provided by law or rule or regulation promulgated thereunder. In the event it is found that a union has not complied with this section, the Commission may direct it to take steps to achieve compliance or be disqualified from furnishing labor to contractors subject to this section, or such other sanctions may be imposed and remedies invoked as provided by law or by rule or regulation promulgated thereunder.

E. The Commission on Human Rights is hereby authorized to adopt, publish, amend and rescind rules and regulations, consistent with and in furtherance of the provisions of this section, to subpoena witnesses and require the production of documents to the same extent as is authorized by Section 31-125 of the Connecticut General Statutes, as the same may be, from time to time, amended.

.12 Clayton Act. The Construction Manager offers and agrees to assign to the Owner all rights, title and interest in and to all causes of action it may have under Section 4 of the Clayton Act, 15 U.S.C. and Sec. 15, or under Chapter 624 of the General Statutes of Connecticut, arising out of the purchase of services, property or intangibles of any kind pursuant to a public purchase contract or subcontract. This assignment shall be made and become effective at the time the purchasing body awards or accepts such contract without further acknowledgment by the parties.

.13 Non-Discrimination and Affirmative Action.

Minority Business Enterprises.

1) The Construction Manager agrees and warrants that in the performance of the contract, it 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, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Construction Manager 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 Construction Manager 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, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Construction Manager that such disability prevents performance of the work involved.

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

(3) The Construction Manager agrees to provide each labor union or representative of workers with which the Construction Manager 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, advising the labor union or workers' representative of the Construction Manager's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Construction Manager agrees to comply with each provision of Connecticut General Statutes Sections 46a-60 and 46a-60a, and with each regulation or relevant order issued by the Commission pursuant to the Connecticut General Statutes.

(b) The Construction Manager agrees and warrants that it will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on this public works project.

part of the contract documents and shall be incorporated therein. In particular, during the performance of this contract, the contractor shall be deemed to agree as follows:

(1) The contractor, by itself or its agent, will not discriminate against any employee or applicant for employment because of race, color, religious creed, age, sex, marital status, national origin, ancestry or physical disability, except in the case of a bona fide occupational qualification or need.

(2) The contractor will take affirmative action to make known that company's policy in this regard and to recruit and encourage all qualified persons to seek employment based on individual merit and to ensure that all qualified applicants are given employment and that employees are treated equally during employment without regard to their race, color, religious creed, age, sex, marital status, sexual orientation, gender identity or expression, national origin, ancestry or physical disability. Such affirmative action and nondiscrimination shall be in respect to but not limited to the following: employment; terms and conditions of employment; upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in form to be approved by the Commission on Human Rights of the City of Stamford, setting forth the provisions of this nondiscrimination clause.

(3) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, age, sex, marital status, sexual orientation, gender identity or expression, national origin, ancestry or physical disability.

B. Each labor organization supplying labor to or having a labor contract with a person covered by Subsection A of this section shall be deemed to have accepted the provisions of this section. In particular, such union shall be deemed to agree as follows:

(1) The union will not discriminate against any union member or employee or applicant for union membership or employment because of race, color, religious creed, age, sex, marital status, sexual orientation, gender identity or expression, national origin, ancestry or physical disability, unless such action is based on a bona fide occupational qualification.

(2) The union will take affirmative action to make known its policy in this regard and to encourage and recruit all qualified persons to seek union membership and employment based on individual merit and to ensure that all qualified applicants are given union membership and employment and that members and employees are treated equally during union membership and employment without regard to their race, color, religious creed, age, sex, marital status, sexual orientation, gender identity or expression, national origin, ancestry or physical disability. Such affirmative action and nondiscrimination shall be in respect to but not be limited to the following: union membership; employment; terms and conditions of employment; upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training, including apprenticeship; and the benefits of collective bargaining rights. The union agrees to post in conspicuous places, available to employees, its members and applicants for employment or union membership, notices in form approved by the Commission on Human Rights of the City of Stamford, setting forth the provisions of this nondiscrimination clause.

C. The Commission on Human Rights and/or the Director of Operations shall have the right to inspect and obtain copies of personnel, employment and other relevant records of contractors and membership and other relevant records of unions subject to this Article for the purpose of investigation to determine compliance. The Owner shall provide Notice to the Construction Manager when State of Connecticut funding is applicable to the Work.

D. Upon due notice to a contractor or a union concerning which there is reasonable cause to believe noncompliance has occurred or is occurring, the Commission on Human Rights is empowered to hold a public hearing to determine whether or not any of the provisions of this section

.9 Proof of Payments to Subcontractors. Upon receipt of any payment from the Owner, the Construction Manager shall pay each subcontractor and material supplier in proportion to the percentage of work completed by each subcontractor and material supplier. If for any reason, the Construction Manager receives less than the full payment due from the Owner, the Construction Manager shall be obligated to disburse on a pro rata basis those funds received, such that the Construction Manager, subcontractors and material suppliers each receive a prorated portion based upon the amount of the payment.

Within thirty (30) calendar days of the receipt of any payment from the Owner, the Construction Manager shall be required to submit a completed form, attached hereto as Exhibit E, entitled "Statement of Payments made by General Contractors to Subcontractors" to the Owner's Clerk of the Works, Staff Engineer, or other City employee or official directly supervising the work of the Construction Manager. Failure to timely submit such form to the Owner shall entitle Owner to withhold future payments to the Construction Manager until such time as the form has been submitted to the Owner.

.10 Prohibition of Wastes Generated from Oil & Gas Drilling and Extraction Activities. Pursuant to City of Stamford Ordinance No 1241 Supplemental, Prohibiting Wastes Generated from Oil and Gas Drilling and Extraction Activities, the Construction Manager warrants and represents (Certification Re Prohibition of Fracking Waste – Exhibit F) that no materials containing natural gas or oil waste shall be purchased, acquired or utilized in any way in the construction or maintenance of any publically owned and/or maintained road or real property within the City of Stamford and the Construction Manager further warrants and represents that no materials each containing natural gas or oil waste shall be provided to the Owner.

.11 City of Stamford Charter and Code Sections 47-14 thru 47-16

https://library.municode.com/CT/Stamford/codes/code-of-ordinance-Charter/CODE/CHAPTER_47_ARTICLE_11

Sec. 47-14. - Hiring preferences.

A. In the employment of labor to perform the work specified in § 47-16A herein, preference shall be given to legal residents of the United States who are and continuously for at least three (3) months prior to their date of hire have been residents of the labor market area for the City of Stamford as established by the State Labor Commission under Section 31-52(b) of the Connecticut General Statutes, and if no such qualified person is available, then to legal residents who have continuously resided in the county in which the work is to be performed for at least three (3) months prior to their date of hire, and then to legal residents of the state who have continuously resided in the state at least three (3) months prior to their date of hire. Any contractor who knowingly and willfully employs any person in violation of any provision of this subsection shall be fined one hundred dollars (\$100.00) for each week or fraction of a week each such person is employed.

B. Each contract specified in § 47-16A herein shall contain the following provisions: "In the employment of labor to perform the work specified herein, preference shall be given to legal residents of the United States who are and continuously for at least three (3) months prior to their date of hire have been residents of the labor market area for the City of Stamford as established by the State Labor Commission under Section 31-52(b) of the Connecticut General Statutes, and if no such qualified person is available, then to legal residents who have continuously resided in the county in which the work is to be performed for at least three (3) months prior to their date of hire, and then to citizens of the state who have continuously resided in the state at least three (3) months prior to their date of hire."

Sec. 47-15. - Compliance with provisions.

A. Every person or employer with three (3) or more persons in his employ, contracting with the City of Stamford for public or publicly aided construction as defined in section 47-16A, shall be deemed to have accepted the provisions of this section, and these provisions shall thereupon become

.5 Code of Ethics. The Construction Manager shall comply with the City of Stamford Municipal Code of Ethics as codified in Chapter 19 of the City of Stamford Code of Ordinances and shall be considered an "employee", as defined in that Chapter, strictly for the purpose of compliance thereto. The Construction Manager is prohibited from using its status as a consultant to the Owner to derive any interest(s) or benefit(s) from other individuals or organizations.

.6 Set-Off. Pursuant to Section 23-18.4.1 of the City of Stamford Code of Ordinances, the Construction Manager agrees that the Owner shall have the right to set-off or withhold any payment, or portion thereof, due the Construction Manager under this Agreement, for and up to the amount of any taxes, penalties, lien fees and delinquent interest that have been levied by the Owner against any property of the Construction Manager, both real and personal, provided such taxes owed by the Construction Manager are delinquent and have been so delinquent for a period of not less than one year.

.7 Responsible Employer Obligation. Pursuant to Sec. 103-10 of the City of Stamford Code of Ordinances, the Construction Manager shall comply with, and shall be responsible for the compliance of its subcontractors with:

1. the requirements of the 1996 Stamford Construction Jobs Agreement that contractors make every effort to employ qualified residents of Stamford at a targeted goal of twenty nine percent (29%) of the project's workforce, when available, which shall include a goal of that targeted percentage of one third (1/3) minorities and/or women;
2. all state and federal laws and regulations regarding prevailing wages;
3. all applicable state and federal laws and regulations, and the provisions of the Stamford Jobs Construction Agreement, regarding maintenance and participation in apprenticeship training programs;
4. all applicable state laws concerning employee health insurance;
5. All state and federal laws concerning classification of employees as employees rather than independent contractors; workers' compensation; unemployment taxes; and social security and income tax withholdings.

Failure to comply with subsections 1 through 5 of this Paragraph shall be subject the Construction Manager to one or more of the following sanctions:

1. Cessation of work on the project until compliance is obtained;
2. Permanent removal from any further work on the project;
3. Withholding of payment due under any contract or subcontract;
4. Liquidated damages to the Owner in the amount of five percent (5%) of the dollar value of the contract; and/or

Exclusion from the performance of future work or behalf of the City of Stamford.

.8 Acceptance or Rejection of Contract Work. Pursuant to Section 103-9 of the City of Stamford Code or Ordinances, as a condition precedent to the release of any performance bond required hereunder, immediately following the inspection of contract work the Construction Manager shall submit to the Owner an affidavit setting forth either acceptance of the work performed under this Agreement or an itemized list of work to be corrected, repaired, or replaced.

payment shall be made by the Owner not later than forty five (45) days after the Architect receives the Application for Payment.

...

- .2 Add the Construction Manager's Fee, less retainage of ~~percent (— %)~~ five percent (5 %) if the work is a capital project, but no retainage held on professional services billed at Time & Materials. The Construction Manager's Fee shall be computed upon the Cost of the Work described in the preceding Section 7.1.6.1 at the rate stated in Section 5.1.1; or if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract retainage of five percent (5 %) from that portion of the Work that the Construction Manager ~~self-performs; self-performs if the work is a capital project;~~

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- .6 Subtract amounts, if any, for which the Architect has withheld or withdrawn a Certificate for Payment as provided in the Contract Documents.
- .7 Retainage associated with each Application for Payment shall be released no later than Ninety (90) Days after Substantial Completion of Capital Work.

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See Article 11 of A201 (Exhibit A)

...

[X] Arbitration pursuant to Section 15.4 of AIA Document A201-2007

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Section 13.1 of A201-2007 shall apply to both the Preconstruction and Construction Phases. This Agreement shall be governed by the laws of the State of Connecticut and the parties hereby waive any choice of law provisions contained therein.

...

.1 Contract Extras. Pursuant to The City's Code of Ordinances, Section 23-18.4 C., it is specifically understood and agreed by the Construction Manager that all contract extras regarding this Agreement shall be governed by The City of Stamford Charter and/or Code of Ordinances. The Owner shall not be liable for payment of any additional costs, except as otherwise expressly set forth in this Agreement, unless the provisions of The City of Stamford Charter and/or Code of Ordinances are fully complied with. The City of Stamford Charter and Code of Ordinances can be found at www.cityofstamford.org.

.2 Compliance With City of Stamford Code Provisions. The Construction Manager hereby agrees to fully comply with the requirements of The City of Stamford Code of Ordinances, Sections 103-1 through 103-10, regarding consultants in general. The provisions of the City Code can be found at www.cityofstamford.org.

.3 Confidentiality. During and after the term of this Agreement, Construction Manager, including, without limitation, its employees, agents, servants and representatives, shall not directly or indirectly disclose or make available to any person, firm, corporation, association or other entity for any reason or purpose whatsoever, or use or cause to be used in any manner adverse to the interest of the Owner, any financial, administrative or other confidential business information, except as require by law.

.4 Gifts: During the term of this Agreement, including any extensions, The Construction Manager shall refrain from making gifts of money, goods, real or personal property or services to any appointed or elected official or employee of The City of Stamford or the Stamford Board of Education or any appointed or elected official or employee of their Boards, Commissions, Departments, Agencies or Authorities. All references to the Construction Manager shall include its members, officers, directors, employees, and owners of more than 5% equity in the Construction Manager.

Seven (7%) Percent overhead and profit, combined, on payments made to subcontractors per § 6.3. Beginning June 1, 2019, Seven (7%) Percent overhead and profit, combined, on payments made to subcontractors/vendors per §§6.3 through 6.7.

...

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work: Construction Manager will contract with subcontractors / vendors for corrective work on a Time and Material bases with notification prior to scheduling the work.

...

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed seven percent (7%) of the standard rate paid at the place of the Project.

PAGE 10

§ 6.2.1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops. Direct labor if required will be billed per hourly rates (Exhibit B). All direct Field labor (self-Performed) under Viking Construction as listed plus 12% for Overhead and profit, combined. No Overhead or profit shall be paid on Owner's Custodians or Trade Staff directed by the Construction Manager, with Owner's consent, to perform the construction of the work at the site.

...

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the ~~subcontracts~~, subcontracts plus seven (7%) percent overhead and profit, combined. No Overhead or profit shall be paid on Owner's Custodians or Trade Staff directed by Construction Manager, with Owner's consent, to perform the construction of the work at the site.

PAGE 11

§ 6.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval. Rate for insurance attributed to this contract is one percent (1.0%) of all work and compensation.

...

§ 6.6.6 Costs for electronic equipment and software, directly related to the ~~Work-Work~~, billed at three percent (3.0%) of Management Staffing cost, with the Owner's prior approval.

PAGE 13

The Construction Manager shall keep full and detailed records and accounts related to the cost of the ~~Work-Work~~, alleged breaches of this Agreement, settlement of claims and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

...

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the 30th day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the ~~day of the month~~, 45 days thereafter. If an Application for Payment is received by the Architect after the application date fixed above,

anthony.gaglio@vikingconstruction.net

PAGE 2

At Owner's instruction per project

PAGE 3

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, as amended by Owner, which document is attached hereto as Exhibit A and incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

...

The Contract Sum is the actual Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee as defined in Section 5.1. The Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work as certified by the Architect in accordance with Section 9.8 of AIA Document A201-2007. The Contract Time shall be measured from the date of commencement of the Construction Phase as established pursuant to Section 2.3.1.2 of this Agreement. The Owner shall have the right to direct the Construction Manager with regard to days and hours of work performance on City property. Changes in the Work shall be governed by Section 5.2 of this Agreement and not by Article 7 of A201-2007. If, however, the Contract Time has been established in accordance with Section 2.2.4.5, Article 7 of A201-2007 shall control adjustments to the Contract Time. Construction Manager's sole remedy for Owner delays, if any, shall be an extension of time to complete the work and Construction Manager hereby waives any claims for consequential damages, including, but not limited to, principal office expense, loss of financing, reputation and/or lost profit.

PAGE 6

§ 2.3.2.1.1 The Construction Manager shall provide the Owner fully executed copies of the City of Stamford State of Connecticut Contractor Verification (in accordance with CT PA 16-67) Compliance Affidavits (Exhibit D) for itself and all proposed subcontractors.

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§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows: All preconstruction investigative work to be performed per hourly rates based on staffing rates listed on Exhibit C (management team) plus 7% overhead and Profit. Construction Manager will add management individuals, with Owner's approval, based on Mold Task Force work load by school. Notwithstanding the foregoing, Construction Manager's compensation shall not exceed Ninety Nine Thousand Nine Hundred Ninety Nine (\$99,999.00) Dollars without an additional, written Notice to Proceed from Owner, which Notice to Proceed shall be given only after Construction Manager's submission of increased Performance and Payment bonds, if necessary.

...

§ 4.2.2 Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid forty-five (45) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.

...

1.5 % One and one half percent per month.

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Seven (7%) Percent of the Field Office Staff Services based on the rates set forth in Exhibit C (Stamford Mold Task Force Project Management Staffing);

Twelve (12%) Percent overhead and profit, combined, on direct field labor per § 6.2.1; and

AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

City of Stamford Mold Task Force

Investigation Re: Construction

THE OWNER:

(Name and address)

City of Stamford

888 Washington Boulevard

Stamford, CT 06901

THE ARCHITECT:

(Name and address)

and/or Engineer shall be at Owner's instruction per project. Architect = Engineer in these General Conditions and the A134 Agreement.

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.

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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.

§ 1.1.1.1 Owner and Contractor recognize that other rights, duties and obligations with respect to public construction contracts are also provided by statute, City of Stamford Charter, and the City Code, including but not limited to Sections 103-1 through 103-7, notwithstanding the fact that they are not specifically enumerated herein. Accordingly, any provision required by such governmental requirements to be included in this Contract shall be deemed to be so included as though fully set forth herein. However, compliance with such governmental requirements does not diminish the Contractor's responsibilities hereunder. A reference to certain statutes which are applicable to the Project are contained herein and are specifically incorporated by reference as Contract Documents.

§ 1.1.2 THE CONTRACT

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

§ 1.1.3 THE WORK

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

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 INSTRUMENTS OF SERVICE

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

§ 1.1.8 INITIAL DECISION MAKER

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

§ 1.1.9 THE PROJECT MANUAL

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

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. All Work mentioned or indicated in the Contract Documents shall be performed by the Contractor as part of the Contract unless it is specifically indicated in the Contract Documents that such Work is to be done by others.

§ 1.2.1.1 In the event of conflict in or between the Contract Documents, the Contractor shall be held to the higher quality or greater quantity as set forth therein as determined by the Owner and Architect.

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

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

§ 1.2.3.1 Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names or similar reference, no substitutions may be made unless accepted by the Owner in writing prior to execution of the Contract, or, if accepted as a change in the Work in accordance with Sections 3.4.2, 3.4.2.1 and 3.4.2.2 hereof. Where two or more products are shown or specified, the Contractor has the option to use either shown or specified.

§ 1.2.3.2 When applied to materials and equipment required for the Work, the words "furnish", "install" and "provide" shall mean the following:

- .1 The word "provide" shall mean to furnish, pay for, deliver, install, adjust clean and otherwise make materials and equipment fit and ready for their intended use.
- .2 The word "furnish" shall mean to secure, pay for, deliver to site, unload and uncrate materials and equipment.
- .3 The word "install" shall mean to place in position, incorporate in the work, adjust, clean, make fit and ready for use and perform all services except those included under the term "furnish".
- .4 The phrase "furnish and install" shall be equivalent to the word "provide". Each shall be interpreted to mean "the Contractor shall furnish all labor, material and equipment and install....".
- .5 "As required" shall mean as required to produce a fully completed project or result to the satisfaction of the Architect.

§ 1.3 CAPITALIZATION

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

§ 1.4 INTERPRETATION

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

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

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

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this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them 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 material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

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

§ 2.1.2 [Not used.]

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 [Not used.]

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

§ 2.2.3 The Owner shall furnish available surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Owner makes no warranties as to the accuracy or completeness of such material. The Contractor shall exercise proper precautions relating to the safe performance of the Work.

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

§ 2.2.5 Bid Documents, Project Manual and Drawings can be picked up from County Reproductions, 39 Belden Street, Stamford, CT, 06902. Phone: (203) 348-3758. Fax: (203) 348-2654. A non-refundable fee will be charged for these documents.

§ 2.3 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 fails to carry out Work in accordance with the Contract Documents, the Owner may, in addition to any other remedy it may have in this Agreement, 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.

§ 2.4 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 written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, in its sole discretion and without prejudice to

other remedies the Owner may have: (a) furnish, or employ a person or entity to furnish, labor, services, materials or equipment to correct, remove, replace and/or repair such deficiencies, as the Owner deems most expedient; (b) take such action as the Owner deems necessary to regain and/or maintain the Schedule; and/or (c) withhold payment as permitted under the Contract Documents. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. In the event that the Contractor's failure to prosecute the Work causes (in the opinion of the Owner), an immediate and imminent risk of harm to the public, the Owner shall have the right to carry out the Work without notice at the Contractor's cost and/or deduct such sums from amounts due the Contractor.

§ 2.5 RIGHTS CUMULATIVE

The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner under the Contract Documents, 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 shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

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

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

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed (including, without limitation, (i) the location, condition, layout and nature of the Project site and surrounding areas; (ii) anticipated labor and supply costs; and (iii) availability and cost of materials, tools and equipment) and correlated personal observations with requirements of the Contract Documents. During the period that the Contractor is in care, custody and control of the Project site, the Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. During execution of the Work, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section.

§ 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 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions and verify all grades, elevations dimensions or locations at the site affecting it. Any defects resulting from the Contractor's failure to comply with its obligations under this paragraph shall be promptly rectified by the Contractor without additional cost to the Owner. 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 Owner and Architect as a request for information in such form as the Architect may require if the Contractor observes or is aware of any errors, inconsistencies or omissions in the Contract Documents or between the Contract Documents and the field conditions, or if a portion of the Contract Documents is at variance with applicable law. 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. In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and the applicable standards, codes and ordinances as they relate to performance of the Work,

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the Contractor shall (i) provide the better quality or greater quantity of Work, or (ii) comply with the more stringent requirements; either or both in accordance with the Owner's interpretation.

§ 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 in writing 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 The Contractor shall reimburse the Owner for costs incurred by the Architect for design and construction administration services which are caused by the Contractor's inefficient or otherwise faulty administration or execution of its Work. These may include but are not limited to the cost of the Architect to perform:

Review of unreasonable amount of Contractor's submittals and submittals, substantially incomplete or out of sequence from the submittal schedule provided by the Contractor and agreed to by the Architect;

Responding to an unreasonable amount of responses to the Contractor's requests for information where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior correspondence or documentation;

Change Orders and Construction Change Directives requiring the preparation or revision of instruments of service and not otherwise caused by errors and omissions in the design or change in scope by the Owner;

Evaluation of substitutions proposed by the Contractor and making subsequent revisions to Instruments of Services resulting therefrom, except to the extent made necessary by unavailability of materials or equipment specified in the Specifications;

Contract Administration services provided 135 days or more after Substantial Completion, if caused by the negligence or breach by the Contractor.

§ 3.2.5 Preconstruction Inspection: The Contractor shall notify the Owner and the Architect in writing of any existing damage to the property or any unsafe conditions at the site prior to commencing 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, and not the Owner, shall be solely responsible for, and have control over, charge of and responsibility for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, notwithstanding any of the rights and authority granted the Owner in the Contract Documents. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures will not be safe with the proper exercise of safety precautions and programs required hereunder, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect or Owner.

§ 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 or supplying portions of the Work for or on behalf of the Contractor or any of its Subcontractors. The Contractor shall be required to take appropriate precautions for workers performing tasks in asbestos environments.

§ 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 If part of the Work is adjacent to or dependent upon work by a separate contractor or the Owner's own forces, the Contractor shall meet and coordinate with such separate contractor or forces prior to proceeding with that portion of the Work.

§ 3.3.5 The Contractor shall ensure that sufficient personnel are employed at the Project site in order to complete the Project in accordance with the construction schedule and in accordance with the Owner's objectives as to cost and quality.

§ 3.4 LABOR AND MATERIALS

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

§ 3.4.2 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. Substitutions and alternates may be rejected in the Owner's sole discretion. Substitutions and alternates will be considered only if: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations; (ii) specified products are unavailable through no fault of the Contractor or any Subcontractor; (iii) subsequent information discloses the inability of specified products to perform properly or to fit in a designated space; (iv) the manufacturer or fabricator refuses to certify or guaranty the performance of the specified product as required; or (v) when, in the sole judgment of the Owner, a substitution would be substantially in the Owner's best interests in terms of cost, time or other considerations.

§ 3.4.2.1 No time extensions shall be allowed nor any responsibility assumed by the Owner if the Contractor submits a request for a substitution, whether such request is approved or denied.

§ 3.4.2.2 Notwithstanding the Owner's approval of any substitution, the Contractor shall be responsible for additional costs incurred by other trades for changes made necessary to accommodate the substituted item.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall, upon written request of the Owner, remove and replace workers where the Owner deems such worker(s) to be disorderly, careless or incompetent, or to be employed in violation of the terms of the Contract Documents, at no increase in the Contract Sum or the Contract Time.

§ 3.4.4 The Contractor shall only employ or hire Subcontractors in connection with the Work capable of working harmoniously with all trades, crafts or other individuals associated with the Project and with Owner's own forces and separate contractors. The Contractor shall use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance.

§ 3.4.5 The Contractor shall require each worker to dress appropriately in a clean, neat and professional manner and to conduct themselves with respect and courtesy.

§ 3.4.6 The Contractor shall control the volume of communication radios and loudspeakers to avoid creating a nuisance.

§ 3.4.7 All forms of lewdness and sexual harassment including: touching, whistling, sexually explicit jokes, drawings, photos, representations, exhibitionism and all other sexually oriented offensive behavior is strictly prohibited.

§ 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, included unauthorized substitutions, shall be

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considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by or on behalf of 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 Except when a longer warranty time is specifically called for in the Specifications or is otherwise provided by law, and subject to the provisions of § 12.2.2 hereof, all warranties shall be for a period of eighteen (18) months from the date of Substantial Completion, and shall be in form and content consistent with industry standards.

Warranties shall become effective upon Substantial Completion of the entire Project. The Contractor's warranty obligations shall survive acceptance of the Work by the Owner and Architect and termination of the Contract. The Contractor's warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or the Contract Documents.

§ 3.5.3 The Contractor shall be solely responsible for determining that all materials furnished for the Work meet all requirements of the Contract Documents. The Architect may require the Contractor to furnish at the Contractor's expense, reasonable evidence that a material meets such requirements.

§ 3.5.4 The Contractor shall procure and deliver to the Architect, no later than Substantial Completion, all special warranties required by the Contract Documents. Delivery of such warranties shall constitute the Contractor's guarantee to the Owner that the warranties will be performed in accordance with their terms and conditions.

§ 3.6 TAXES

§ 3.6.1 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. The Owner is tax exempt. The Contractor shall familiarize itself with current, applicable tax statutes, regulations and procedures. The tax on the sale of such materials or supplies that is available for exemption by such statutes and regulations shall not be included as part of the price for any Work performed or included in an application for payment. A tax exemption certificate is available from the Owner for purchases pertaining to the Project.

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

§ 3.7.1 The Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work. The Contractor shall secure all certificates of inspection, use, occupancy, permits and licenses, and give all notices necessary and incidental to the due and lawful prosecution of the Work. Certificates of inspection, use and occupancy shall be delivered to the Owner upon Substantial Completion of the Work.

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

§ 3.7.3 If the Contractor performs Work which it knows or should in the exercise of reasonable judgment know to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction in addition to any other damages incurred by the Owner.

§ 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 21 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 an equitable adjustment 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 in writing, stating the

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reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15. No adjustment in the Contract Time or Contract Sum shall be permitted in connection with a concealed or unknown condition that does not differ materially from those conditions that were disclosed to or that reasonably should have been known to the Contractor in the proper exercise of its obligations hereunder.

§ 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 full time 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. Individuals employed at the Project site must be acceptable to and approved by the Owner, and shall be replaced upon the reasonable request of the Owner with individuals acceptable to and approved by the Owner.

§ 3.9.1.2 The Contractor's Superintendent and similar authorized representative of any Subcontractor, supplier or any other person or organization shall attend all meetings as required by the Owner.

§ 3.9.1.3 When the presence of a Subcontractor or Sub-subcontractor is required at a job meeting, the Contractor shall require that the Subcontractor or Sub-subcontractor be represented by an authorized representative who is empowered to make binding commitments on all matters to be discussed at such meetings, including costs, payments, Change Orders, time schedules and manpower. All required notices may be served on such representatives.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed Superintendent and necessary assistants. If the Owner or Architect objects to the Contractor's Superintendent or any assistant, whether initially or otherwise, the Contractor shall submit a competent replacement Superintendent or assistant at no increase in the Contract Sum or the Contract Time.

§ 3.9.3 The Contractor shall not employ a proposed Superintendent or necessary assistants to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the Superintendent or necessary assistants without written consent.

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§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be updated at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for orderly, sequential, expeditious and practicable execution of the Work. The baseline construction schedule and all schedule updates shall clearly delineate all Subcontractor start and finish dates, realistic activity sequences and durations, allocations of labor and materials, critical dates by which Shop Drawings, Product Data, Samples and other submittals must be processed and the times by which products requiring long delivery lead times must be procured, as well as the anticipated dates for the Owner's other contractors, if any, to coordinate their work with the Contractor's Work. The Contractor shall update the construction schedule on a monthly basis, or more frequently as necessary to keep the Owner apprised of the progress of the Work. Construction schedule updates shall conspicuously note any changes to the prior submitted schedule update. The construction schedule shall not be modified or extended without the prior approval of the Owner in each instance.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect sufficient time to review submittals in accordance with Specifications. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. The Contractor shall collaborate with the Architect to establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals.

§ 3.10.3 Time is of the essence of the Contract. Accordingly, the Contractor shall perform the Work in strict accordance with the approved construction schedule. The Contractor's compliance with the construction schedule shall be a material obligation of this Contract. 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 actual delays or reasonably anticipated delays. The Contractor shall recommend to the Owner adjustments in the construction schedule necessary to meet the date for Substantial Completion. In the event of any actual or reasonably anticipated delays, the Contractor shall propose an affirmative plan to overcome the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report or schedule update constitute an adjustment in the Contract Time or the Contract Sum.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

§ 3.11.1 The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.11.2 The Contractor shall maintain at the Project site on a current basis, records of all subcontracts, purchase orders, materials, equipment, maintenance and operating manuals and instructions, warranties, and any other related documents and revisions which arise out of any subcontract or the Work. The Contractor will make records stored at its home office available to the Owner at the Project site on the Owner's request. At the completion of the Project, the Contractor shall deliver all such records to the Owner.

§ 3.11.3 The Contractor shall indicate on the record drawings, as far as possible, all new and existing pipe and conduit runs which are concealed. The Contractor shall indicate on the record drawings the electrical distribution panel and circuit number supplying each item installed or reconnected, with the diagrammatic lines showing sequence of connections.

§ 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.

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§ 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 the way by which 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. Submittals that are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

§ 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 for dimensional accuracy and coordination with the requirements of the Work and of the Contract Documents. Any intended deviation from the requirements of the Contract Documents shall be conspicuously identified. Measurements not available prior to the presentation of a Submittal shall be conspicuously noted as not available and, to the extent reasonably possible, such measurements shall be obtained and incorporated into the Submittal by the submitting person or entity prior to fabrication.

§ 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 requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically and conspicuously identified and informed the Architect in writing of such deviation at the time of submittal and (i) the Architect has given written approval to the specific deviation as a minor change in the Work, or (ii) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility to comply with the Contract Documents or 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, conspicuous 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 conspicuous, written 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. 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 Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications,

certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals. Pursuant to this Section § 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.12.11 When professional certification of materials, systems or equipment is required by the Contract Documents, the Owner shall be entitled to rely upon such certifications, and neither the Owner nor the Architect shall be expected to make an independent examination with respect to the performance of such materials systems or equipment.

§ 3.13 USE OF SITE

The right of possession of the premises and the improvements made thereon by the Contractor shall remain at all times in the Owner. The Contractor's right to entry and use thereof arises solely from the permission granted by the Owner under the Contract Documents. The Contractor shall confirm the Contractor's apparatus, the storage of materials and the operations of the Contractor's workers to limits indicated by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Contract Documents and/or directions, and/or directions of the Architect and shall not unreasonably encumber the premises with the Contractor's materials. The Owner shall not be liable to the Contractor, the Subcontractors, their employees or anyone else with respect to the conditions of the premises, except only for a condition caused directly and solely by the negligence of the Owner.

§ 3.13.1 Following the date of Substantial Completion, the Contractor shall notify the Owner prior to each entry to the Site, and neither the Contractor nor its Subcontractors shall enter the Site without the express permission of the Owner. The Contractor shall confine operations at the Site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the Site with materials or equipment.

§ 3.13.2 Protection of construction materials and equipment stored at the Project Site from weather, theft, damage and all other such adversity is solely the responsibility of the Contractor.

§ 3.13.3 The Contractor shall accept delivery and arrange storage, protection, insurance and security, at Owner's expense, for all Owner purchased materials, systems and equipment, if any, which are a part of the Work until such items are turned over to the Subcontractors and cause all such materials, systems and equipment to be insured under the builder's risk policy Contractor is obligated to carry pursuant to this Agreement, with any increase in the premium of such policy paid for by Owner without any additional fee or mark-up charged by Contractor.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, coring, fitting and patching required to complete the Work or to make its parts fit together properly as described in the Contract Specifications. All areas requiring cutting, coring, fitting and patching shall be restored to the condition existing prior to the cutting, coring, fitting and 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, coring, fitting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the 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 or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall

remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

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

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, the Architect, Architect's consultants, and representatives, agents and employees of any of them from and against any and all liability, costs, claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, to the extent caused by the breach of contract or negligent acts or omissions or intentional misconduct of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which 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 As pertains to Paragraph 3.18, the Owner reserves the right to retain its own counsel and to charge any reasonable counsel fees to the Contractor where there is not a commonality of interests between the Owner and the Contractor or as to claims that are not insured. The Contractor expressly consents to the Owner's selection of legal counsel and waives any waivable conflict.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

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

§ 4.1.2 [Not used.]

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a new Architect whose status under the Contract Documents shall be that of the former Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents. The Architect shall have no authority to order any extra-

contractual work or services, contractually bind the Owner or alter the Owner's rights and obligations under the Contract Documents.

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

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

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

The Owner encourages direct communication between and among the representatives of the Owner, Architect and Contractor at all times during the Project for the purpose of the timely sharing of Project data and information.

Written communications between or among the Contractor, Architect or Owner shall be copied to each of them, unless the Owner, in its discretion, determines otherwise with respect to specific communications. Communications with consultants and subcontractors shall be through the designated representatives of the entity that retained such consultant or subcontractor.

§ 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. The Owner shall make the final decision on whether to make payment to the Contractor in accordance with the Contractor's Applications for Payment, and the Owner shall have the right to communicate with any individual or entity involved in the Project to verify amounts included in Applications for Payment.

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

§ 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 authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 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 from the Contractor and forward to the Owner, for the Owner's review and records, record drawings, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

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

§ 4.2.11 The Architect will interpret and 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 subcontractors of a separate contractor.

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

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

§ 5.2.1 The Contractor is prohibited from subcontracting this Agreement or any part of it unless the Owner first approves such subcontracting in writing, the specific subcontractors proposed to be used by the Contractor. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void. In addition to the foregoing, pursuant to §103.4 of the City of Stamford Code of Ordinances, within fifteen (15) days after receipt of the Notice to Proceed, the Contractor agrees to provide Owner with the names and addresses of all consultants to be used for any subcontract that shall be in an amount in excess of ten thousand (\$10,000.00) dollars. Such information shall be supplied at the time such contracts are executed. The Owner or Architect will promptly reply to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.

§ 5.2.2 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 neither the Owner nor Architect has reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Owner may reasonably require the Contractor to change any Subcontractor previously approved, and the Contract Sum shall be increased or decreased by the difference in cost occasioned by such change. The Contractor shall supply Owner with a list of the names and addresses of all Subcontractors and material suppliers on request and from time to time.

§ 5.2.5 If any of the Subcontractors or personnel involved in the Project is not fulfilling its responsibilities properly, the Owner may require such personnel to be terminated or removed and replaced as expeditiously as possible with Subcontractors or personnel acceptable to the Owner.

§ 5.2.6 Nothing herein shall be construed as an intent to create a contractual or third party beneficiary relationship between the Owner and any of the Subcontractors, except as provided in § 5.4.

§ 5.2.7 All Subcontractors shall be properly licensed by the State of Connecticut and are required to obtain their own permits.

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by the 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. The Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors of all tiers. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

§ 5.4.2 When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights under the subcontract.

(Paragraph Deleted)

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§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

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 Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15. The Owner's separate contractors, if any, may have access to those portions the Project Site under construction prior to the anticipated date of Substantial Completion for the purpose of installing items which it is more cost effective for the Owner to have installed during the progress of the Work (i.e., before walls and ceilings are completed). The Owner and Contractor agree to cooperate in scheduling all entries and work by the Owner's separate contractors.

§ 6.1.1.1 The Owner reserves the right to access any part of the Project at any time to install material or services other than the Work, either with its own forces or with separate contractors hired by the Owner. Such access is in not to be construed as partial occupancy by the Owner. The Contractor shall permit the Owner to place, and install furniture, equipment and other materials during the progress of the Work, and agrees that the installation of such items shall not be construed as acceptance of the Work or any portion thereof.

§ 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 other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised. Nothing in this § 6.1.3 shall be construed as authorizing a revision to the Contract Time.

§ 6.1.4 [Not used.]

§ 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 report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report 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, except as to defects not then reasonably discoverable.

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

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

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

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§ 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, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument signed by the Owner and Contractor 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 Upon request of the Owner or the Architect, the Contractor shall, without cost to the Owner, submit to the Architect in such form that the Architect may require a written proposal for a Change in the Work. The proposal shall include the quantity and unit cost of each item of material, and the number of hours of work and the hourly rate for each class of labor, as well as the description and amounts of all other costs sought by the Contractor to perform the proposed change. The Contractor shall also furnish to the Architect bona fide proposals from Subcontractors and suppliers for all labor, materials and equipment to be incorporated into such Work. The Contractor, when requested, shall furnish in a form satisfactory to the Owner, itemized statements of the cost of Work, including, but not limited to, certified payrolls and copies of accounts, bills and vouchers to substantiate the estimates. The proposal shall be furnished promptly so as not to delay the Work and shall include an estimate of any additional time required to complete the Work. Percentages for overhead and profit shall be accordance with paragraph 7.2.4.

§ 7.2.2.1 Change Order Proposals shall be complete and all inclusive. The amount of the adjustment in the Contract Sum and Contract Time, if any, shall be stated in the proposal for all Work affected by the proposed change. Once a Change Order is executed, the Contractor shall be required to perform all of the Work required therein (including incidental work and changes to related Work which may be required to complete the Change Order) in accordance with the Contract Documents, for the amount stated in the Change Order.

§ 7.2.2.2 Contractor's requests for changes or substitutes shall be subject to the same requirements as a change initiated by the Architect or Owner.

§ 7.2.3 The cost or credit to the Owner resulting from a Change in the Work, absent the applicability of a unit price for such item(s) set forth in the Contract shall be determined as follows:

§ 7.2.3.1 The cost of material and equipment incorporated into the Work.

§ 7.2.3.2 The cost of wages, including fringe benefits mandated by collective bargaining agreements.

§ 7.2.3.3 Cost of Workers' Compensation, employer Liability Insurance, Federal Social Security (FICA), Federal Unemployment Compensation (FUTA).

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§ 7.2.3.4 Cost of Builder's Risk Insurance. N/A.

§ 7.2.3.5 Cost of Performance and Payment Bonds. To be adjusted at the end of the Project.

§ 7.2.3.6 Cost of rental of equipment whose purchase price is greater than two hundred fifty dollars (\$250.00). Cost of rental shall be substantiated by invoice for the actual rental cost; or in the case where the equipment is owned, the cost shall include the daily, weekly and monthly rates for such equipment. The applicable rate shall be as mutually agreed by the Contractor and Owner.

§ 7.2.3.6.1 Cost of fuel consumed by equipment used in the performance of the Work if not included in the publicized rate.

§ 7.2.3.7 Cost of pro rata share of debris removal and dumpster rental. This cost shall be allowed only when the debris removal is associated with Work such as demolition but shall not be allowed as part of general cleanup.

§ 7.2.3.8 Cost of a foreman. This cost shall be allowed if the crew size of a respective trade exceeds a combined total of six journeymen and apprentices. In such instances the total foremen hours may not exceed one sixth of the hours of the working crew.

§ 7.2.3.9 [Not used]

§ 7.2.3.10 Costs of small tools whose individual cost is less than two hundred fifty dollars (\$250.00) shall be included in overhead and profit, and shall not be allowed as separate line items.

§ 7.2.3.11 [No used]

§ 7.2.3.12 Cost of revisions to shop drawings shall not be allowed as a separate line item unless the shop drawings have been previously submitted and approved by the Architect.

§ 7.2.3.13 All other costs which are not specifically enumerated in Article 7.2.3 shall be included in overhead and profit, and shall not be allowed as separate line items.

§ 7.2.4 [Not used].

§ 7.2.4.1 [Not used]

§ 7.2.4.2 [Not used]

§ 7.2.4.3 [Not used]

§ 7.2.4.4 [Not used]

§ 7.2.4.5 [Not used]

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

§ 7.2.5 A Change Order constitutes a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including all direct and indirect costs associated with such change and any and all adjustments in the Contract Sum and Contract Time. In no event shall a Change Order include any other relief prohibited by the Contract Documents.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order signed by the Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by

Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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

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

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
 - .1.1 Such itemization shall include the quantity and unit cost of each item of material, and the number of hours worked and the hourly rate of each class of labor, as well as a description and amounts of all other costs sought by the Contractor to perform the proposed Change. The Contractor shall furnish to the Architect, bona fide proposals from Subcontractors and suppliers for all labor, materials, and equipment to be incorporated into such Work. The Contractor, when requested, shall furnish in a form satisfactory to the Owner, itemized statements of the cost of Work, including, but not limited to certified payrolls and copies of accounts, bills and vouchers to permit evaluation.
 - .1.2 Allowable costs shall be in accordance with Section 7.2.3.
 - .1.3 Allowance for overhead and profit shall be in accordance with Section 7.2.4.
- .2 unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or an allowance for overhead and profit in accordance with Section 7.2.4.
- .4 as provided in Section 7.3.7.

§ 7.3.4 [Not used.]

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect and Owner 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.

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the

(Paragraphs Deleted)

allowable costs set forth in § 7.2.3.

(Paragraphs Deleted)

§ 7.3.8 [Not used.]

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may not request payment for Work completed under the Construction Change Directive in Applications for Payment without the Owner's express, written consent.

§ 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 change will be recorded in a Change Order.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

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 determined in accordance with Section 9.8.

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

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. The Contractor and Subcontractors shall perform and coordinate all Work without delay. The Construction Schedule in the Invitation Bid serves as a guide of critical milestone dates for completion of certain work activities on the Project. Failure to meet the intermediate milestone dates will jeopardize the overall Project Schedule. By executing the Agreement the Contractor confirms that it has reviewed the Contract Documents and the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously in accordance with the construction schedule with adequate forces and shall achieve Substantial Completion within the Contract Time. The Contractor shall at all times ensure that each Subcontractor is providing and maintaining sufficient skilled workmen, materials and equipment to achieve Substantial Completion within the Contract Time. Absent Change Orders signed by the Owner or a delay for which the Contractor is entitled to an extension of time by § 8.3.1, the Contractor shall not make any claims for additional payment of straight time, overtime or premium time in undertaking to achieve Substantial Completion of the Work in accordance with the construction schedule. The burden of lost time and costs related to any Subcontractor's nonperformance shall not be charged to Owner unless such nonperformance is attributable to delay for which the Contractor is entitled to an extension of time by § 8.3.1.

§ 8.2.4 Unless specifically required by law, no payment under the Contract shall become due until the Construction Schedule as described in Section 3.10 herein has been approved.

§ 8.2.5 If the Architect determines that there have been delays to critical paths and that in the Owner's sole discretion, there is reasonable concern that the Project will not be Substantially Completed by the date described in the Agreement, the Owner may, in addition to any other remedy it may have direct the Contractor to submit a written description of the steps the Contractor intends to take to put the Project back on schedule. At the Owner's sole discretion, the Owner may also in addition to any other remedy it may have direct the Contractor to take some or all of the following actions: (a) increase the number of workers in such quantities and trades as the Owner directs; (b) increase the number of working hours per shift, shifts per day, working days per week, amount of construction equipment, or any combination of the foregoing; and/or (c) reschedule activities at the Owner's direction.

§ 8.2.6 Nothing contained herein shall limit the Owner's right to withhold or recover liquidated or other damages for delays caused by the Contractor or any other remedy in which the Owner is entitled pursuant to the Contract.

§ 8.2.7 Contractor shall cooperate with Owner and Architect and coordinate with all Subcontractors on the Project to make every reasonable effort to reduce 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 the wrongful act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by unforeseeable labor disputes, fire, unavoidable delay in deliveries, or unavoidable casualties; or by delay authorized in writing by the Owner pending mediation and arbitration; then, provided that Contractor has complied with its obligations hereunder, the Contract Time shall be extended by Change Order for such reasonable time as may be required.

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

§ 8.3.3 The Contractor's sole remedy for delays excusable under § 8.3.1 is an extension of time as provided herein. The Contractor waives damages for delays incurred by it or anyone claiming through it.

§ 8.3.4 The Owner shall extend the Contract Time due to a delay until all contract float is identified and used.

§ 8.3.5 No extension of time, or increase in the Contract Sum shall be granted because of seasonal variations in temperature, humidity or precipitation, which conditions shall be wholly at the risk of the Contractor.

§ 8.4 The Contractor shall not be entitled to an adjustment of the Contract Time on account of delays: (i) that it could have avoided or mitigated using its best professional efforts; (ii) that do not impact the critical path; (iii) for which there is available float in the chain of activities affected by the delay; (iv) that were caused by, or could have been reasonably anticipated by, the Contractor or those for whom it is responsible; or (v) that could have been mitigated or avoided by the Contractor's timely notice to the Owner as required hereunder.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

§ 9.2 SCHEDULE OF VALUES

No payment shall be made to the Contractor, unless the Schedule of Values has been approved by the Owner and Architect. The Contractor shall submit to the Architect and Owner, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form, supported by such data to substantiate its accuracy, and broken down by trade as the Architect or Owner may require. This schedule of values shall be subject to the Owner's review and approval, and shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 The Contractor shall submit to the Architect an itemized pencil copy Application for Payment prepared in accordance with the schedule of values for completed portions of the Work at least ten days before the payment application is due. On the first day of the month, the Contractor shall submit its payment application, accounting for the Architect's changes and comments to the pencil copy. Such application shall be notarized and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, including without limitation copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. The Architect shall then review the Contractor's formal notarized Application for Payment, supported by such data sustaining the Contractor's Application for Payment as the Owner or Architect may require, and verify in writing in accordance with Section 9.4 the total value of Work completed, including an allowance for the value of materials delivered and suitably stored at the site at the time of such Application.

§ 9.3.1.1 As provided in Section 7.3.9., such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives.

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

§ 9.3.1.3 Each Application for Payment shall include a statement identifying all authorized directives for extra work, including pending Change Orders, Construction Change Directives and authorized changes in the Work, and showing with respect to each: (a) the date of initiation; (b) the status; (c) the costs associated with its performance; and (d) a description of any work completed.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment that are finished, ready for shipment, and 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. When any Application for Payment includes materials stored off the Project Site or stored on the Project Site but not yet incorporated in the Work, for which no previous payment has been requested, a complete description of such material shall be attached to the Application for Payment. Suitable storage which is off the Project Site shall be a bonded warehouse or appropriate storage approved by Owner with the stored materials properly insured, tagged and identifiable for this Project and properly segregated from other materials. The Owner's written approval shall be obtained before the use of offsite storage is made. Such approval may be withheld in Owner's sole reasonable discretion.

§ 9.3.2.1 In no case will payment be made for materials or equipment stored outside the United States.

§ 9.3.3 The Contractor warrants that title to all Work (including stored materials and equipment) covered by an Application for Payment will pass to the Owner no later than the time of payment, free and clear of all liens, claims, security interests, or encumbrances whatsoever, that the vesting of such title shall not impose any obligations on Owner or relieve Contractor of any of its obligations under the Contract, that the Contractor shall remain responsible for damage to or loss of the Work not caused by Owner or Owner's separate contractors, whether completed or under construction, until responsibility for the Work has been accepted by Owner in the manner set forth in the Contract Documents. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.3.4 The Contractor's Applications for Payment shall be accompanied by:

- .1 A list of names and addresses of each person or entity that furnished labor, services, materials or equipment on behalf of the Contractor;
- .2 Partial releases and waivers, in a form approved by the Owner, from the Contractor, Subcontractors and Sub-subcontractors for all labor, services, materials and equipment furnished to the Project through the date covered by such Application, conditioned on performance of the Work and receipt of payment, and excluding any permitted retainage and unresolved Claims submitted in accordance with the Contract Documents;
- .3 Applications for Payment and invoices from all persons or entities whose work is included in the Contractor's Application for Payment;
- .4 A construction schedule update;
- .5 Written warranties from Subcontractors, manufacturers and installers covering portions of the Work that have reached Substantial Completion; and
- .6 Such other data, accounts and receipts substantiating costs included in the Application for Payment as reasonably requested by the Owner.

§ 9.3.5 The Contractor's Applications for Payment shall be signed and notarized, which signature shall constitute a representation and warranty that:

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- .1 the amounts sought are due and earned in accordance with the Contract Documents;
- .2 all applicable taxes are included in such Application for Payment;
- .3 the Work is progressing in accordance with the schedule and the Substantial Completion date established herein;
- .4 they shall use the amounts requested to discharge their financial obligations on account of labor, services, materials or equipment furnished to the Project and included in the Application for Payment;
- .5 they have discharged their financial obligations on account of labor, services, materials or equipment furnished to the Project for which the Owner has made payment;
- .6 to the best of their knowledge, there are no claims of liens, security interests or encumbrances in favor of persons or entities that provided services, labor, materials and/or equipment to the Project on their behalf; and
- .7 title to all Work covered by the application has passed to the Owner no later than the time of payment.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 Subject to the Owner's approval, the Architect will, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, that the quality of the Work is in accordance with the Contract Documents and that the Architect recommends that the Owner release payment to the Contractor in the amount requested. The foregoing representations are subject to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will not be a representation that the Architect or Owner has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum. Notwithstanding anything to the contrary in the Contract Documents, the Owner shall not be obligated to release payment to the Contractor until the Owner is satisfied that the Work has progressed to the point indicated in the Application for Payment, that the quality of the Work is in accordance with the Contract Documents and that withholding permitted under the Contract Documents is not required. Payment by the Owner of any Certificate for Payment shall not be deemed to waive any of the Owner's rights to later claim that the Work covered by a Certificate for Payment was not properly completed or not completed in accordance with the Contract Documents.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect shall 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 Owner may withhold payment and the Architect shall withhold a Certificate for Payment or, because of subsequently discovered evidence, either may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be required by applicable law or necessary in the Architect's or Owner's opinion to protect the Owner from loss for which the Contractor is responsible, including without limitation 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 claims of nonpayment by Subcontractors of any tier for services 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;

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- .7 repeated failure to carry out the Work in accordance with the Contract Documents;
- .8 losses for which the Owner is entitled to indemnity from the Contractor under the Contract Documents;
- .9 failure to comply with mandatory requirements for maintaining record drawings per the Contract Specifications. The Contractor shall confirm in writing, with each monthly Application for Payment, that the Contractor has checked the record drawings and that they accurately describe the work in place; or
- .10 costs incurred by the Owner as described under Section 10.2.5.

§ 9.5.2 The Owner may apply any amounts withheld as the Owner may deem proper to satisfy or set off against Claims, secure its protection, complete the Work or compensate itself for losses suffered by reason of nonperformance or default and deduct such amounts from the Contract Sum by Change Order. When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 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 material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered, and such payment shall be deemed to have been made on account of the payee and all tiers between the payee and the Owner. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment. Any payment made by the Owner by joint check shall not be construed as a promise to assume the debt of any joint payee, nor as a continuing obligation to make joint payments, nor as an assumption or establishment of a direct contractual relationship with the payee unless expressly stated in a separate written agreement with such payee.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner provided it first approves the Certificate of Payment, shall make payment in the manner and within the time provided, in the Contract Documents, and shall so notify the Architect. The Owner shall not be deemed in default by reason of withholding payment in accordance with the Contract Documents or while any default by Contractor or any Subcontractor remains uncured.

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

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

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors 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, except as may otherwise be required by law.

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

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

§ 9.6.7 Payments received by the Contractor for Work properly performed by Subcontractors and 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.

§ 9.7 [Not used.]

(Paragraph Deleted)

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The Work will not be considered suitable for Substantial Completion review, and the Contractor shall not be deemed to have achieved Substantial Completion until: (i) all Project systems included in the Work have been started up, tested and commissioned, and are operational as designed and scheduled; (ii) to the extent reasonably required, the Contractor has instructed Owner's personnel in the operation of all systems and equipment; and (iii) the Contractor has arranged for and obtained all designated or required governmental inspections and certifications necessary for legal use and occupancy of the completed Project, including without limitation, a permanent or temporary certificate of occupancy for the Project.

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

§ 9.8.3 Upon receipt of the Contractor's list, the Architect with the input of the Owner 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 determined by the Architect in consultation with the Owner to be substantially complete, the Architect will prepare a Certificate of Substantial Completion shall record the responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. The Contractor shall promptly proceed to complete or correct the Work on this list. 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 such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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§ 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 written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect and Owner will promptly make such inspection and, when the Architect and Owner 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 terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner evidence of compliance with all requirements of the Contract Documents including without limitation, all notices, certificates, affidavits and other requirements to complete obligations under the Contract Documents, including but not limited to: (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 and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner; (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents; (4) consent of surety, if any, to final payment; (5) delivery of keys to the Owner with keying schedule (master, submaster and special keys), if required by the Contract Documents; (6) delivery to the Owner of all warranties, including without limitation, all manufacturer's warranties and certificates of inspections; (7) delivery to the Owner of written operating, servicing, maintenance and cleaning instructions for all Work, and attic stock, spare parts, parts lists and special tools for mechanical and electrical equipment, in approved form; (8) delivery to the Owner of specified Project record documents, including without limitation the documents described in § 3.11; (9) delivery to the Owner of all final certificates for use and occupancy of the completed Project; (10) completion of all touchup painting, delayed final finishes and punch list items; (11) delivery to the Owner of all other submissions required by the Contract Documents including without limitation, final construction schedule; (12) final cleanup, including touch-up of marred surfaces; and other data establishing payment or satisfaction of obligations, such as receipts, final releases and waivers of claims, security interests or encumbrances arising out of the Contract from the Contractor and every Subcontractor and major material suppliers, to the extent and in such form as may be designated by the Owner.

§ 9.10.2.1 As a precondition to receiving Final Payment, the Contractor shall deliver to the Owner a complete set of "as-built" Drawings, consisting of marked-up field plans showing final as-built field conditions, dimensions and conditions including, without limitation, those relating to the heating, air-conditioning and ventilation systems and the electrical, plumbing and life safety systems, recording the Work as actually performed to the extent that the information differs from or supplements original Contract Documents.

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

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

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall, to the exclusion of the Owner, exercise control over the Project site and shall be exclusively responsible for managing, superintending, directing and overseeing the conduct of persons and entities performing of the Work.

§ 10.1.1 The Contractor shall provide all facilities and shall follow all procedures required by the Occupational Safety and Health Act, and all standard and regulations promulgated by the governmental and regulatory bodies responsible for administration thereof, including without limitation providing and posting all required posters and notices, and shall otherwise be responsible for complying with applicable safety laws.

§ 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 or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

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

§ 10.2.3 The Contractor shall 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 owners and users of adjacent sites and utilities.

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18. Where the damage or loss presents an immediate danger to the public, the Owner, in its sole discretion and at the Contractor's expense, may promptly remedy such damage or loss without prior notice to the Contractor.

§ 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 The Contractor shall be responsible for the adequate strength and safety of all scaffolding, staging and hoisting equipment and for temporary shoring, bracing and tying.

§ 10.2.9 The Contractor shall provide approved hard hats, other personal protective equipment as required, approved first aid supplies, name of first aid attendant and a posted list of emergency facilities.

§ 10.2.10 The Contractor shall take immediate action to correct any dangerous conditions that result from the reopening of any portion of the Work.

§ 10.2.11 No visitors shall be allowed on the work site without permission from the Owner .

§ 10.2.12 All employees at the worksite shall have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work. The Contractor and all Subcontractors shall furnish documentation of successful completion of said course with the first certified payroll report for each employee. The Contractor shall indemnify and hold harmless the Owner from any and all fines, costs and expenses, including but not limited to reasonable attorney's fees, incurred by Owner due to the Contractor's violation of such Acts, standards and/or regulations. Such indemnity shall not be construed to limit the indemnity required under Subparagraph 3.18.1.

§ 10.2.13 In the event the Owner determines that conditions present an immediate danger, the Owner shall have the right but not the obligation to suspend the Work in the unsafe area immediately upon its discovery. All costs of any nature (including without limitation, overtime pay, acceleration, liquidated damages or other costs arising out of delays) resulting from the suspension by whomever incurred, shall be paid by the Contractor.

§ 10.2.14 INJURY OR DAMAGE TO PERSON OR PROPERTY The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work that caused death, bodily injury or property damage, giving full details and statements of any witnesses. Such reports shall be made immediately by telephone or messenger to the Owner and Architect in the event of death, serious bodily injury or serious property damage.

§ 10.2.15 MOLD GROWTH [Not used]

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. If the Contractor encounters on the site any material or substance which is considered to be a biological pollutant, or is classified as hazardous under any federal, state or local law or regulations, or any underground storage tank, the Contractor shall immediately stop work in the affected area and report the condition to the Owner and the Architect for appropriate action. The Contractor shall comply with all applicable federal, state, and local environmental laws regarding the use, handling, transportation and disposal of oil, hazardous waste or hazardous substances.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be equitably adjusted.

§ 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 materials or substances the Contractor brings to the site unless such materials or substances are expressly required by the Contract Documents. The Owner shall be responsible for materials or substances expressly required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of damages caused by a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred unless the Contractor knew or had reason to know that its activities, even if directed by Owner, violated applicable law.

§ 10.3.7 Prior to introducing any hazardous materials to the Project Site, the Contractor shall provide a material safety data sheet (MSDS), information about precautionary measures necessary to protect persons or property and an indication of the type of labeling system in use.

§ 10.3.8 In the event that during the performance of the Work the activities of the Contractor or any Subcontractor, or any person or entity for which the Contractor is responsible, causes the incursion of mold at the Project site, the Contractor shall be responsible for and bear the entire cost of mitigation of any mold to the satisfaction of the Owner.

§ 10.4 EMERGENCIES

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

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

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;

- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The Contractor shall maintain such paid-up insurance as will adequately protect the Contractor and the City of Stamford, Board of Education, and their respective officers, agents and employees from damages for personal injury (including death) and/or property damage, which may arise from or which may in any way be related to the work or services to be provided hereunder, in such amounts and types as the Risk Management department of the City of Stamford shall deem reasonably necessary to adequately protect the Contractor, the City of Stamford, the Board of Education, and their respective directors, officers, agents, and employees.

At a minimum, the Contractor shall maintain the following insurance coverages:

- 1. Commercial general liability insurance in a minimum amount of \$1,000,000 combined single limit per occurrence per occurrence for bodily injury and property damage and \$2,000,000 in the aggregate. This insurance shall contain, but not be limited to, contractual liability insurance, which covers any indemnities contained in this contract, products liability and completed operations coverage, which shall be maintained for a period of not less than three (3) years following termination of the work or services to be provided by the Contractor or termination of the Contract, whichever is later, personal injury and advertising liability, X, C, U coverage, if applicable, broad form property damage coverage, and operations liability.
- 1. Commercial automobile liability insurance in a minimum amount of \$1,000,000 combined single limit per occurrence for bodily injury and property damage. This insurance shall cover, but not be limited to, all owned, non-owned and hired/leased vehicles.
- 1. Excess (umbrella) liability insurance in a minimum amount of \$5,000,000 per occurrence and in the aggregate. This insurance shall provide additional limits of liability for the commercial general liability, commercial automobile liability, and employer's liability coverage.
- 1. Workers' compensation insurance, which complies with all the workers' compensation laws and regulations of the State of Connecticut.
- 1. Employer's liability insurance, which contains minimum limits of liability of \$500,000 each accident, \$500,000 disease policy limit and \$500,000 disease each employee.
- 1. Asbestos liability insurance (if applicable), which contains a minimum limit of liability of \$2,000,000 per claim and in the aggregate, and insures the abatement (removal) of asbestos and its disposal. This insurance shall contain the following:
 - 1. If the insurance is underwritten on a claims made, as opposed to an occurrence basis, the retroactive date in the policy shall be the earlier of the effective date of the Agreement between the successful bidder and the City of Stamford or the date the successful Contractor begins its services for the City of Stamford. The policy shall also contain an extended reporting date of not less than three years following termination of the agreement between the Contractor and the City of Stamford or conclusion of the services rendered by the successful contractor, whichever date is later.
- 1. Contractors Pollution Legal Liability/Errors and Omissions insurance, with a minimum limit of liability of 2,000,000 which will protect the contractor, the City, and the Board of Education from claims arising from pollution releases caused by working on this project.

The commercial general liability and automobile liability insurance policies required hereunder shall designate the City of Stamford, Board of Education, and their employees, agents and officers as additional insureds.

Any insurance required hereunder, which is underwritten on a claims made, as opposed to an occurrence basis, shall contain a retroactive date of the date the contract is executed or the date the Contractor commences services or work, whichever is earlier, and an extended reporting date the later of the date the

work or services required hereunder are completed or the termination date of the Contract.

The Contractor agrees to waive any right of any claim, loss or damage against the City of Stamford and its employees, agents and officers for any work or services to be provided by the Contractor hereunder. All insurance required hereunder shall be endorsed to contain waivers of subrogation against the City of Stamford, Board of Education, and their employees, agents and officers.

All such insurance required hereunder shall contain provisions requiring the insurance company(s) to provide thirty (30) days prior written notice to the Risk Manager for the City of Stamford in the event of cancellation, termination or material change to any policy terms and conditions.

The Contractor agrees to provide the Risk Manager for the City of Stamford with certified copies of all insurance policies of insurance required hereunder or certificates of insurance, whichever the Risk Manager deems appropriate, prior to commencement of services under this Agreement hereunder and throughout the full term of this contract upon expiration or termination or change in any insurance coverage required hereunder.

The insurance requirements of the Agreement are an integral part of the Agreement. Any defect in the insurance program required in the Agreement may result in termination of the Agreement, as stipulated in the Agreement. No employee or the entity can modify the terms of the Agreement without the prior approval of corporation Counsel and the Chief Administrative Officer or his/her designee.

All insurance coverages must be with insurance companies licensed to do business in the State of Connecticut and approved by the City of Stamford. The insurance companies must have at least an A-rating by A.M. Best Company.

The Contractor shall require its contractors/subcontractors to maintain insurance coverage, which is commensurate with their type and amount of work and or services being provided. Failure to require its contractors to maintain such insurance could result in termination of this Agreement.

The insurance required hereunder shall not serve to limit the liability of the Contractor with respect to any obligations or liabilities it assumes under the Contract.

The policy in the minimum amount of Five Million Dollars (\$5,000,000) shall be written as excess following the terms and conditions of the employer's liability, commercial general liability and business automobile liability coverages described herein and also shall be written to drop down and provide primary insurance including coverage for defense for the Contractor in the event that an aggregate limit has been exhausted. The policy shall include the Owner, the Contractor, and the Architect and their respective officers, directors, agents and employees as additional insureds in the same manner as the underlying policies. Coverage provided to said indemnified parties shall be primary to and not seek contribution from any other insurance available to the indemnified parties where they are a named insured.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner within ten (10) days of the Notice of Award and thereafter upon renewal or replacement of each required policy of insurance at least fifteen (15) days prior to expiration. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. Certificates of insurance must state whether coverages are written on an occurrence or claims-made basis. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. Failure of the Contractor to keep the Contractor's required insurance policies in force during the Work covered by this Contract or any extensions thereof or extra or additional Work agreed to by the Contractor, shall constitute a breach of this Contract, entitling Owner, notwithstanding anything to the contrary contained herein, to immediately cancel and terminate this Contract for cause.

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§ 11.1.4 Certificates of insurance acceptable to the Owner confirming the insurance coverage required by Section 11.1 shall be filed with the Owner prior to the execution of the Contract, and thereafter upon renewal or replacement of each required policy of insurance. The Owner shall have no obligation to execute the Contract, and may award the Contract to the next lowest responsible and eligible bidder, if such insurance certificates have not been provided to the Owner within five (5) business days after presentation of the Contract to Contractor for execution. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. These certificates shall set forth evidence of all coverage required by Sections 11.1.1 and 11.1.2. The form of certificate shall be the ACCORD form, supplemented as necessary by AIA Documents G715. The Contractor shall furnish to the Owner copies of any endorsement that are subsequently issued amending limits of coverage. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.5 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's Consultants as additional insureds during Contractor's operations; and (2) the Owner as an additional insured during Contractor's completed operations.

§ 11.1.6 Neither the Owner's authority to review certificate and policies of insurance, nor their decision to raise or not to raise any objections about those certificates and policies, shall in any way give rise to any duty or responsibility on the part of the Owner to exercise this authority for the benefit of the Contractor, any Subcontractor, Sub-subcontractor or supplier, or any other party.

§ 11.1.7 The Contractor's liability insurance shall remain in effect until the end of the Correction period as defined in Article 12 and in the Contract Specifications, and at all times that when the Contractor may be correcting, removing or replacing defective Work.

§ 11.1.8 If the Contractor or any Subcontractor provides any professional design services that constitute the practice of architecture or engineering, the Contractor shall procure and maintain errors and omissions insurance for such professional services in an amount required by the Contract Documents on a claims made basis, and shall maintain such insurance for a period of seven (7) years following the date of Substantial Completion.

§ 11.1.9 The Contractor shall cause all Subcontractors to provide and maintain insurance in compliance herewith, using good business judgment in establishing coverage limits and deductibles applicable to such insurance, and subject to the Owner's acceptance. The Contractor shall ensure that Subcontractors and those for whom they are responsible have provided certificates of insurance in compliance with the Contract Documents prior to commencing activities on the Project site.

§ 11.1.10 The Owner shall not be responsible for any amounts paid by the Contractor or those for whom it is responsible on account of deductibles on their policies of insurance.

§ 11.1.11 Insurance coverages provided by the Contractor and those for whom it is responsible shall be primary, and any insurance carried by the Owner will be considered excess or contingent.

§ 11.2 OWNER'S LIABILITY INSURANCE [Not used.]

§ 11.3 PROPERTY INSURANCE

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

or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later.

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

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

§ 11.3.1.3 [Not used.]

§ 11.3.1.4 [Not used.]

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Contractor shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards.

§ 11.3.4 [Not used.]

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

§ 11.3.6 The Contractor shall file two certified copies of all policies and Certificates of Insurance with the Owner prior to execution of the Contract.

§ 11.3.7 WAIVER OF SUBROGATION

The Contractor waives all rights against (1) the Owner and its agents and employees and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by insurance applicable to the Work, except such rights as the Contractor has to proceeds of such insurance held by the Owner as fiduciary. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a

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duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

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

§ 11.3.9 [Not used.]

§ 11.3.10 The Owner shall have power to adjust and settle any loss with insurers for which the Contractor has obtained insurance.

§ 11.3.11 Upon the occurrence of an insured loss, the Owner and Contractor shall cooperate with each other and with each other's insurer in the submission of claims and related information and the distribution of any insurance proceeds. If, after such a loss no other special agreement is made, replacement of damaged Work shall be covered by an appropriate Change Order.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 If Performance, payment or maintenance bonds are required for this bid as specified on the bid's Cover Sheet, Contractor shall furnish surety bonds from a licensed surety in the State of Connecticut and acceptable to Owner. The surety bonds shall be in the form of traditional bonds or in the form an irrevocable letter of credit drawn on a financial institution acceptable to Owner in amounts stipulated. Said surety bonds shall be for the faithful and proper performance of all persons/corporations performing work towards the acceptable completion of the Contract. The face value of the performance bond shall be as noted on the bid's Cover Sheet. The face value of the maintenance bond shall be as noted on the bid's Cover Sheet or \$5,000.00, whichever is greater. The maintenance bond shall be for a period commencing upon the expiration of the performance bond and terminating twenty four (24) months following completion and acceptance of the work by Owner. Such maintenance bonds shall be provided by Contractor to Owner upon completion and acceptance of the
(Paragraph Deleted)

work by Owner. The cost of all such required surety bonds shall be borne entirely by Contractor. Said surety bonds shall be provided no later than fifteen (15) calendar days from the date of award of this bid. The performance and payment bonds must both be underwritten by an insurance company licensed to do business in the State of Connecticut and currently listed in the Department of Treasury's Listing of Approved Sureties (Most Recent Circular) and rated B+ or better by A. M. Best in the full stipulated amount of the Contract.

§ 11.4.2 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.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Owner's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the 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 Owner's or Architect has not specifically requested to examine prior to its being covered, the Owner or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.1.1 If the correction or repair of this Work is required to avoid impacts to the maintenance, operation or safety of the facilities, the Owner reserves the right to undertake the repairs, prior to notifying the Contractor or without waiting for the Contractor to respond, without waiving the Owner's right under the warranties and Owner's right to correct Work under Section 2.4. The Contractor shall notify the Owner and Architect in writing sixty (60) days prior to the end of the eighteen (18) months period for correction of work that sixty (60) days remain in the applicable warranty period.

§ 12.2.2.2 The 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. Upon completion of any Work under or pursuant to § 12.2, the eighteen (18) months correction period in connection with the Work requiring correction shall be renewed and recommence.

§ 12.2.2.3 [Not used.]

§ 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, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

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

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. The Owner's acceptance of Work under this provision must be in writing, signed by the Owner's authorized representative identified in Article 7 of the parties' AIA A101 Form of Agreement as amended. No acceptance by any other person or entity is authorized. 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.

§ 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 such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 13.3 WRITTEN NOTICE

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

§ 13.4 RIGHTS AND REMEDIES

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

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

§ 13.5 TESTS AND INSPECTIONS

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

§ 13.5.2 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 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

§ 13.5.4 . The Contractor shall obtain and deliver promptly to the Architect any Occupancy Permit and any certificates of final inspection of any part of the Contractor's Work and operating permits for any mechanical apparatus, such as elevators, escalators, boilers and air compressors, which may be required by law to permit full use

and occupancy of the premises by the Owner. Receipt of such permit or certificates by the Architect shall be a condition precedent to determining that the Work is Substantially Complete.

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

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

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear no interest.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law.

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 60 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents.

(Paragraph Deleted)

§ 14.1.2 [Not used.]

§ 14.1.3 If one of the reasons described in Section 14.1.1 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit on completed Work only, said costs being the limit of the Owner's liability.

§ 14.1.4 [Not used.]

§ 14.1.5 The Construction Manager may, at any time, terminate the Agreement for the Construction Manager's convenience and without cause with at least ninety (90) day's notice.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor:

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 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 breaches any warranty made by the Contractor under or pursuant to the Contract Documents;
- .6 is declared bankrupt, has a petition in bankruptcy filed against it, or if the Contractor files for bankruptcy protection; or

- .7 causes or threatens to cause or create labor unrest, dispute, picketing, slowdowns, work stoppage, strike or disharmony.

§ 14.2.2 When any of the above reasons 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' written notice, terminate employment of the Contractor and may:

- .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 attorney's fees incurred in enforcing the requirements of this Section, 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. This obligation for payment shall survive termination of the Contract.

§ 14.2.5 In the event that it shall be determined by an arbitration panel or court of competent jurisdiction that a termination under this Paragraph 14.2 was wrongful or not justified, such termination shall be conclusively deemed to be a termination for convenience by Owner under Paragraph 14.4 hereof and the sole right, remedy and recourse of the Contractor against the Owner shall be governed and determined by Paragraph 14.4.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in 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 with at least ninety (90) days notice.

§ 14.4.2 Upon receipt of written 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 Contractor shall be entitled to receive payment in the manner and within the time provided in Article 9 of the Contract for Work executed in accordance with the Contract Documents, and costs incurred by reason of such termination, in no event shall such costs being the Contractor's sole remedy. In no event shall Contractor be entitled to lost anticipated profit on work not completed or performed.

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, 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.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker. Claims by either party must 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. Failure by the Contractor to give such notice within the time specified shall greatly prejudice the Owner, and the failure to submit proper and timely notice shall constitute a waiver and abandonment of such Claim.

§ 15.1.2.2 The Contractor or Owner shall furnish the Initial Decision Maker and other party with such additional documentation as the Initial Decision Maker may request to evaluate the Claim.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

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

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

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

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. In the case of a continuing delay, the Contractor shall file with the Owner written reports on the delay identifying the continuing cause of the delay no less than once a week during the duration of the delay.

§ 15.1.5.2 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 unusually severe for the period of time, could not have been reasonably anticipated and had an adverse effect on the critical path of the scheduled construction.

§ 15.1.5.3 [Not used.]

§ 15.1.5.4 Any change request seeking an extension of the Contract Time shall contain:

- .1 a detailed description of the nature of each cause of delay, the date or dates upon which each cause of delay began and ended (as known or as projected), the number of days of delay attributable to each such cause, and the impact of such delay upon the construction schedule;
- .2 the construction schedule in effect at the start of the delay, showing that the portion of the Work that was, or will be, delayed is on the critical path and that no float remains or will be available for the delayed activities at the start of the delay;
- .3 a schedule analysis of the impact of the delay on the critical path in the construction schedule at the time of the delay, including any proposed adjustment to the Contract Time; and
- .4 such other supporting data that the Owner may reasonably request.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor shall waive Claims against the Owner for consequential damages arising out of or relating to this Contract. This waiver includes

- .1 [Not used.]

- .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 waiver is applicable, without limitation, to all consequential damages due to the Contractor's termination in accordance with Article 14.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, shall be referred to the Initial Decision Maker for initial decision. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered.

§ 15.2.2 The Initial Decision Maker will review Claims and within twenty-one (21) 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; or (2) recommend a resolution of the claim in whole or in part.

§ 15.2.3 [Not used.]

§ 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 (except as otherwise expressly agreed by the parties), within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will recommend a resolution of the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will recommend a resolution of the Claim (1) in writing; (2) stating the reasons therefor; (3) notifying the parties of any recommended change in the Contract Sum or Contract Time or both; and (4) stating a time frame for the parties to respond in writing with their intent to either accept the Initial Decision Maker's recommendation and document the resolution or reject the recommendation and commence mediation. Except as otherwise expressly agreed by the parties, the Initial Decision Maker's recommendation shall be subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 [Not used.]

(Paragraph Deleted)

§ 15.2.7 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 [Not used.]

§ 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 15.1.6 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 with those parties who the Owner believes are necessary for resolving any of the Claims 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 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 The Owner may, at its sole option, elect arbitration as the method for binding dispute resolution in the Agreement, for any Claim subject to, but not resolved by, mediation. Unless the parties mutually agree otherwise, any arbitration 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 venue for any such arbitration shall be Stamford, Connecticut.

§ 15.4.1.1 If the Owner consents to arbitration, 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 the Owner shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4.4 CONSOLIDATION OR JOINDER

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

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

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

§ 15.5 LITIGATION

§ 15.5.1 All Claims, disputes and other matters in controversy between the parties that the Owner does not consent to arbitrate shall be resolved by litigation. The venue for such litigation shall be the Connecticut Superior Court in the City of Stamford, Judicial District of Stamford/Norwalk.

§ 15.5.2 The Owner and Contractor both waive their rights to a trial by jury of any or all issues arising in any action or proceeding between the parties hereto or their successors, under or connected with the Contract Documents, or any of their provisions. THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE FOREGOING, HAVE HAD THE OPPORTUNITY TO HAVE THIS AGREEMENT REVIEWED BY THEIR LEGAL COUNSEL, AND ACCEPT THAT THEY ARE WAIVING THEIR RIGHT TO A JURY TRIAL.

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PAGE 1

for the following PROJECT:

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City of Stamford Mold Task Force
Investigation Re: Construction

...

~~(Name, legal status (Name and address))~~

...

City of Stamford
888 Washington Boulevard
Stamford, CT 06901

...

~~(Name, legal status (Name and address))~~

...

and/or Engineer shall bet at Owner's instruction per project. Architect = Engineer in these General Conditions and the A134 Agreement.

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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 requirements.~~ § 1.1.1.1 Owner and Contractor recognize that other rights, duties and obligations with respect to public construction contracts are also provided by statute, City of Stamford Charter, and the City Code, including but not limited to Sections 103-1 through 103-7, notwithstanding the fact that they are not specifically enumerated herein. Accordingly, any provision required by such governmental requirements to be included in this Contract shall be deemed to be so included as though fully set forth herein. However, compliance with such governmental requirements does not diminish the Contractor's responsibilities hereunder. A reference to certain statutes which are applicable to the Project are contained herein and are specifically incorporated by reference as Contract Documents.

...

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

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§ 1.1.9 THE PROJECT MANUAL

...

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

...

§ 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. All Work mentioned or indicated in the Contract Documents shall be performed by the Contractor as part of the Contract unless it is specifically indicated in the Contract Documents that such Work is to be done by others.

...

§ 1.2.1.1 In the event of conflict in or between the Contract Documents, the Contactor shall be held to the higher quality or greater quantity as set forth therein as determined by the Owner and Architect.

...

§ 1.2.3.1 Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names or similar reference, no substitutions may be made unless accepted by the Owner in writing prior to execution of the Contract, or, if accepted as a change in the Work in accordance with Sections 3.4.2, 3.4.2.1 and 3.4.2.2 hereof. Where two or more products are shown or specified, the Contractor has the option to use either shown or specified.

...

§ 1.2.3.2 When applied to materials and equipment required for the Work, the words "furnish", "install" and "provide" shall mean the following:

...

.1 The word "provide" shall mean to furnish, pay for, deliver, install, adjust clean and otherwise make materials and equipment fit and ready for their intended use.

...

.2 The word "furnish" shall mean to secure, pay for, deliver to site, unload and uncrate materials and equipment.

...

.3 The word "install" shall mean to place in position, incorporate in the work, adjust, clean, make fit and ready for use and perform all services except those included under the term "furnish".

...

.4 The phrase "furnish and install" shall be equivalent to the word "provide". Each shall be interpreted to mean "the Contractor shall furnish all labor, material and equipment and install....".

...

.5 "As required" shall mean as required to produce a fully completed project or result to the satisfaction of the Architect.

...

In the interest of brevity the Contract Documents frequently omit modifying words such as ~~"all"~~ and ~~"any"~~ **"all"** and **"any"** and articles such as ~~"the"~~ and ~~"an,"~~ **"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.

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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 will retain Specifications. The Instruments

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

...

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

...

~~§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.~~ [Not used.]

...

~~§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~ [Not used.]

...

§ 2.2.3 The Owner shall furnish available surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. ~~The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but Owner makes no warranties as to the accuracy or completeness of such material . The Contractor shall exercise proper precautions relating to the safe performance of the Work.~~

...

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

...

~~§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2. Bid Documents, Project Manual and Drawings can be picked up from County Reproductions, 39 Belden Street, Stamford, CT, 06902. Phone: (203) 348-3758. Fax: (203) 348-2654. A non-refundable fee will be charged for these documents.~~

...

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, in addition to any other remedy it may have in this Agreement, 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.

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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 written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, in its sole discretion and without prejudice to other remedies the Owner may have, ~~correct such deficiencies~~ have: (a) furnish, or employ a person or entity to furnish, labor, services, materials or equipment to correct, remove, replace and/or repair such deficiencies, as the Owner deems most expedient; (b) take such action as the Owner deems necessary to regain and/or maintain the Schedule; and/or (c) withhold payment as permitted under the Contract Documents. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor 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. ~~Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect.~~ If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. In the event that the Contractor's failure to prosecute the Work causes (in the opinion of the Owner), an immediate and imminent risk of harm to the public, the Owner shall have the right to carry out the Work without notice at the Contractor's cost and/or deduct such sums from amounts due the Contractor.

...

§ 2.5 RIGHTS CUMULATIVE

...

The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner under the Contract Documents, at law, or in equity.

...

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

...

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed (including, without limitation, (i) the location, condition, layout and nature of the Project site and surrounding areas; (ii) anticipated labor and supply costs; and (iii) availability and cost of materials, tools and equipment) and correlated personal observations with requirements of the Contract Documents. During the period that the Contractor is in care, custody and control of the Project site, the Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. During execution of the Work, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section.

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§ 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 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions and verify all grades, elevations dimensions or locations at the site affecting it. Any defects resulting from the Contractor's failure to comply with its obligations under this paragraph shall be promptly rectified by the Contractor without additional cost to the Owner. 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~~ Owner and Architect as a request for information in such form as the Architect may require. require if the Contractor observes or is aware of any errors, inconsistencies or omissions in the Contract Documents or between the Contract Documents and the field conditions, or if a portion of the Contract Documents is at variance with applicable law. 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. -In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and the applicable standards, codes and ordinances as they relate to performance of the Work, the Contractor shall (i) provide the better quality or greater quantity of Work, or (ii) comply with the more stringent requirements; either or both in accordance with the Owner's interpretation.

...

§ 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 in writing 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~~ The Contractor shall reimburse the Owner for costs incurred by the Architect for design and construction administration services which are caused by the Contractor's inefficient or otherwise faulty administration or execution of its Work. These may include but are not limited to the cost of the Architect to perform:

...

~~Contractor's notices or~~ Review of unreasonable amount of Contractor's submittals and submittals, substantially incomplete or out of sequence from the submittal schedule provided by the Contractor and agreed to by the Architect;

...

~~requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided~~ Responding to an unreasonable amount of responses to the Contractor's requests for information where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner provided information, Contractor prepared coordination drawings, or prior correspondence or documentation;

...

~~in Article 15. If the Contractor fails to perform the obligations~~ Change Orders and Construction Change Directives requiring the preparation or revision of instruments of service and not otherwise caused by errors and omissions in the design or change in scope by the Owner;

...

~~of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided.~~ Evaluation of substitutions proposed by the Contractor and making subsequent revisions to Instruments of Services resulting therefrom, except to the extent made necessary by unavailability of materials or equipment specified in the Specifications;

...

~~if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contract Administration services provided 135 days or more after Substantial Completion, if caused by the negligence or breach by the Contractor.~~

...

~~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 Preconstruction Inspection: The Contractor shall notify the Owner and the Architect in writing of any existing damage to the property or any unsafe conditions at the site prior to commencing the Work.

...

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. ~~The Contractor~~ Contractor, and not the Owner, shall be solely responsible for, and have control over, ~~charge of and responsibility for all~~ construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, ~~unless the Contract Documents give other specific instructions concerning these matters, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.~~ If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures ~~may not be safe, will not be safe with the proper exercise of safety precautions and programs required hereunder,~~ the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. ~~If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner required means, methods, techniques, sequences or procedures.~~ Architect or Owner.

...

§ 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 or supplying portions of the Work ~~for, or on behalf of, for or on behalf of~~ the Contractor or any of its Subcontractors. The Contractor shall be required to take appropriate precautions for workers performing tasks in asbestos environments.

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§ 3.3.4 If part of the Work is adjacent to or dependent upon work by a separate contractor or the Owner's own forces, the Contractor shall meet and coordinate with such separate contractor or forces prior to proceeding with that portion of the Work.

...

§ 3.3.5 The Contractor shall ensure that sufficient personnel are employed at the Project site in order to complete the Project in accordance with the construction schedule and in accordance with the Owner's objectives as to cost and quality.

...

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the 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. Substitutions and alternates may be rejected in the Owner's sole discretion. Substitutions and alternates will be considered only if: (i) the proposal is required for compliance with interpretation of code requirements or insurance regulations; (ii) specified products are unavailable through no fault of the Contractor or any Subcontractor; (iii) subsequent information discloses the inability of specified products to perform properly or to fit in a designated space; (iv) the manufacturer or fabricator refuses to certify or guaranty the performance of the specified product as required; or (v) when, in the sole judgment of the Owner, a substitution would be substantially in the Owner's best interests in terms of cost, time or other considerations.

...

§ 3.4.2.1 No time extensions shall be allowed nor any responsibility assumed by the Owner if the Contractor submits a request for a substitution, whether such request is approved or denied.

...

§ 3.4.2.2 Notwithstanding the Owner's approval of any substitution, the Contractor shall be responsible for additional costs incurred by other trades for changes made necessary to accommodate the substituted item.

...

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Contractor shall, upon written request of the Owner, remove and replace workers where the Owner deems such worker(s) to be disorderly, careless or incompetent, or to be employed in violation of the terms of the Contract Documents, at no increase in the Contract Sum or the Contract Time.

...

§ 3.4.4 The Contractor shall only employ or hire Subcontractors in connection with the Work capable of working harmoniously with all trades, crafts or other individuals associated with the Project and with Owner's own forces and separate contractors. The Contractor shall use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance.

...

§ 3.4.5 The Contractor shall require each worker to dress appropriately in a clean, neat and professional manner and to conduct themselves with respect and courtesy.

...

§ 3.4.6 The Contractor shall control the volume of communication radios and loudspeakers to avoid creating a nuisance.

...

§ 3.4.7 All forms of lewdness and sexual harassment including: touching, whistling, sexually explicit jokes, drawings, photos, representations, exhibitionism and all other sexually oriented offensive behavior is strictly prohibited.

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§ 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 requirements, included unauthorized substitutions, shall be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by or on behalf of 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 Except when a longer warranty time is specifically called for in the Specifications or is otherwise provided by law, and subject to the provisions of § 12.2.2 hereof, all warranties shall be for a period of eighteen (18) months from the date of Substantial Completion, and shall be in form and content consistent with industry standards. Warranties shall become effective upon Substantial Completion of the entire Project. The Contractor's warranty obligations shall survive acceptance of the Work by the Owner and Architect and termination of the Contract. The Contractor's warranty shall be in addition to and not in limitation of any other warranty or remedy required by law or the Contract Documents.

...

§ 3.5.3 The Contractor shall be solely responsible for determining that all materials furnished for the Work meet all requirements of the Contract Documents. The Architect may require the Contractor to furnish at the Contractor's expense, reasonable evidence that a material meets such requirements.

...

§ 3.5.4 The Contractor shall procure and deliver to the Architect, no later than Substantial Completion, all special warranties required by the Contract Documents. Delivery of such warranties shall constitute the Contractor's guarantee to the Owner that the warranties will be performed in accordance with their terms and conditions.

...

§ 3.6.1 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. The Owner is tax exempt. The Contractor shall familiarize itself with current, applicable tax statutes, regulations and procedures. The tax on the sale of such materials or supplies that is available for exemption by such statutes and regulations shall not be included as part of the price for any Work performed or included in an application for payment. A tax exemption certificate is available from the Owner for purchases pertaining to the Project.

...

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

...

§ 3.7.1 ~~Unless otherwise provided in the Contract Documents, the~~ The Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. Work. The Contractor shall secure all certificates of inspection, use, occupancy, permits and licenses, and give all notices necessary and incidental to the due and lawful prosecution of the Work. Certificates of inspection, use and occupancy shall be delivered to the Owner upon Substantial Completion of the Work.

...

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

...

§ 3.7.3 If the Contractor performs Work ~~knowing it which it knows or should in the exercise of reasonable judgment~~ know to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction. correction in addition to any other damages incurred by the Owner.

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§ 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 21 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 an equitable adjustment 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 in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15. -No adjustment in the Contract Time or Contract Sum shall be permitted in connection with a concealed or unknown condition that does not differ materially from those conditions that were disclosed to or that reasonably should have been known to the Contractor in the proper exercise of its obligations hereunder.

...

§ 3.9.1 The Contractor shall employ a competent full time 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. Individuals employed at the Project site must be acceptable to and approved by the Owner, and shall be replaced upon the reasonable request of the Owner with individuals acceptable to and approved by the Owner.

...

§ 3.9.1.2 The Contractor's Superintendent and similar authorized representative of any Subcontractor, supplier or any other person or organization shall attend all meetings as required by the Owner.

...

§ 3.9.1.3 When the presence of a Subcontractor or Sub-subcontractor is required at a job meeting, the Contractor shall require that the Subcontractor or Sub-subcontractor be represented by an authorized representative who is empowered to make binding commitments on all matters to be discussed at such meetings, including costs, payments, Change Orders, time schedules and manpower. All required notices may be served on such representatives.

...

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether Superintendent and necessary assistants.

...

the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection. If the Owner or Architect objects to the Contractor's Superintendent or any assistant, whether initially or otherwise, the Contractor shall submit a competent replacement Superintendent or assistant at no increase in the Contract Sum or the Contract Time.

...

§ 3.9.3 The Contractor shall not employ a proposed superintendent Superintendent or necessary assistants 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. Superintendent or necessary assistants without written consent.

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§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised/updated at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for orderly, sequential, expeditious and practicable execution of the Work. The baseline construction schedule and all schedule updates shall clearly delineate all Subcontractor start and finish dates, realistic activity sequences and durations, allocations of labor and materials, critical dates by which Shop Drawings, Product Data, Samples and other submittals must be processed and the times by which products requiring long delivery lead times must be procured, as well as the anticipated dates for the Owner's other contractors, if any, to coordinate their work with the Contractor's Work. The Contractor shall update the construction schedule on a monthly basis, or more frequently as necessary to keep the Owner apprised of the progress of the Work. Construction schedule updates shall conspicuously note any changes to the prior submitted schedule update. The construction schedule shall not be modified or extended without the prior approval of the Owner in each instance.

...

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be 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/sufficient time to review submittals in accordance with Specifications. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract

Time based on the time required for review of submittals. The Contractor shall collaborate with the Architect to establish and implement procedures for expediting the processing and approval of Shop Drawings, Product Data, Samples and other submittals.

...

§ 3.10.3 The Time is of the essence of the Contract. Accordingly, the Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect, strict accordance with the approved construction schedule. The Contractor's compliance with the construction schedule shall be a material obligation of this Contract. 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 actual delays or reasonably anticipated delays. The Contractor shall recommend to the Owner adjustments in the construction schedule necessary to meet the date for Substantial Completion. In the event of any actual or reasonably anticipated delays, the Contractor shall propose an affirmative plan to overcome the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report or schedule update constitute an adjustment in the Contract Time or the Contract Sum.

...

§ 3.11.1 The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

...

§ 3.11.2 The Contractor shall maintain at the Project site on a current basis, records of all subcontracts, purchase orders, materials, equipment, maintenance and operating manuals and instructions, warranties, and any other related documents and revisions which arise out of any subcontract or the Work. The Contractor will make records stored at its home office available to the Owner at the Project site on the Owner's request. At the completion of the Project, the Contractor shall deliver all such records to the Owner.

...

§ 3.11.3 The Contractor shall indicate on the record drawings, as far as possible, all new and existing pipe and conduit runs which are concealed. The Contractor shall indicate on the record drawings the electrical distribution panel and circuit number supplying each item installed or reconnected, with the diagrammatic lines showing sequence of connections.

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§ 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. Submittals that are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

...

§ 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 for dimensional accuracy and coordination with the

requirements of the Work and of the Contract Documents. Any intended deviation from the requirements of the Contract Documents shall be conspicuously identified. Measurements not available prior to the presentation of a Submittal shall be conspicuously noted as not available and, to the extent reasonably possible, such measurements shall be obtained and incorporated into the Submittal by the submitting person or entity prior to fabrication.

...

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

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§ 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. 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 cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, professionals.~~ Pursuant to this Section § 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

...

§ 3.12.11 When professional certification of materials, systems or equipment is required by the Contract Documents, the Owner shall be entitled to rely upon such certifications, and neither the Owner nor the Architect shall be expected to make an independent examination with respect to the performance of such materials systems or equipment.

...

The right of possession of the premises and the improvements made thereon by the Contractor shall remain at all times in the Owner. The Contractor's right to entry and use thereof arises solely from the permission granted by the

Owner under the Contract Documents. The Contractor shall confirm the Contractor's apparatus, the storage of materials and the operations of the Contractor's workers to limits indicated by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Contract Documents and/or directions, and/or directions of the Architect and shall not unreasonably encumber the premises with the Contractor's materials. The Owner shall not be liable to the Contractor, the Subcontractors, their employees or anyone else with respect to the conditions of the premises, except only for a condition caused directly and solely by the negligence of the Owner.

...

§ 3.13.1 Following the date of Substantial Completion, the Contractor shall notify the Owner prior to each entry to the Site, and neither the Contractor nor its Subcontractors shall enter the Site without the express permission of the Owner. The Contractor shall confine operations at the site-Site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site-Site with materials or equipment.

...

§ 3.13.2 Protection of construction materials and equipment stored at the Project Site from weather, theft, damage and all other such adversity is solely the responsibility of the Contractor.

...

§ 3.13.3 The Contractor shall accept delivery and arrange storage, protection, insurance and security, at Owner's expense, for all Owner purchased materials, systems and equipment, if any, which are a part of the Work until such items are turned over to the Subcontractors and cause all such materials, systems and equipment to be insured under the builder's risk policy Contractor is obligated to carry pursuant to this Agreement, with any increase in the premium of such policy paid for by Owner without any additional fee or mark-up charged by Contractor.

...

§ 3.14.1 The Contractor shall be responsible for cutting, ~~fitting or coring~~, fitting and patching required to complete the Work or to make its parts fit together properly, properly as described in the Contract Specifications. All areas requiring cutting, coring, fitting and patching shall be restored to the condition existing prior to the cutting, coring, fitting and 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, coring, fitting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

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

...

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, the Architect, Architect's consultants, and representatives, agents and employees of any of them from and against any and all liability, costs, claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the breach of contract or negligent acts or omissions or intentional misconduct of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that which would otherwise exist as to a party or person described in this Section 3.18.

...

§ 3.18.3 As pertains to Paragraph 3.18, the Owner reserves the right to retain its own counsel and to charge any reasonable counsel fees to the Contractor where there is not a commonality of interests between the Owner and the Contractor or as to claims that are not insured. The Contractor expressly consents to the Owner's selection of legal counsel and waives any waivable conflict.

...

§ 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.~~ [Not used.]

...

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

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§ 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.~~ construction. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents. The Architect shall have no authority to order any extra-contractual work or services, contractually bind the Owner or alter the Owner's rights and obligations under the Contract Documents.

...

~~Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner. The Owner encourages direct communication between and among the representatives of the Owner, Architect and Contractor at all times during the Project for the purpose of the timely sharing of Project data and information. Written communications between or among the Contractor, Architect or Owner shall be copied to each of them, unless the Owner, in its discretion, determines otherwise with respect to specific communications. Communications with consultants and subcontractors shall be through the designated representatives of the entity that retained such consultant or subcontractor.~~

...

§ 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. The Owner

shall make the final decision on whether to make payment to the Contractor in accordance with the Contractor's Applications for Payment, and the Owner shall have the right to communicate with any individual or entity involved in the Project to verify amounts included in Applications for Payment.

...

§ 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, ~~unless otherwise specifically stated by the Architect,~~ of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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§ 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 from the Contractor and forward to the Owner, for the Owner's review and records, record drawings, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

...

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

...

§ 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"~~ "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"~~ "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

...

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term ~~"Sub-subcontractor"~~ "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 or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days. The Contractor is prohibited from subcontracting this Agreement or any part of it unless the Owner first approves such subcontracting in writing, the specific subcontractors proposed to be used by the Contractor. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void. In addition to the foregoing, pursuant to~~

§103.4 of the City of Stamford Code of Ordinances, within fifteen (15) days after receipt of the Notice to Proceed, the Contractor agrees to provide Owner with the names and addresses of all consultants to be used for any subcontract that shall be in an amount in excess of ten thousand (\$10,000.00) dollars. Such information shall be supplied at the time such contracts are executed. The Owner or Architect will promptly reply to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period promptly shall constitute notice of no reasonable objection.

...

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

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~~§ 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 neither the Owner nor Architect has reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.~~

...

§ 5.2.4 The Owner may reasonably require the Contractor to change any Subcontractor previously approved, and the Contract Sum shall be increased or decreased by the difference in cost occasioned by such change. The Contractor shall supply Owner with a list of the names and addresses of all Subcontractors and material suppliers on request and from time to time.

...

~~not substitute~~ § 5.2.5 If any of the Subcontractors or personnel involved in the Project is not fulfilling its responsibilities properly, the Owner may require such personnel to be terminated or removed and replaced as expeditiously as possible with Subcontractors or personnel acceptable to the Owner.

...

~~a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection~~

§ 5.2.6 Nothing herein shall be construed as an intent to create a contractual or third party beneficiary relationship between the Owner and any of the Subcontractors, except as provided in § 5.4.

...

~~to such substitution~~ § 5.2.7 All Subcontractors shall be properly licensed by the State of Connecticut and are required to obtain their own permits.

...

§ 5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these the 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. Sub-subcontractors of all tiers.~~ The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

...

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

...

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

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

...

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15. The Owner's separate contractors, if any, may have access to those portions the Project Site under construction prior to the anticipated date of Substantial Completion for the purpose of installing items which it is more cost effective for the Owner to have installed during the progress of the Work (i.e., before walls and ceilings are completed). The Owner and Contractor agree to cooperate in scheduling all entries and work by the Owner's separate contractors.

...

§ 6.1.1.1 The Owner reserves the right to access any part of the Project at any time to install material or services other than the Work, either with its own forces or with separate contractors hired by the Owner. Such access is in not to be construed as partial occupancy by the Owner. The Contractor shall permit the Owner to place, and install furniture, equipment and other materials during the progress of the Work, and agrees that the installation of such items shall not be construed as acceptance of the Work or any portion

...

§-thereof.

...

§ 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"~~ "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 other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised. Nothing in this § 6.1.3 shall be construed as authorizing a revision to the Contract Time.

...

§ 6.1.4 ~~Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.~~ [Not used.]

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

...

§ 7.2.2 Upon request of the Owner or the Architect, the Contractor shall, without cost to the Owner, submit to the Architect in such form that the Architect may require a written proposal for a Change in the Work. The proposal shall include the quantity and unit cost of each item of material, and the number of hours of work and the hourly rate for each class of labor, as well as the description and amounts of all other costs sought by the Contractor to perform the proposed change. The Contractor shall also furnish to the Architect bona fide proposals from Subcontractors and suppliers for all labor, materials and equipment to be incorporated into such Work. The Contractor, when requested, shall furnish in a form satisfactory to the Owner, itemized statements of the cost of Work, including, but not limited to, certified payrolls and copies of accounts, bills and vouchers to substantiate the estimates. The proposal shall be furnished promptly so as not to delay the Work and shall include an estimate of any additional time required to complete the Work. Percentages for overhead and profit shall be accordance with paragraph 7.2.4.

...

§ 7.2.2.1 Change Order Proposals shall be complete and all inclusive. The amount of the adjustment in the Contract Sum and Contract Time, if any, shall be stated in the proposal for all Work affected by the proposed change. Once a Change Order is executed, the Contractor shall be required to perform all of the Work required therein (including incidental work and changes to related Work which may be required to complete the Change Order) in accordance with the Contract Documents, for the amount stated in the Change Order.

...

§ 7.2.2.2 Contractor's requests for changes or substitutes shall be subject to the same requirements as a change initiated by the Architect or Owner.

...

§ 7.2.3 The cost or credit to the Owner resulting from a Change in the Work, absent the applicability of a unit price for such item(s) set forth in the Contract shall be determined as follows:

...

§ 7.2.3.1 The cost of material and equipment incorporated into the Work.

...

§ 7.2.3.2 The cost of wages, including fringe benefits mandated by collective bargaining agreements.

...

§ 7.2.3.3 Cost of Workers' Compensation, employer Liability Insurance, Federal Social Security (FICA), Federal Unemployment Compensation (FUTA).

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§ 7.2.3.4 Cost of Builder's Risk Insurance. N/A.

...

§ 7.2.3.5 Cost of Performance and Payment Bonds. To be adjusted at the end of the Project.

...

§ 7.2.3.6 Cost of rental of equipment whose purchase price is greater than two hundred fifty dollars (\$250.00). Cost of rental shall be substantiated by invoice for the actual rental cost; or in the case where the equipment is owned, the cost shall include the daily, weekly and monthly rates for such equipment. The applicable rate shall be as mutually agreed by the Contractor and Owner.

...

§ 7.2.3.6.1 Cost of fuel consumed by equipment used in the performance of the Work if not included in the publicized rate.

...

§ 7.2.3.7 Cost of pro rata share of debris removal and dumpster rental. This cost shall be allowed only when the debris removal is associated with Work such as demolition but shall not be allowed as part of general cleanup.

...

§ 7.2.3.8 Cost of a foreman. This cost shall be allowed if the crew size of a respective trade exceeds a combined total of six journeymen and apprentices. In such instances the total foremen hours may not exceed one sixth of the hours of the working crew.

...

§ 7.2.3.9 [Not used]

...

§ 7.2.3.10 Costs of small tools whose individual cost is less than two hundred fifty dollars (\$250.00) shall be included in overhead and profit, and shall not be allowed as separate line items.

...

§ 7.2.3.11 [No used]

...

§ 7.2.3.12 Cost of revisions to shop drawings shall not be allowed as a separate line item unless the shop drawings have been previously submitted and approved by the Architect.

...

§ 7.2.3.13 All other costs which are not specifically enumerated in Article 7.2.3 shall be included in overhead and profit, and shall not be allowed as separate line items.

...

§ 7.2.4 [Not used].

...

§ 7.2.4.1 [Not used]

...

§ 7.2.4.2 [Not used]

...

§ 7.2.4.3 [Not used]

...

§ 7.2.4.4 [Not used]

...

§ 7.2.4.5 [Not used]

...

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

...

§ 7.2.5 A Change Order constitutes a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including all direct and indirect costs associated with such change and any and all adjustments in the Contract Sum and Contract Time. In no event shall a Change Order include any other relief prohibited by the Contract Documents.

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§ 7.3.1 A Construction Change Directive is a written order ~~prepared by the Architect and signed by the Owner and Architect, signed by the Owner,~~ 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.

...

- .1** ~~Mutual-mutual~~ acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

...

- .1.1** Such itemization shall include the quantity and unit cost of each item of material, and the number of hours worked and the hourly rate of each class of labor, as well as a description and amounts of all other costs sought by the Contractor to perform the proposed Change. The Contractor shall furnish to the Architect, bona fide proposals from Subcontractors and suppliers for all labor, materials, and equipment to be incorporated into such Work. The Contractor, when requested, shall furnish in a form satisfactory to the Owner, itemized statements of the cost of Work, including, but not limited to certified payrolls and copies of accounts, bills and vouchers to permit evaluation.

...

- .1.2** Allowable costs shall be in accordance with Section 7.2.3.

...

- .1.3** Allowance for overhead and profit shall be in accordance with Section 7.2.4.

...

.2 ~~Unit-unit~~ prices stated in the Contract Documents or subsequently agreed upon;

...

.3 ~~Cost-cost~~ to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or an allowance for overhead and profit in accordance with Section 7.2.4.

...

.4 ~~As-as~~ provided in Section 7.3.7.

...

~~§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted. [Not used.]~~

...

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect and Owner 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 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

...

~~.1—Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;~~

...

~~.2—Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;~~

...

~~.3—Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others; allowable costs set forth in § 7.2.3.~~

...

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

...

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

...

~~§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change. [Not used.]~~

...

~~§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may not request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15. Payment without the Owner's express, written consent.~~

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~~§ 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. change will be recorded in a Change Order.~~

...

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

...

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

...

~~§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. The Contractor and Subcontractors shall perform and coordinate all Work without delay. The Construction Schedule in the Invitation Bid serves as a guide of critical milestone dates for completion of certain work activities on the Project. Failure to meet the intermediate milestone dates will jeopardize the overall Project Schedule. By executing the Agreement the Contractor confirms that it has reviewed the Contract Documents and the Contract Time is a reasonable period for performing the Work.~~

...

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

...

§ 8.2.3 The Contractor shall proceed expeditiously in accordance with the construction schedule with adequate forces and shall achieve Substantial Completion within the Contract Time. The Contractor shall at all times ensure that each Subcontractor is providing and maintaining sufficient skilled workmen, materials and equipment to achieve Substantial Completion within the Contract Time. Absent Change Orders signed by the Owner or a delay for which the Contractor is entitled to an extension of time by § 8.3.1, the Contractor shall not make any claims for additional payment of straight time, overtime or premium time in undertaking to achieve Substantial Completion of the Work in accordance with the construction schedule. The burden of lost time and costs related to any Subcontractor's nonperformance shall not be charged to Owner unless such nonperformance is attributable to delay for which the Contractor is entitled to an extension of time by § 8.3.1.

...

§ 8.2.4 Unless specifically required by law, no payment under the Contract shall become due until the Construction Schedule as described in Section 3.10 herein has been approved.

...

§ 8.2.5 If the Architect determines that there have been delays to critical paths and that in the Owner's sole discretion, there is reasonable concern that the Project will not be Substantially Completed by the date described in the Agreement, the Owner may, in addition to any other remedy it may have direct the Contractor to submit a written description of the steps the Contractor intends to take to put the Project back on schedule. At the Owner's sole discretion, the Owner may also in addition to any other remedy it may have direct the Contractor to take some or all of the following actions: (a) increase the number of workers in such quantities and trades as the Owner directs; (b) increase the number of working hours per shift, shifts per day, working days per week, amount of construction equipment, or any combination of the foregoing; and/or (c) reschedule activities at the Owner's direction.

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§ 8.2.6 Nothing contained herein shall limit the Owner's right to withhold or recover liquidated or other damages for delays caused by the Contractor or any other remedy in which the Owner is entitled pursuant to the Contract.

...

§ 8.2.7 Contractor shall cooperate with Owner and Architect and coordinate with all Subcontractors on the Project to make every reasonable effort to reduce the Contract Time.

...

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by ~~an the wrongful act~~ or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized unforeseeable labor disputes, fire, unavoidable delay in deliveries, or unavoidable casualties; or by delay authorized in writing by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then then, provided that Contractor has complied with its obligations hereunder, the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. may be required.

...

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for The Contractor's sole remedy for delays excusable under § 8.3.1 is an extension of time as provided herein. The Contractors waives damages for delays incurred by it or anyone claiming through it.

...

~~delay by either party under other provisions~~ § 8.3.4 The Owner shall extend the Contract Time due to a delay until all contract float is identified and used.

...

§ 8.3.5 No extension of time, or increase in the Contract Sum shall be granted because of seasonal variations in temperature, humidity or precipitation, which conditions shall be wholly at the risk of the Contractor.

...

~~of the Contract Documents.~~ § 8.4 The Contractor shall not be entitled to an adjustment of the Contract Time on account of delays: (i) that it could have avoided or mitigated using its best professional efforts; (ii) that do not impact the critical path; (iii) for which there is available float in the chain of activities affected by the delay; (iv) that were caused by, or could have been reasonably anticipated by, the Contractor or those for whom it is responsible; or (iv) that could have been mitigated or avoided by the Contractor's timely notice to the Owner as required hereunder.

...

~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, No payment shall be made to the Contractor, unless the Schedule of Values has been approved by the Owner and Architect. The Contractor shall submit to the Architect and Owner, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and form, supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, accuracy, and broken down by trade as the Architect or Owner may require. This schedule of values shall be subject to the Owner's review and approval, and shall be used as a basis for reviewing the Contractor's Applications for Payment.~~

...

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized pencil copy Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, values for completed portions of the Work at least ten days before the payment application is due. On the first day of the month, the Contractor shall submit its payment application, accounting for the Architect's changes and comments to the pencil copy. Such application shall be notarized and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as including without limitation copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents. The Architect shall then review the Contractor's formal notarized Application for Payment, supported by such data sustaining the Contractor's Application for Payment as the Owner or Architect may require, and verify in writing in accordance with Section 9.4 the total value of Work completed, including an allowance for the value of materials delivered and suitably stored at the site at the time of such Application.

...

§ 9.3.1.1 As provided in Section 7.3.9, 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. ~~Directives.~~

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§ 9.3.1.3 Each Application for Payment shall include a statement identifying all authorized directives for extra work, including pending Change Orders, Construction Change Directives and authorized changes in the Work, and showing with respect to each: (a) the date of initiation; (b) the status; (c) the costs associated with its performance; and (d) a description of any work completed.

...

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment ~~that are finished, ready for shipment, and~~ 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. When any Application for Payment includes materials stored off the Project Site or stored on the Project Site but not yet incorporated in the Work, for which no previous payment has been requested, a complete description of such material shall be attached to the Application for Payment. Suitable storage which is off the Project Site shall be a bonded warehouse or appropriate storage approved by Owner with the stored materials properly insured, tagged and identifiable for this Project and properly segregated from other materials. The Owner's written approval shall be obtained before the use of offsite storage is made. Such approval may be withheld in Owner's sole reasonable discretion.

...

§ 9.3.2.1 In no case will payment be made for materials or equipment stored outside the United States.

...

§ 9.3.3 The Contractor warrants that title to all Work (including stored materials and equipment) covered by an Application for Payment will pass to the Owner no later than the time of payment. ~~payment, free and clear of all liens, claims, security interests, or encumbrances whatsoever, that the vesting of such title shall not impose any obligations on Owner or relieve Contractor of any of its obligations under the Contract, that the Contractor shall remain responsible for damage to or loss of the Work not caused by Owner or Owner's separate contractors, whether completed or under construction, until responsibility for the Work has been accepted by Owner in the manner set forth in the Contract Documents.~~ The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

...

§ 9.3.4 The Contractor's Applications for Payment shall be accompanied by:

...

.1 A list of names and addresses of each person or entity that furnished labor, services, materials or equipment on behalf of the Contractor;

...

.2 Partial releases and waivers, in a form approved by the Owner, from the Contractor, Subcontractors and Sub-subcontractors for all labor, services, materials and equipment furnished to the Project through the date covered by such Application, conditioned on performance of the Work and receipt of

payment, and excluding any permitted retainage and unresolved Claims submitted in accordance with the Contract Documents;

...

.3 Applications for Payment and invoices from all persons or entities whose work is included in the Contractor's Application for Payment;

...

.4 A construction schedule update;

...

.5 Written warranties from Subcontractors, manufacturers and installers covering portions of the Work that have reached Substantial Completion; and

...

.6 Such other data, accounts and receipts substantiating costs included in the Application for Payment as reasonably requested by the Owner.

...

§ 9.3.5 The Contractor's Applications for Payment shall be signed and notarized, which signature shall constitute a representation and warranty that:

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.1 the amounts sought are due and earned in accordance with the Contract Documents;

...

.2 all applicable taxes are included in such Application for Payment;

...

.3 the Work is progressing in accordance with the schedule and the Substantial Completion date established herein;

...

.4 they shall use the amounts requested to discharge their financial obligations on account of labor, services, materials or equipment furnished to the Project and included in the Application for Payment;

...

.5 they have discharged their financial obligations on account of labor, services, materials or equipment furnished to the Project for which the Owner has made payment;

...

.6 to the best of their knowledge, there are no claims of liens, security interests or encumbrances in favor of persons or entities that provided services, labor, materials and/or equipment to the Project on their behalf; and

...

.7 title to all Work covered by the application has passed to the Owner no later than the time of payment.

...

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

...

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

...

§ 9.5.1 The Architect may shall 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 Owner may withhold payment and the Architect shall withhold a Certificate for Payment or, because of subsequently discovered evidence, either may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be required by applicable law or necessary in the Architect's or Owner's opinion to protect the Owner from loss for which the Contractor is responsible, including without limitation loss resulting from acts and omissions described in Section 3.3.2, because of

...

.4—1 defective Work not remedied;

...

~~.2—~~ .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 for .3~~ claims of nonpayment by Subcontractors of any tier for services labor, materials or equipment;

...

~~.4—~~ .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

...

~~.5—~~ .5 damage to the Owner or a separate contractor;

...

~~.6—~~ .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

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~~.7—~~ .7 repeated failure to carry out the Work in accordance with the Contract Documents; Documents;

...

~~.8~~ losses for which the Owner is entitled to indemnity from the Contractor under the Contract Documents;

...

~~.9~~ failure to comply with mandatory requirements for maintaining record drawings per the Contract Specifications. The Contractor shall confirm in writing, with each monthly Application for Payment, that the Contractor has checked the record drawings and that they accurately describe the work in place; or

...

~~.10~~ costs incurred by the Owner as described under Section 10.2.5.

...

§ 9.5.2 The Owner may apply any amounts withheld as the Owner may deem proper to satisfy or set off against Claims, secure its protection, complete the Work or compensate itself for losses suffered by reason of nonperformance or default and deduct such amounts from the Contract Sum by Change Order. When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

...

§ 9.5.3 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 material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. delivered, and such payment shall be deemed to have been made on account of the payee and all tiers between the payee and the Owner. If the Owner makes payments by joint check, the Owner shall notify the Architect and the

Architect will reflect such payment on the next Certificate for Payment. -Any payment made by the Owner by joint check shall not be construed as a promise to assume the debt of any joint payee, nor as a continuing obligation to make joint payments, nor as an assumption or establishment of a direct contractual relationship with the payee unless expressly stated in a separate written agreement with such payee.

...

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner provided it first approves the Certificate of Payment, shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. The Owner shall not be deemed in default by reason of withholding payment in accordance with the Contract Documents or while any default by Contractor or any Subcontractor remains uncured.

...

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

...

~~§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments- Payments received by the Contractor for Work properly performed by Subcontractors and 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, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.~~

...

§ 9.7 FAILURE OF PAYMENT [Not used.]

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

...

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The Work will not be considered suitable for Substantial Completion review, and the Contractor shall not be deemed to have achieved Substantial Completion until: (i) all Project systems included in the Work have been started up, tested and commissioned, and are operational as designed and scheduled; (ii) to the extent reasonably required, the Contractor has instructed Owner's personnel in the operation of all systems and equipment; and (iii) the Contractor has arranged for and obtained all designated or required governmental inspections and certifications necessary for legal use and occupancy of the completed Project, including without limitation, a permanent or temporary certificate of occupancy for the Project.

...

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

...

§ 9.8.3 Upon receipt of the Contractor's list, the Architect ~~with the input of the Owner~~ 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 determined by the Architect in consultation with the Owner to be substantially complete, the Architect will prepare a Certificate of Substantial Completion ~~that shall establish the date of Substantial Completion, shall establish~~ shall record the responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. The Contractor shall promptly proceed to complete or correct the Work on this list. 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.

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§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect and Owner will promptly make such inspection and, when the Architect and Owner 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 terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

...

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the ~~Architect~~ Owner evidence of compliance with all requirements of the Contract Documents including without limitation, all notices, certificates, affidavits and other requirements to complete obligations under the Contract Documents, including but not limited to: (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, satisfied;~~ (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the ~~Owner, Owner;~~ (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract ~~Documents, Documents;~~ (4) consent of surety, if any, to final payment ~~and (5), if required by the Owner, payment;~~ (5) delivery of keys to the Owner with keying schedule (master, submaster and special keys), if required by the Contract Documents; (6) delivery to the Owner of all warranties, including without limitation, all manufacturer's warranties and certificates of inspections; (7) delivery to the Owner of written operating, servicing, maintenance and cleaning instructions for all Work, and attic stock, spare parts, parts lists and special tools for mechanical and electrical equipment, in approved form; (8) delivery to the Owner of specified Project record documents, including without limitation the documents described in § 3.1.1; (9)

delivery to the Owner of all final certificates for use and occupancy of the completed Project; (10) completion of all touchup painting, delayed final finishes and punch list items; (11) delivery to the Owner of all other submissions required by the Contract Documents including without limitation, final construction schedule; (12) final cleanup, including touch-up of marred surfaces; and other data establishing payment or satisfaction of obligations, such as receipts, final releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, Contract from the Contractor and every Subcontractor and major material suppliers, to the extent and in such form as may be designated by the Owner.

...

a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees. § 9.10.2.1 As a precondition to receiving Final Payment, the Contractor shall deliver to the Owner a complete set of "as-built" Drawings, consisting of marked-up field plans showing final as-built field conditions, dimensions and conditions including, without limitation, those relating to the heating, air-conditioning and ventilation systems and the electrical, plumbing and life safety systems, recording the Work as actually performed to the extent that the information differs from or supplements original Contract Documents.

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The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall, to the exclusion of the Owner, exercise control over the Project site and shall be exclusively responsible for managing, superintending, directing and overseeing the conduct of persons and entities performing of the Work.

...

§ 10.1.1 The Contractor shall provide all facilities and shall follow all procedures required by the Occupational Safety and Health Act, and all standard and regulations promulgated by the governmental and regulatory bodies responsible for administration thereof, including without limitation providing and posting all required posters and notices, and shall otherwise be responsible for complying with applicable safety laws.

...

§ 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, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3-18-3.18. Where the damage or loss presents an immediate danger to the public, the Owner, in its sole discretion and at the Contractor's expense, may promptly remedy such damage or loss without prior notice to the Contractor.

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§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY The Contractor shall be responsible for the adequate strength and safety of all scaffolding, staging and hoisting equipment and for temporary shoring, bracing and tying.

...

§ 10.2.9 The Contactor shall provide approved hard hats, other personal protective equipment as required, approved first aid supplies, name of first aid attendant and a posted list of emergency facilities.

...

~~If either party suffers injury or damage to person or property because of an act or omission of the other party, or~~
§ 10.2.10 The Contractor shall take immediate action to correct any dangerous conditions that result from the reopening of any portion of the Work.

...

§ 10.2.11 No visitors shall be allowed on the work site without permission from the Owner.

...

~~of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time~~
§ 10.2.12 All employees at the worksite shall have successfully completed a course in construction safety and health approved by the United States Occupational Safety and Health Administration that is at least 10 hours in duration at the time the employee begins work. The Contractor and all Subcontractors shall furnish documentation of successful completion of said course with the first certified payroll report for each employee. The Contractor shall indemnify and hold harmless the Owner from any and all fines, costs and expenses, including but not limited to reasonable attorney's fees, incurred by Owner due to the Contractor's violation of such Acts, standards and/or regulations. Such indemnity shall not be construed to limit the indemnity required under Subparagraph 3.18.1.

...

~~not exceeding 21 days after discovery.~~
§ 10.2.13 In the event the Owner determines that conditions present an immediate danger, the Owner shall have the right but not the obligation to suspend the Work in the unsafe area immediately upon its discovery. All costs of any nature (including without limitation, overtime pay, acceleration, liquidated damages or other costs arising out of delays) resulting from the suspension by whomever incurred, shall be paid by the Contractor.

...

~~The notice shall provide sufficient detail to enable the other party to investigate the matter.~~
§ 10.2.14 INJURY OR DAMAGE TO PERSON OR PROPERTY The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work that caused death, bodily injury or property damage, giving full details and statements of any witnesses. Such reports shall be made immediately by telephone or messenger to the Owner and Architect in the event of death, serious bodily injury or serious property damage.

...

§ 10.2.15 MOLD GROWTH [Not used]

...

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl

(PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. If the Contractor encounters on the site any material or substance which is considered to be a biological pollutant, or is classified as hazardous under any federal, state or local law or regulations, or any underground storage tank, the Contractor shall immediately stop work in the affected area and report the condition to the Owner and the Architect for appropriate action. The Contractor shall comply with all applicable federal, state, and local environmental laws regarding the use, handling, transportation and disposal of oil, hazardous waste or hazardous substances.

...

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

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

...

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of damages caused by a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

...

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby ~~incurred~~ incurred unless the Contractor knew or had reason to know that its activities, even if directed by Owner, violated applicable law.

...

§ 10.3.7 Prior to introducing any hazardous materials to the Project Site, the Contractor shall provide a material safety data sheet (MSDS), information about precautionary measures necessary to protect persons or property and an indication of the type of labeling system in use.

...

§ 10.3.8 In the event that during the performance of the Work the activities of the Contractor or any Subcontractor, or any person or entity for which the Contractor is responsible, causes the incursion of mold at the Project site, the Contractor shall be responsible for and bear the entire cost of mitigation of any mold to the satisfaction of the Owner.

...

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

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§ 11.1.2 The Contractor shall maintain such paid-up insurance as will adequately protect the Contractor and the City of Stamford, Board of Education, and their respective officers, agents and employees from damages for personal injury (including death) and/or property damage, which may arise from or which may in any way be related to the work or services to be provided hereunder, in such amounts and types as the Risk Management department of the City of Stamford shall deem reasonably necessary to adequately protect the Contractor, the City of Stamford, the Board of Education, and their respective directors, officers, agents, and employees.

...

At a minimum, the Contractor shall maintain the following insurance coverages:

1. **Commercial general liability insurance in a minimum amount of \$1,000,000 combined single limit per occurrence per occurrence for bodily injury and property damage and \$2,000,000 in the aggregate. This insurance shall contain, but not be limited to, contractual liability insurance, which covers any indemnities contained in this contract, products liability and completed operations coverage, which shall be maintained for a period of not less than three (3) years following termination of the work or services to be provided by the Contractor or termination of the Contract, whichever is later, personal injury and advertising liability, X, C, U coverage, if applicable, broad form property damage coverage, and operations liability.**
1. **Commercial automobile liability insurance in a minimum amount of \$1,000,000 combined single limit per occurrence for bodily injury and property damage. This insurance shall cover, but not be limited to, all owned, non-owned and hired/leased vehicles.**
1. **Excess (umbrella) liability insurance in a minimum amount of \$5,000,000 per occurrence and in the aggregate. This insurance shall provide additional limits of liability for the commercial general liability, commercial automobile liability, and employer's liability coverage.**
1. **Workers' compensation insurance, which complies with all the workers' compensation laws and regulations of the State of Connecticut.**
1. **Employer's liability insurance, which contains minimum limits of liability of \$500,000 each accident, \$500,000 disease policy limit and \$500,000 disease each employee.**
1. **Asbestos liability insurance (if applicable), which contains a minimum limit of liability of \$2,000,000 per claim and in the aggregate, and insures the abatement (removal) of asbestos and its disposal. This insurance shall contain the following:**
 1. **If the insurance is underwritten on a claims made, as opposed to an occurrence basis, the retroactive date in the policy shall be the earlier of the effective date if the Agreement between the successful bidder and the**

City of Stamford or the date the successful Contractor begins its services for the City of Stamford. The policy shall also contain an extended reporting date of not less than three years following termination of the agreement between the Contractor and the City of Stamford or conclusion of the services rendered by the successful contractor, which ever date is later.

1. Contractors Pollution Legal Liability/Errors and Omissions insurance, with a minimum limit of liability of 2,000,000 which will protect the contractor, the City, and the Board of Education from claims arising from pollution releases caused by working on this project.

...

The commercial general liability and automobile liability insurance policies required hereunder shall designate the City of Stamford, Board of Education, and their employees, agents and officers as additional insureds.

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Any insurance required hereunder, which is underwritten on a claims made, as opposed to an occurrence basis, shall contain a retroactive date of the date the contract is executed or the date the Contractor commences services or work, whichever is earlier, and an extended reporting date the later of the date the work or services required hereunder are completed or the termination date of the Contract.

...

by Section 11.1.1 shall be. The Contractor agrees to waive any right of any claim, loss or damage against the City of Stamford and its employees, agents and officers for any work or services to be provided by the Contractor hereunder. All insurance required hereunder shall be endorsed to contain waivers of subrogation against the City of Stamford, Board of Education, and their employees, agents and officers.

...

written for not less than limits of liability specified in the Contract Documents or All such insurance required hereunder shall contain provisions requiring the insurance company(s) to provide thirty (30) days prior written notice to the Risk Manager for the City of Stamford in the event of cancellation, termination or material change to any policy terms and conditions.

...

required by law, whichever coverage. The Contractor agrees to provide the Risk Manager for the City of Stamford with certified copies of all insurance policies of insurance required hereunder or certificates of insurance, whichever the Risk Manager deems appropriate, prior to commencement of services under this Agreement hereunder and throughout the full term of this contract upon expiration or termination or change in any insurance coverage required hereunder.

...

The insurance requirements of the Agreement are an integral part of the Agreement. Any defect in the insurance program required in the Agreement may result in termination of the Agreement, as stipulated in the Agreement. No employee or the entity can modify the terms of the Agreement without the prior approval of corporation Counsel and the Chief Administrative Officer or his/her designee.

...

All insurance coverages must be with insurance companies licensed to do business in the State of Connecticut and approved by the City of Stamford. The insurance companies must have at least an A-rating by A.M. Best Company.

...

is greater. Coverages, whether The Contractor shall require its contractors/subcontractors to maintain insurance coverage, which is commensurate with their type and amount of work and or services being provided. Failure to require its contractors to maintain such insurance could result in termination of this Agreement.

...

The insurance required hereunder shall not serve to limit the liability of the Contractor with respect to any obligations or liabilities it assumes under the Contract.

...

written on an occurrence or claims-made basis, shall be maintained without interruption from the date The policy in the minimum amount of Five Million Dollars (\$5,000,000) shall be written as excess following the terms and conditions of the employer's liability, commercial general liability and business automobile liability coverages described herein and also shall be written to drop down and provide primary insurance including coverage for defense for the Contractor in the event that an aggregate limit has been exhausted. The policy shall include the Owner, the Contractor, and the Architect and their respective officers, directors, agents and employees as additional insureds in the same manner as the underlying policies. Coverage provided to said indemnified parties shall be primary to and not seek contribution from any other insurance available to the indemnified parties where they are a named insured.

...

of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents. § 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner within ten (10) days of the Notice of Award and thereafter upon renewal or replacement of each required policy of insurance at least fifteen (15) days prior to expiration. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. Certificates of insurance must state whether coverages are written on an occurrence or claims-made basis. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. Failure of the Contractor to keep the Contractor's required insurance policies in force during the Work covered by this Contract or any extensions thereof or extra or additional Work agreed to by the Contractor, shall constitute a breach of this Contract, entitling Owner, notwithstanding anything to the contrary contained herein, to immediately cancel and terminate this Contract for cause.

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§ 11.1.4 Certificates of insurance acceptable to the Owner confirming the insurance coverage required by

Section 11.1 shall be filed with the Owner prior to commencement of the Work the execution of the Contract, and thereafter upon renewal or replacement of each required policy of insurance. The Owner shall have no obligation to execute the Contract, and may award the Contract to the next lowest responsible and eligible bidder, if such insurance certificates have not been provided to the Owner within five (5) business days after presentation of the Contract to Contractor for execution. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. These certificates shall set forth evidence of all coverage required by Sections 11.1.1 and 11.1.2. The form of certificate shall be the ACCORD form, supplemented as necessary by AIA Documents G715. The Contractor shall furnish to the Owner copies of any endorsement that are subsequently issued amending limits of coverage. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

...

~~§ 11.1.4-11.1.5~~ The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Consultants as additional insureds during Contractor's operations; and (2) the Owner as an additional insured for claims caused during Contractor's completed operations.

...

~~in whole or in part by the § 11.1.6~~ Neither the Owner's authority to review certificate and policies of insurance, nor their decision to raise or not to raise any objections about those certificates and policies, shall in any way give rise to any duty or responsibility on the part of the Owner to exercise this authority for the benefit of the Contractor, any Subcontractor, Sub-subcontractor or supplier, or any other party.

...

~~Contractor's negligent acts § 11.1.7~~ The Contractor's liability insurance shall remain in effect until the end of the Correction period as defined in Article 12 and in the Contract Specifications, and at all times that when the Contractor may be correcting, removing or replacing defective Work.

...

~~or omissions during the Contractor's completed operations. § 11.1.8~~ If the Contractor or any Subcontractor provides any professional design services that constitute the practice of architecture or engineering, the Contractor shall procure and maintain errors and omissions insurance for such professional services in an amount required by the Contract Documents on a claims made basis, and shall maintain such insurance for a period of seven (7) years following the date of Substantial Completion.

...

~~§ 11.2 OWNER'S LIABILITY INSURANCE~~ 11.1.9 The Contractor shall cause all Subcontractors to provide and maintain insurance in compliance herewith, using good business judgment in establishing coverage limits and deductibles applicable to such insurance, and subject to the Owner's acceptance. The Contractor shall ensure that Subcontractors and those for whom they are responsible have provided certificates of insurance in compliance with the Contract Documents prior to commencing activities on the Project site.

...

~~§ 11.1.10 The Owner shall be responsible for purchasing not be responsible for any amounts paid by the Contractor or those for whom it is responsible on account of deductibles on their policies of insurance.~~

...

~~and maintaining the Owner's usual liability insurance. § 11.1.11 Insurance coverages provided by the Contractor and those for whom it is responsible shall be primary, and any insurance carried by the Owner will be considered excess or contingent.~~

...

§ 11.2 OWNER'S LIABILITY INSURANCE

...

[Not used.]

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

...

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

...

~~§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles. [Not used.]~~

...

~~§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit. [Not used.]~~

...

The ~~Owner-Contractor~~ shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final

acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

...

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, ~~however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused.~~ hazards.

...

~~§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.~~ [Not used.]

...

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

...

§ 11.3.7 WAIVERS WAIVER OF SUBROGATION

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

...

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

...

§ 11.3.9 If required in writing by a party in interest, [Not used.]

...

§ 11.3.10 The Owner shall have power to adjust and settle any loss with insurers for which the Contractor has obtained insurance.

...

the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such § 11.3.11 Upon the occurrence of an insured loss, the Owner and Contractor shall cooperate with each other and with each other's insurer in the submission of claims and related information and the distribution of any insurance proceeds. If, after such a loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7 made, replacement of damaged Work shall be covered by an appropriate Change Order.

...

§ 11.3.10 The Owner-11.4 PERFORMANCE BOND AND PAYMENT BOND

...

as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators. § 11.4.1 If Performance, payment or maintenance bonds are required for this bid as specified on the bid's Cover Sheet, Contractor shall furnish surety bonds from a licensed surety in the State of Connecticut and acceptable to Owner. The surety bonds shall be in the form of traditional bonds or in the form an irrevocable letter of credit drawn on a financial institution acceptable to Owner in amounts stipulated. Said surety bonds shall be for the faithful and proper performance of all persons/corporations performing work towards the acceptable completion of the Contract. The face value of the performance bond shall be as noted on the bid's Cover Sheet. The face value of the maintenance bond shall be as noted on the bid's Cover Sheet or \$5,000.00, whichever is greater. The maintenance bond shall be for a period commencing upon the expiration of the performance bond and terminating twenty four (24) months following completion and acceptance of the work by Owner. Such maintenance bonds shall be provided by Contractor to Owner upon completion and acceptance of the

...

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

...

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract work by Owner. The cost of all such required surety bonds shall be borne entirely by Contractor. Said surety bonds shall be provided no later than fifteen (15) calendar days from the date of award of this bid. The performance and payment bonds must both be

underwritten by an insurance company licensed to do business in the State of Connecticut and currently listed in the Department of Treasury's Listing of Approved Sureties (Most Recent Circular) and rated B+ or better by A. M. Best in the full stipulated amount of the Contract.

...

§ 12.1.1 If a portion of the Work is covered contrary to the Owner's or Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the 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 Owner's or Architect has not specifically requested to examine prior to its being covered, the Owner or Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

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

...

§ 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 an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. ~~During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.~~

...

§ 12.2.2.1.1 If the correction or repair of this Work is required to avoid impacts to the maintenance, operation or safety of the facilities, the Owner reserves the right to undertake the repairs, prior to notifying the Contractor or without waiting for the Contractor to respond, without waiving the Owner's right under the warranties and Owner's right to correct Work under Section 2.4. The Contractor shall notify the Owner and Architect in writing sixty (60) days prior to the end of the eighteen (18) months period for correction of work that sixty (60) days remain in the applicable warranty period.

...

§ 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. Upon completion of any Work under or pursuant to § 12.2, the eighteen (18) months correction period in connection with the Work requiring correction shall be renewed and recommence.

...

~~§ 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. [Not used.]~~

...

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor or its surety 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.

...

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. The Owner's acceptance of Work under this provision must be in writing, signed by the Owner's authorized representative identified in Article 7 of the parties' AIA A101 Form of Agreement as amended. No acceptance by any other person or entity is authorized. Such adjustment shall be effected whether or not final payment has been made.

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~~The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4. located.~~

...

§ 13.5.2 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 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. ~~Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.~~

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~~**§ 13.5.4** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect. The Contractor shall obtain and deliver promptly to the Architect any Occupancy Permit and any certificates of final inspection of any part of the Contractor's Work and operating permits for any mechanical apparatus, such as elevators, escalators, boilers and air compressors, which may be required by law to permit full use and occupancy of the premises by the Owner. Receipt of such permit or certificates by the Architect shall be a condition precedent to determining that the Work is Substantially Complete.~~

...

~~Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located no interest.~~

...

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

...

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of ~~30-60~~ consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

...

~~.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because~~ .3 Because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents;
or Documents.

...

~~.4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.~~

...

§ 14.1.2 ~~The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, 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.~~ [Not used.]

...

§ 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' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, ~~costs incurred by reason of such termination, and damages; profit on completed Work only, said costs being the limit of the Owner's liability.~~

...

§ 14.1.4 ~~If~~ [Not used.]

...

~~the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written 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 Construction Manager may, at any time, terminate the Agreement for the Construction Manager's convenience and without cause with at least ninety (90) day's notice.

...

§ 14.2.1 The Owner may terminate the Contract if the ~~Contractor~~ Contractor:

...

.1 ~~repeatedly~~ refuses or fails to supply enough properly skilled workers or proper materials;

...

.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~~ Documents;

...

.5 breaches any warranty made by the Contractor under or pursuant to the Contract Documents;

...

.6 is declared bankrupt, has a petition in bankruptcy filed against it, or if the Contractor files for bankruptcy protection; or

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.7 causes or threatens to cause or create labor unrest, dispute, picketing, slowdowns, work stoppage, strike or disharmony.

...

§ 14.2.2 When any of the above reasons exist, the Owner, ~~upon certification by the Initial Decision Maker that sufficient cause exists to justify such action,~~ 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' written notice, terminate employment of the Contractor and ~~may, subject to any prior rights of the surety, may;~~

...

.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.

...

§ 14.2.4 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, ~~thereby~~, and attorney's fees incurred in enforcing the requirements of this Section, 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~~ This obligation for payment shall survive termination of the Contract.

...

~~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.~~ § 14.2.5 In the event that it shall be determined by an arbitration panel or court of competent jurisdiction that a termination under this Paragraph 14.2 was wrongful or not justified, such termination shall be conclusively deemed to be a termination for convenience by Owner under Paragraph 14.4 hereof and the sole right, remedy and recourse of the Contractor against the Owner shall be governed and determined by Paragraph 14.4.

...

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.~~cause with at least ninety (90) days notice.~~

...

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

...

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, in the manner and within the time provided in Article 9 of the Contract for Work executed in accordance with the Contract Documents, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed; in no event shall such costs being the Contractor's sole remedy. In no event shall Contractor be entitled to lost anticipated profit on work not completed or performed.

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A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "~~Claim~~" "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.

...

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the ~~Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the~~ Initial Decision Maker. Claims by either party must be initiated within 21 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. Failure by the Contractor to give such notice within the time specified shall greatly prejudice the Owner, and the failure to submit proper and timely notice shall constitute a waiver and abandonment of such Claim.

...

§ 15.1.2.2 The Contractor or Owner shall furnish the Initial Decision Maker and other party with such additional documentation as the Initial Decision Maker may request to evaluate the

...

Claim.

...

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

payments in accordance with the Contract Documents. ~~The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.~~

...

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

...

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate ~~of cost and of~~ probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. In the case of a continuing delay, the Contractor shall file with the Owner written reports on the delay identifying the continuing cause of the delay no less than once a week during the duration of the delay.

...

§ 15.1.5.2 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~~ unusually severe for the period of time, could not have been reasonably anticipated and had an adverse effect on the critical path of the scheduled construction.

...

§ 15.1.5.3 [Not used.]

...

§ 15.1.5.4 Any change request seeking an extension of the Contract Time shall contain:

...

.1 a detailed description of the nature of each cause of delay, the date or dates upon which each cause of delay began and ended (as known or as projected), the number of days of delay attributable to each such cause, and the impact of such delay upon the construction schedule;

...

.2 the construction schedule in effect at the start of the delay, showing that the portion of the Work that was, or will be, delayed is on the critical path and that no float remains or will be available for the delayed activities at the start of the delay;

...

.3 a schedule analysis of the impact of the delay on the critical path in the construction schedule at the time of the delay, including any proposed adjustment to the Contract Time; and

...

.4 such other supporting data that the Owner may reasonably request.

...

The Contractor and Owner waive Claims against each other shall waive Claims against the Owner 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 [Not used.]

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

...

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

...

~~§ 15.2.2 The Initial Decision Maker will review Claims and within ten-twenty-one (21) 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; or (2) recommend a resolution of the claim in whole or in part.~~

...

~~§ 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. [Not used.]~~

...

~~§ 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~~ respond (except as otherwise expressly agreed by the parties), within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will ~~either reject or approve~~ recommend a resolution of 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 recommended a resolution of the Claim (1) in writing; (2) stating the reasons therefor; (3) notifying the parties of any recommended change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but both; and (4) stating a time frame for the parties to respond in writing with their intent to either accept the Initial Decision Maker's recommendation and document the resolution or reject the recommendation and commence mediation. Except as otherwise expressly agreed by the parties, the Initial Decision Maker's recommendation shall be 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. [Not used.]~~

...

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

...

~~§ 15.2.7 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. [Not used.]~~

...

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation with those parties who the Owner believes are necessary for resolving any of the Claims 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.

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§ 15.3.3 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.

...

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

...

~~§ 15.4.1.1 A-If the Owner consents to arbitration,~~ 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.

...

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

...

~~§ 15.4.4.1 Either party,~~ The Owner, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

...

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

...

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

...

§ 15.5 LITIGATION

...

§ 15.5.1 All Claims, disputes and other matters in controversy between the parties that the Owner does not consent to arbitrate shall be resolved by litigation. The venue for such litigation shall be the Connecticut Superior Court in the City of Stamford, Judicial District of Stamford/Norwalk.

...

§ 15.5.2 The Owner and Contractor both waive their rights to a trial by jury of any or all issues arising in any action or proceeding between the parties hereto or their successors, under or connected with the Contract Documents, or any of their provisions. THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ AND UNDERSTAND THE FOREGOING, HAVE HAD THE OPPORTUNITY TO HAVE THIS AGREEMENT REVIEWED BY THEIR LEGAL COUNSEL, AND ACCEPT THAT THEY ARE WAIVING THEIR RIGHT TO A JURY TRIAL.

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, Chris Dellaselva, 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 12:05:27 ET on 05/29/2019 under Order No. 5874476543 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™ - 2007, 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)

Viking Construction, Inc.

1/31/2019

Exhibit B – Viking Labor Rates

Project: Stamford Mold Task Force

Rates are Hourly, unless otherwise noted.

Description	Unit Rate	Labor Cost
Carpenter Foreman	Hour	\$87.86
Mason	Hour	\$88.66
Carpenter	Hour	\$79.51
Laborer	Hour	\$69.74

Rates adjust on May 1st, 2019 – with contract negotiations

Viking Construction, Inc.

1/31/2019

Exhibit C – Viking Management Staff Rates

Project: Stamford Mold Task Force

Rates are Hourly, unless otherwise noted.

Description	Unit Rate	Labor Cost
Project Manager	Hour	\$105.00
Asst. Project Manager	Hour	\$88.00
Superintendent	Hour	\$91.00
Clerical	Hour	\$60.00

Rates adjust on May 1st, 2019 – with contract negotiations

EXHIBIT D

City of Stamford
State of Connecticut Contractor Verification (in accordance with Public Act 16-67)
Compliance Affidavit

I, the undersigned, personally and on behalf of Viking Construction, Inc., having
(Contractor)
been duly sworn, affirm and say that I have read, understand and am in compliance with Public Act 16-67 Concerning the Disclosure of Certain Education Personnel Records, Criminal Penalties for Threatening in Educational Settings and the Exclusion of a Minor's Name from Summary Process Complaints, and that neither I nor said Contractor, to the best of my knowledge, is in possession of any information indicating a finding of abuse or neglect or sexual misconduct, or otherwise have knowledge of such a condition(s) for any employees working on the project identified in RFQ/RFP or Bid S-_____. Further, if I or said Contractor
(RFQ/RFP or Bid Number)
become aware of any information indicating such a finding, or otherwise gain knowledge of such a condition, I and/or said Contractor will immediately forward such information to the City of Stamford.

Contractor Name: Viking Construction, Inc.
Street Address: 1387 Seaview Avenue
City, State, Zip: Bridgeport, CT 06607
Title of person completing this form: President
Signature: _____
Printed Name: Anthony Gaglio, Sr.
Date: 5/30/2019

ACKNOWLEDGMENT

STATE OF Connecticut

COUNTY OF Fairfield

ss. BPT.

Date: 5/30/2019

Personally appeared Anthony Gaglio, Sr., as President
of the above named Contractor, and attested that the foregoing statements are true and accurate to the best of his/her knowledge and belief on behalf of himself and said Contractor.

C. V. Sanger
Signature of Notary Public

My Commission Expires: 12/31/2020

EXHIBIT E

**STATEMENT OF PAYMENTS
MADE BY GENERAL CONTRACTOR
TO SUBCONTRACTORS - Page 1 of 2**

(BID No. S-)

Pursuant to the Agreement of the parties, this form must be submitted to the City within thirty (30) calendar days of the receipt of any payment from the City.

06-1329391

Federal Employee Identification No.

Social Security No.

Name Viking Construction, Inc.

Address 1387 Seaview Avenue

Bridgeport, CT 06607

Contractors' Total Gross Receipts from City of Stamford: \$

Payments to Subcontractors

Name Viking Construction, Inc.	Employer ID No.
Address 1387 Seaview Avenue	
Bridgeport, CT 06607	Amount of Payment \$
	Date of Payment

Name	Employer ID No.
Address	
	Amount of Payment \$
	Date of Payment

Name	Employer ID No.
Address	
	Amount of Payment \$
	Date of Payment

Name	Employer ID No.
Address	
	Amount of Payment \$
	Date of Payment

STATEMENT OF PAYMENTS
MADE BY GENERAL CONTRACTOR
TO SUBCONTRACTORS Page 2 of 2

(BID No. S-)

ACKNOWLEDGEMENT

Personally appeared before me at Anthony Gnolio, this 30th day of May, as President of Viking Coast, who affirmed under oath that the foregoing information is true and accurate.

Rich V. Stanger

NOTARY PUBLIC
My Commission Expires: 2/28/2020

Bid No. S- _____

EXHIBIT F

CITY OF STAMFORD CONNECTICUT

**CERTIFICATION OF PROHIBITION OF WASTES GENERATED FROM OIL & GAS
DRILLING AND EXTRACTION ACTIVITIES**

Pursuant to City of Stamford Ordinance No. 1241 Supplemental, Prohibiting Wastes Generated from Oil and Gas Drilling and Extraction Activities, if the goods/services contemplated pursuant to this Agreement involves the construction or maintenance of any publically owned and/or maintained road or real property within the City, or involves the purchase or acquisition of materials to be used to construct or maintain any publically owned and/or maintained road or real property within the City, the Contractor shall complete the following statement:

"We Viking Construction, Inc. hereby will provide materials, equipment and/or labor for the City of Stamford.

The materials, equipment and/or labor is for a project titled:

Mold Task Force - Investigation Re: Construction

We hereby certify under penalty of perjury that no natural gas waste or oil waste will be used by the undersigned bidder; or any contractor, sub-contractor, agent or vendor agent in connection with the bid; nor will the undersigned bidder or any subcontractor, agent or vendor agent thereof apply any natural gas waste or oil waste to any road or real property within the City of Stamford as a result of the submittal of this bid if selected."

5/30/2019

Date

Signed



Anthony Gaglio, Sr.

Print Name

Viking Construction, Inc.

Company

1387 Seaview Avenue, Bridgeport, CT 06607

Address

Exhibit G – Viking Optional Staffing and Equipment Rates

Project: Stamford Mold Task Force

Rates are Hourly, unless otherwise noted.

Description		Unit Rate	Labor Cost	Equip Cost	TOTAL
PRINCIPAL	SEE NOTE #1	Hour	\$250.00		\$250.00
PROJECT EXECUTIVE OR SR. PM	SEE NOTE #1	Hour	\$200.00		\$200.00
ESTIMATOR	SEE NOTE #1	Hour	\$150.00		\$150.00
ACCOUNTANT		Hour	\$79.00		\$79.00
ADMINISTRATIVE ASSISTANT		Hour	\$79.00		\$79.00
SECRETARY		Hour	\$68.00		\$68.00
MASON FOREMAN		Hour	\$115.00		\$115.00
LABORER FOREMAN		Hour	\$88.00		\$88.00
TRUCK DRIVER		Hour	\$87.00		\$87.00
HEAVY EQUIPMENT OPERATOR		Hour	\$95.00		\$95.00
WELDER		Hour	\$105.00		\$105.00
WELDING EQUIP.-W/ PORTABLE GAS OR ELECT. MACHINE		Hour		\$45.00	\$45.00
VOLVO 360 (2.5-3 YD)	INCL OPERATOR	Hour	\$95.00	\$208.00	\$303.00
CAT 329 (2.5-3YD)	INCL OPERATOR	Hour	\$95.00	\$208.00	\$303.00
CAT 325 (2-2.5YD)	INCL OPERATOR	Hour	\$95.00	\$173.00	\$268.00
ATTACHMENTS:					
GRAPPLE FOR 325		Day		\$500.00	\$500.00
7000 LB HAMMER FOR BOTH 360 & 325		Day		\$1,600.00	\$1,600.00
VOLVO 140 EXCAVATOR W/ THUMB	INCL OPERATOR	Hour	\$95.00	\$153.00	\$248.00
CAT 305 MINI EXCAVATOR	INCL OPERATOR	Hour	\$95.00	\$83.00	\$178.00
VOLVO MINI EC55 EXCAVATOR	INCL OPERATOR	Hour	\$95.00	\$93.00	\$188.00
ATTACHMENTS FOR BOTH					
AUGER		Day		\$400.00	\$400.00
700 LB HAMMER		Day		\$1,000.00	\$1,000.00
CAT 924 WHEEL LOADER	INCL OPERATOR	Hour	\$95.00	\$165.00	\$260.00
CAT 953 TRACK LOADER	INCL OPERATOR	Hour	\$95.00	\$158.00	\$253.00
CAT D3 BULLDOZER	INCL OPERATOR	Hour	\$95.00	\$98.00	\$193.00

Description	Unit	Rate	Labor Cost	Equip Cost	TOTAL
CAT 446 RUBBER TIRE BACKHOE	Hour	\$95.00	\$95.00	\$98.00	\$193.00
CAT 299 OR 298 TRACK SKID STEER	Hour	\$95.00	\$95.00	\$90.00	\$185.00
ATTACHMENTS FOR BOTH:					
AUGER	Day			\$400.00	\$400.00
700 LB HAMMER	Day			\$1,000.00	\$1,000.00
BACKHOE	Day			\$400.00	\$400.00
SWEEPER	Day			\$400.00	\$400.00
FORKS	Day			\$100.00	\$100.00
LULL FORKLIFT OR GRADALL FORKLIFT	Hour	\$95.00	\$95.00	\$58.00	\$153.00
CAT 730 ARTICULATED TRUCK	Hour	\$95.00	\$95.00	\$165.00	\$260.00
FORD DUMP / RACK	Hour	\$87.00	\$87.00	\$37.00	\$124.00
TRIAXLE DUMP TRUCK	Hour	\$87.00	\$87.00	\$47.00	\$134.00
MACK TRACTOR AND LOWBED TRAILER	Hour	\$87.00	\$87.00	\$117.00	\$204.00
MACK TRACTOR WITH DRIVER ONLY	Hour	\$87.00	\$87.00	\$47.00	\$134.00
MACK TRACTOR AND TRAILER DUMP	Hour	\$87.00	\$87.00	\$98.00	\$185.00
40 FOOT TRAILER - DAY (BARE RENTAL)	Day			\$250.00	\$250.00
PETERBUILT DUMP TRUCK (2002)	Hour	\$87.00	\$87.00	\$80.00	\$167.00
12 YD DUMPSTER DEMURRAGE (Excludes dump fees)	Day			\$20.00	\$20.00
SILVERADO W/ PLOW (2011)	Hour	\$87.00	\$87.00	\$67.00	\$154.00
BOOMLIFT	Day			\$750.00	\$750.00
RAMMAX/ROLLER - DAY	Day			\$400.00	\$400.00
12 TON ROLLER - INGENSOL RAND	Day			\$600.00	\$600.00
SMALL TRUCK - DAY	Day			\$450.00	\$450.00
TCM SHOP FORKLIFT	Day			\$500.00	\$500.00
LARGE FLAT TAMPER	Day			\$200.00	\$200.00
LARGE REVERSING FLAT TAMPER	Day			\$400.00	\$400.00
JUMPING JACK	Day			\$200.00	\$200.00
3" GAS PUMP	Day			\$250.00	\$250.00
3" ELECTRIC PUMP	Day			\$200.00	\$200.00
2" ELECTRIC PUMP	Day			\$175.00	\$175.00
TROWEL MACHINE	Day			\$250.00	\$250.00
GENERATOR 5000W	Day			\$250.00	\$250.00
18" ROAD SAW	Day			\$250.00	\$250.00
14" ROAD SAW	Day			\$225.00	\$225.00

Description	Unit Rate	Labor Cost	Equip Cost	TOTAL
COLD WATER POWER WASHER	Day		\$350.00	\$350.00
CORE DRILL + BITS	Day		\$350.00	\$350.00
BITS UP TO 6"	Day		\$250.00	\$250.00
6" AND ABOVE CALL FOR PRICING	Day		call for pricing	
CHAIN SAW UP TO 20"	Day		\$250.00	\$250.00
SCREENER	Day		\$2,500.00	\$2,500.00
GROUND THAW MACHINE - EXCL FUEL	Month		\$10,000.00	\$10,000.00
WATER WAGON	Day		\$400.00	\$400.00
<p>NOTE #1: Overtime is Not Applicable where this note appears</p> <p>All equipment and manpower are billed at 4 hour increments EXCEPT AS NOTED ABOVE</p> <p>Delivery and Pickup of equipment is excluded and will be billed separately</p> <p>All Equipment Rates are BARE RENTAL unless noted otherwise</p> <p>All Equipment Rates include Fuel Consumption unless noted otherwise</p> <p>All Rates Exclude Overhead & Profit</p> <p>All Overtime Labor is billed at 1.5 times Labor Rates above, except where Note#1 appears.</p>				

Rates adjust on May 1st, 2019 – with contract negotiations