



**Kittitas County Hospital District No. 2
BOARD OF COMMISSIONERS' SPECIAL MEETING**

**August 31, 2020
5:00 p.m.**

Conference Call
877 853 5257 US Toll-free
Meeting ID: 996 3391 8041

AGENDA

- I. Call to Order**
 - II. Introductions**
 - III. Approval of Agenda**
 - IV. New Business**
 - a. Review Project Budget for Medic One Station 99
 - V. Adjournment**
-

AIA® Document A201® – 2017

General Conditions of the Contract for Construction

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

Ambulance Garage
201 Alpha Way
Cle Elum, WA 98922
KDA Project Number: 201838

THE OWNER:
(Name, legal status and address)

Kittitas County Public Hospital District #2
603 South Chestnut Street
Ellensburg, WA 98926

THE ARCHITECT:
(Name, legal status and address)

KDA Architecture, Inc.
1310 North 16th Avenue
Yakima, WA 98902
509-575-5408

TABLE OF ARTICLES

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

ADDITIONS AND DELETIONS:

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

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

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

- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
- 15 CLAIMS AND DISPUTES
- 16 ADDITIONAL REQUIREMENTS
- 17 EQUAL EMPLOYMENT OPPORTUNITY
- 18 LIENS
- 19 APPRENTICESHIP

Init.

INDEX

(Topics and numbers in bold are Section headings.)

Acceptance of Nonconforming Work

9.6.6, 9.9.3, 12.3

Acceptance of Work

9.6.6, 9.8.2, 9.9.3, 9.10.1, 9.10.3, 12.3

Access to Work

3.16, 6.2.1, 12.1

Accident Prevention

10

Acts and Omissions

3.2, 3.3.2, 3.12.8, 3.18, 4.2.3, 8.3.1, 9.5.1, 10.2.5, 10.2.8, 13.3.2, 14.1, 15.1.2, 15.2

Addenda

1.1.1

Additional Costs, Claims for

3.7.4, 3.7.5, 10.3.2, 15.1.5

Additional Inspections and Testing

9.4.2, 9.8.3, 12.2.1, 13.4

Additional Time, Claims for

3.2.4, 3.7.4, 3.7.5, 3.10.2, 8.3.2, 15.1.6

Administration of the Contract

3.1.3, 4.2, 9.4, 9.5

Advertisement or Invitation to Bid

1.1.1

Aesthetic Effect

4.2.13

Allowances

3.8

Applications for Payment

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

Approvals

2.1.1, 2.3.1, 2.5, 3.1.3, 3.10.2, 3.12.8, 3.12.9, 3.12.10.1, 4.2.7, 9.3.2, 13.4.1

Arbitration

8.3.1, 15.3.2, 15.4

ARCHITECT

4

Architect, Definition of

4.1.1

Architect, Extent of Authority

2.5, 3.12.7, 4.1.2, 4.2, 5.2, 6.3, 7.1.2, 7.3.4, 7.4, 9.2, 9.3.1, 9.4, 9.5, 9.6.3, 9.8, 9.10.1, 9.10.3, 12.1, 12.2.1, 13.4.1, 13.4.2, 14.2.2, 14.2.4, 15.1.4, 15.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.12.4, 3.12.8, 3.12.10, 4.1.2, 4.2.1, 4.2.2, 4.2.3, 4.2.6, 4.2.7, 4.2.10, 4.2.12, 4.2.13, 5.2.1, 7.4, 9.4.2, 9.5.4, 9.6.4, 15.1.4, 15.2

Architect's Additional Services and Expenses

2.5, 12.2.1, 13.4.2, 13.4.3, 14.2.4

Architect's Administration of the Contract

3.1.3, 3.7.4, 15.2, 9.4.1, 9.5

Architect's Approvals

2.5, 3.1.3, 3.5, 3.10.2, 4.2.7

Architect's Authority to Reject Work

3.5, 4.2.6, 12.1.2, 12.2.1

Architect's Copyright

1.1.7, 1.5

Architect's Decisions

3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 4.2.14, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4.1, 9.5, 9.8.4, 9.9.1, 13.4.2, 15.2

Architect's Inspections

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

Architect's Instructions

3.2.4, 3.3.1, 4.2.6, 4.2.7, 13.4.2

Architect's Interpretations

4.2.11, 4.2.12

Architect's Project Representative

4.2.10

Architect's Relationship with Contractor

1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5, 3.7.4, 3.7.5, 3.9.2, 3.9.3, 3.10, 3.11, 3.12, 3.16, 3.18, 4.1.2, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.3.2, 13.4, 15.2

Architect's Relationship with Subcontractors

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

Architect's Representations

9.4.2, 9.5.1, 9.10.1

Architect's Site Visits

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

Asbestos

10.3.1

Attorneys' Fees

3.18.1, 9.6.8, 9.10.2, 10.3.3

Award of Separate Contracts

6.1.1, 6.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

5.2

Basic Definitions

1.1

Bidding Requirements

1.1.1

Binding Dispute Resolution

8.3.1, 9.7, 11.5, 13.1, 15.1.2, 15.1.3, 15.2.1, 15.2.5, 15.2.6.1, 15.3.1, 15.3.2, 15.3.3, 15.4.1

Bonds, Lien

7.3.4.4, 9.6.8, 9.10.2, 9.10.3

Bonds, Performance, and Payment

7.3.4.4, 9.6.7, 9.10.3, 11.1.2, 11.1.3, 11.5

Building Information Models Use and Reliance

1.8

Building Permit

3.7.1

Capitalization

1.3

Certificate of Substantial Completion

9.8.3, 9.8.4, 9.8.5

Init.

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3

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Certificates for Payment

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

Certificates of Inspection, Testing or Approval
13.4.4

Certificates of Insurance
9.10.2

Change Orders

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

Change Orders, Definition of
7.2.1

CHANGES IN THE WORK

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

Claims, Definition of

15.1.1

Claims, Notice of
1.6.2, 15.1.3

CLAIMS AND DISPUTES

3.2.4, 6.1.1, 6.3, 7.3.9, 9.3.3, 9.10.4, 10.3.3, 15, 15.4
Claims and Timely Assertion of Claims

15.4.1

Claims for Additional Cost

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

Claims for Additional Time

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

Concealed or Unknown Conditions, Claims for
3.7.4

Claims for Damages

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

Claims Subject to Arbitration

15.4.1

Cleaning Up

3.15, 6.3

Commencement of the Work, Conditions Relating to

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

Commencement of the Work, Definition of

8.1.2

Communications

3.9.1, 4.2.4

Completion, Conditions Relating to

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

COMPLETION, PAYMENTS AND

9

Completion, Substantial

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

Compliance with Laws

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

Concealed or Unknown Conditions

3.7.4, 4.2.8, 8.3.1, 10.3

Conditions of the Contract

1.1.1, 6.1.1, 6.1.4

Consent, Written

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

Consolidation or Joinder

15.4.4

**CONSTRUCTION BY OWNER OR BY
SEPARATE CONTRACTORS**

1.1.4, 6

Construction Change Directive, Definition of
7.3.1

Construction Change Directives

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

Construction Schedules, Contractor's

3.10, 3.11, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2

Contingent Assignment of Subcontracts

5.4, 14.2.2.2

Continuing Contract Performance

15.1.4

Contract, Definition of

1.1.2

**CONTRACT, TERMINATION OR
SUSPENSION OF THE**

5.4.1.1, 5.4.2, 11.5, 14

Contract Administration

3.1.3, 4, 9.4, 9.5

**Contract Award and Execution, Conditions Relating
to**

3.7.1, 3.10, 5.2, 6.1

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

Contract Documents, Definition of

1.1.1

Contract Sum

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

Contract Sum, Definition of

9.1

Contract Time

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

Contract Time, Definition of

8.1.1

8.1.1

CONTRACTOR

3

Contractor, Definition of

3.1, 6.1.2

Contractor's Construction and Submittal

Schedules

3.10, 3.12.1, 3.12.2, 4.2.3, 6.1.3, 15.1.6.2

Init.

Contractor's Employees
 2.2.4, 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3, 11.3, 14.1, 14.2.1.1
Contractor's Liability Insurance
11.1
Contractor's Relationship with Separate Contractors and Owner's Forces
 3.12.5, 3.14.2, 4.2.4, 6, 11.3, 12.2.4
Contractor's Relationship with Subcontractors
 1.2.2, 2.2.4, 3.3.2, 3.18.1, 3.18.2, 4.2.4, 5, 9.6.2, 9.6.7, 9.10.2, 11.2, 11.3, 11.4
Contractor's Relationship with the Architect
 1.1.2, 1.5, 2.3.3, 3.1.3, 3.2.2, 3.2.3, 3.2.4, 3.3.1, 3.4.2, 3.5.1, 3.7.4, 3.10, 3.11, 3.12, 3.16, 3.18, 4.2, 5.2, 6.2.2, 7, 8.3.1, 9.2, 9.3, 9.4, 9.5, 9.7, 9.8, 9.9, 10.2.6, 10.3, 11.3, 12, 13.4, 15.1.3, 15.2.1
Contractor's Representations
 3.2.1, 3.2.2, 3.5, 3.12.6, 6.2.2, 8.2.1, 9.3.3, 9.8.2
Contractor's Responsibility for Those Performing the Work
 3.3.2, 3.18, 5.3, 6.1.3, 6.2, 9.5.1, 10.2.8
Contractor's Review of Contract Documents
3.2
Contractor's Right to Stop the Work
 2.2.2, 9.7
Contractor's Right to Terminate the Contract
14.1
Contractor's Submittals
 3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 9.2, 9.3, 9.8.2, 9.8.3, 9.9.1, 9.10.2, 9.10.3
Contractor's Superintendent
 3.9, 10.2.6
Contractor's Supervision and Construction Procedures
 1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3, 7.3.4, 7.3.6, 8.2, 10, 12, 14, 15.1.4
Coordination and Correlation
 1.2, 3.2.1, 3.3.1, 3.10, 3.12.6, 6.1.3, 6.2.1
Copies Furnished of Drawings and Specifications
 1.5, 2.3.6, 3.11
Copyrights
 1.5, 3.17
Correction of Work
 2.5, 3.7.3, 9.4.2, 9.8.2, 9.8.3, 9.9.1, 12.1.2, 12.2, 12.3, 15.1.3.1, 15.1.3.2, 15.2.1
Correlation and Intent of the Contract Documents
1.2
Cost, Definition of
7.3.4
Costs
 2.5, 3.2.4, 3.7.3, 3.8.2, 3.15.2, 5.4.2, 6.1.1, 6.2.3, 7.3.3.3, 7.3.4, 7.3.8, 7.3.9, 9.10.2, 10.3.2, 10.3.6, 11.2, 12.1.2, 12.2.1, 12.2.4, 13.4, 14
Cutting and Patching
 3.14, 6.2.5

Damage to Construction of Owner or Separate Contractors
 3.14.2, 6.2.4, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damage to the Work
 3.14.2, 9.9.1, 10.2.1.2, 10.2.5, 10.4, 12.2.4
Damages, Claims for
 3.2.4, 3.18, 6.1.1, 8.3.3, 9.5.1, 9.6.7, 10.3.3, 11.3.2, 11.3, 14.2.4, 15.1.7
Damages for Delay
 6.2.3, 8.3.3, 9.5.1.6, 9.7, 10.3.2, 14.3.2
Date of Commencement of the Work, Definition of
8.1.2
Date of Substantial Completion, Definition of
8.1.3
Day, Definition of
8.1.4
Decisions of the Architect
 3.7.4, 4.2.6, 4.2.7, 4.2.11, 4.2.12, 4.2.13, 6.3, 7.3.4, 7.3.9, 8.1.3, 8.3.1, 9.2, 9.4, 9.5.1, 9.8.4, 9.9.1, 13.4.2, 14.2.2, 14.2.4, 15.1, 15.2
Decisions to Withhold Certification
 9.4.1, 9.5, 9.7, 14.1.1.3
Defective or Nonconforming Work, Acceptance, Rejection and Correction of
 2.5, 3.5, 4.2.6, 6.2.3, 9.5.1, 9.5.3, 9.6.6, 9.8.2, 9.9.3, 9.10.4, 12.2.1
Definitions
 1.1, 2.1.1, 3.1.1, 3.5, 3.12.1, 3.12.2, 3.12.3, 4.1.1, 5.1, 6.1.2, 7.2.1, 7.3.1, 8.1, 9.1, 9.8.1, 15.1.1
Delays and Extensions of Time
 3.2, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7, 10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5
Digital Data Use and Transmission
1.7
Disputes
 6.3, 7.3.9, 15.1, 15.2
Documents and Samples at the Site
3.11
Drawings, Definition of
1.1.5
Drawings and Specifications, Use and Ownership of
3.11
Effective Date of Insurance
8.2.2
Emergencies
10.4, 14.1.1.2, 15.1.5
Employees, Contractor's
 3.3.2, 3.4.3, 3.8.1, 3.9, 3.18.2, 4.2.3, 4.2.6, 10.2, 10.3.3, 11.3, 14.1, 14.2.1.1
Equipment, Labor, or Materials
 1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1, 4.2.6, 4.2.7, 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1, 10.2.4, 14.2.1.1, 14.2.1.2
Execution and Progress of the Work
 1.1.3, 1.2.1, 1.2.2, 2.3.4, 2.3.6, 3.1, 3.3.1, 3.4.1, 3.7.1, 3.10.1, 3.12, 3.14, 4.2, 6.2.2, 7.1.3, 7.3.6, 8.2, 9.5.1, 9.9.1, 10.2, 10.3, 12.1, 12.2, 14.2, 14.3.1, 15.1.4

Extensions of Time
 3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3, 7.4, 9.5.1, 9.7, 10.3.2,
 10.4, 14.3, 15.1.6, 15.2.5
Failure of Payment
 9.5.1.3, 9.7, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2
Faulty Work
 (See Defective or Nonconforming Work)
Final Completion and Final Payment
 4.2.1, 4.2.9, 9.8.2, 9.10, 12.3, 14.2.4, 14.4.3
Financial Arrangements, Owner's
 2.2.1, 13.2.2, 14.1.1.4
GENERAL PROVISIONS
I
Governing Law
 13.1
Guarantees (See Warranty)
Hazardous Materials and Substances
 10.2.4, 10.3
Identification of Subcontractors and Suppliers
 5.2.1
Indemnification
 3.17, 3.18, 9.6.8, 9.10.2, 10.3.3, 11.3
Information and Services Required of the Owner
 2.1.2, 2.2, 2.3, 3.2.2, 3.12.10.1, 6.1.3, 6.1.4, 6.2.5,
 9.6.1, 9.9.2, 9.10.3, 10.3.3, 11.2, 13.4.1, 13.4.2,
 14.1.1.4, 14.1.4, 15.1.4
Initial Decision
 15.2
Initial Decision Maker, Definition of
 1.1.8
Initial Decision Maker, Decisions
 14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
Initial Decision Maker, Extent of Authority
 14.2.4, 15.1.4.2, 15.2.1, 15.2.2, 15.2.3, 15.2.4, 15.2.5
Injury or Damage to Person or Property
 10.2.8, 10.4
Inspections
 3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,
 9.9.2, 9.10.1, 12.2.1, 13.4
Instructions to Bidders
 1.1.1
Instructions to the Contractor
 3.2.4, 3.3.1, 3.8.1, 5.2.1, 7, 8.2.2, 12, 13.4.2
Instruments of Service, Definition of
 1.1.7
Insurance
 6.1.1, 7.3.4, 8.2.2, 9.3.2, 9.8.4, 9.9.1, 9.10.2, 10.2.5, 11
Insurance, Notice of Cancellation or Expiration
 11.1.4, 11.2.3
Insurance, Contractor's Liability
 11.1
Insurance, Effective Date of
 8.2.2, 14.4.2
Insurance, Owner's Liability
 11.2
Insurance, Property
 10.2.5, 11.2, 11.4, 11.5

Insurance, Stored Materials
 9.3.2
INSURANCE AND BONDS
11
Insurance Companies, Consent to Partial Occupancy
 9.9.1
Insured loss, Adjustment and Settlement of
 11.5
Intent of the Contract Documents
 1.2.1, 4.2.7, 4.2.12, 4.2.13
Interest
 13.5
Interpretation
 1.1.8, 1.2.3, 1.4, 4.1.1, 5.1, 6.1.2, 15.1.1
Interpretations, Written
 4.2.11, 4.2.12
Judgment on Final Award
 15.4.2
Labor and Materials, Equipment
 1.1.3, 1.1.6, 3.4, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2, 10.2.1,
 10.2.4, 14.2.1.1, 14.2.1.2
Labor Disputes
 8.3.1
Laws and Regulations
 1.5, 2.3.2, 3.2.3, 3.2.4, 3.6, 3.7, 3.12.10, 3.13, 9.6.4,
 9.9.1, 10.2.2, 13.1, 13.3.1, 13.4.2, 13.5, 14, 15.2.8,
 15.4
Liens
 2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8
Limitations, Statutes of
 12.2.5, 15.1.2, 15.4.1.1
Limitations of Liability
 3.2.2, 3.5, 3.12.10, 3.12.10.1, 3.17, 3.18.1, 4.2.6,
 4.2.7, 6.2.2, 9.4.2, 9.6.4, 9.6.7, 9.6.8, 10.2.5, 10.3.3,
 11.3, 12.2.5, 13.3.1
Limitations of Time
 2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2.7,
 5.2, 5.3, 5.4.1, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3,
 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15,
 15.1.2, 15.1.3, 15.1.5
Materials, Hazardous
 10.2.4, 10.3
Materials, Labor, Equipment and
 1.1.3, 1.1.6, 3.4.1, 3.5, 3.8.2, 3.8.3, 3.12, 3.13, 3.15.1,
 5.2.1, 6.2.1, 7.3.4, 9.3.2, 9.3.3, 9.5.1.3, 9.10.2,
 10.2.1.2, 10.2.4, 14.2.1.1, 14.2.1.2
Means, Methods, Techniques, Sequences and
Procedures of Construction
 3.3.1, 3.12.10, 4.2.2, 4.2.7, 9.4.2
Mechanic's Lien
 2.1.2, 9.3.1, 9.3.3, 9.6.8, 9.10.2, 9.10.4, 15.2.8
Mediation
 8.3.1, 15.1.3.2, 15.2.1, 15.2.5, 15.2.6, 15.3, 15.4.1,
 15.4.1.1
Minor Changes in the Work
 1.1.1, 3.4.2, 3.12.8, 4.2.8, 7.1, 7.4

MISCELLANEOUS PROVISIONS

13

Modifications, Definition of

1.1.1

Modifications to the Contract

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

Mutual Responsibility

6.2

Nonconforming Work, Acceptance of

9.6.6, 9.9.3, 12.3

Nonconforming Work, Rejection and Correction of

2.4, 2.5, 3.5, 4.2.6, 6.2.4, 9.5.1, 9.8.2, 9.9.3, 9.10.4, 12.2

Notice

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

Notice of Cancellation or Expiration of Insurance

11.1.4, 11.2.3

Notice of Claims

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

Notice of Testing and Inspections

13.4.1, 13.4.2

Observations, Contractor's

3.2, 3.7.4

Occupancy

2.3.1, 9.6.6, 9.8

Orders, Written

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

OWNER

2

Owner, Definition of

2.1.1

Owner, Evidence of Financial Arrangements

2.2, 13.2.2, 14.1.1.4

Owner, Information and Services Required of the

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

Owner's Authority

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

Owner's Insurance

11.2

Owner's Relationship with Subcontractors

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

Owner's Right to Carry Out the Work

2.5, 14.2.2

Owner's Right to Clean Up

6.3

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

6.1

Owner's Right to Stop the Work

2.4

Owner's Right to Suspend the Work

14.3

Owner's Right to Terminate the Contract

14.2, 14.4

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

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

Partial Occupancy or Use

9.6.6, 9.9

Patching, Cutting and

3.14, 6.2.5

Patents

3.17

Payment, Applications for

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

Payment, Certificates for

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

Payment, Failure of

9.5.1.3, 9.7, 9.10.2, 13.5, 14.1.1.3, 14.2.1.2

Payment, Final

4.2.1, 4.2.9, 9.10, 12.3, 14.2.4, 14.4.3

Payment Bond, Performance Bond and

7.3.4.4, 9.6.7, 9.10.3, 11.1.2

Payments, Progress

9.3, 9.6, 9.8.5, 9.10.3, 14.2.3, 15.1.4

PAYMENTS AND COMPLETION

9

Payments to Subcontractors

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

PCB

10.3.1

Performance Bond and Payment Bond

7.3.4.4, 9.6.7, 9.10.3, 11.1.2

Permits, Fees, Notices and Compliance with Laws

2.3.1, 3.7, 3.13, 7.3.4.4, 10.2.2

PERSONS AND PROPERTY, PROTECTION OF

10

Polychlorinated Biphenyl

10.3.1

Product Data, Definition of

3.12.2

Product Data and Samples, Shop Drawings

3.11, 3.12, 4.2.7

Progress and Completion

4.2.2, 8.2, 9.8, 9.9.1, 14.1.4, 15.1.4

Progress Payments

9.3, 9.6, 9.8.5, 9.10.3, 14.2.3, 15.1.4

Int.

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User Notes:

(1198871668)

7

Project, Definition of
 1.1.4
Project Representatives
 4.2.10
Property Insurance
 10.2.5, 11.2
Proposal Requirements
 1.1.1
PROTECTION OF PERSONS AND PROPERTY
10
Regulations and Laws
 1.5, 2.3.2, 3.2.3, 3.6, 3.7, 3.12.10, 3.13, 9.6.4, 9.9.1,
 10.2.2, 13.1, 13.3, 13.4.1, 13.4.2, 13.5, 14, 15.2.8, 15.4
Rejection of Work
 4.2.6, 12.2.1
Releases and Waivers of Liens
 9.3.1, 9.10.2
Representations
 3.2.1, 3.5, 3.12.6, 8.2.1, 9.3.3, 9.4.2, 9.5.1, 9.10.1
Representatives
 2.1.1, 3.1.1, 3.9, 4.1.1, 4.2.10, 13.2.1
Responsibility for Those Performing the Work
 3.3.2, 3.18, 4.2.2, 4.2.3, 5.3, 6.1.3, 6.2, 6.3, 9.5.1, 10
Retainage
 9.3.1, 9.6.2, 9.8.5, 9.9.1, 9.10.2, 9.10.3
Review of Contract Documents and Field
Conditions by Contractor
 3.2, 3.12.7, 6.1.3
Review of Contractor's Submittals by Owner and
Architect
 3.10.1, 3.10.2, 3.11, 3.12, 4.2, 5.2, 6.1.3, 9.2, 9.8.2
Review of Shop Drawings, Product Data and Samples
by Contractor
 3.12
Rights and Remedies
 1.1.2, 2.4, 2.5, 3.5, 3.7.4, 3.15.2, 4.2.6, 5.3, 5.4, 6.1,
 6.3, 7.3.1, 8.3, 9.5.1, 9.7, 10.2.5, 10.3, 12.2.1, 12.2.2,
 12.2.4, 13.3, 14, 15.4
Royalties, Patents and Copyrights
 3.17
Rules and Notices for Arbitration
 15.4.1
Safety of Persons and Property
 10.2, 10.4
Safety Precautions and Programs
 3.3.1, 4.2.2, 4.2.7, 5.3, 10.1, 10.2, 10.4
Samples, Definition of
 3.12.3
Samples, Shop Drawings, Product Data and
3.11, 3.12, 4.2.7
Samples at the Site, Documents and
3.11
Schedule of Values
 9.2, 9.3.1
Schedules, Construction
 3.10, 3.12.1, 3.12.2, 6.1.3, 15.1.6.2
Separate Contracts and Contractors
 1.1.4, 3.12.5, 3.14.2, 4.2.4, 4.2.7, 6, 8.3.1, 12.1.2
Separate Contractors, Definition of
 6.1.1
Shop Drawings, Definition of
 3.12.1
Shop Drawings, Product Data and Samples
 3.11, 3.12, 4.2.7
Site, Use of
 3.13, 6.1.1, 6.2.1
Site Inspections
 3.2.2, 3.3.3, 3.7.1, 3.7.4, 4.2, 9.9.2, 9.4.2, 9.10.1, 13.4
Site Visits, Architect's
 3.7.4, 4.2.2, 4.2.9, 9.4.2, 9.5.1, 9.9.2, 9.10.1, 13.4
Special Inspections and Testing
 4.2.6, 12.2.1, 13.4
Specifications, Definition of
 1.1.6
Specifications
 1.1.1, 1.1.6, 1.2.2, 1.5, 3.12.10, 3.17, 4.2.14
Statute of Limitations
 15.1.2, 15.4.1.1
Stopping the Work
 2.2.2, 2.4, 9.7, 10.3, 14.1
Stored Materials
 6.2.1, 9.3.2, 10.2.1.2, 10.2.4
Subcontractor, Definition of
 5.1.1
SUBCONTRACTORS
5
Subcontractors, Work by
 1.2.2, 3.3.2, 3.12.1, 3.18, 4.2.3, 5.2.3, 5.3, 5.4, 9.3.1.2,
 9.6.7
Subcontractual Relations
 5.3, 5.4, 9.3.1.2, 9.6, 9.10, 10.2.1, 14.1, 14.2.1
Submittals
 3.10, 3.11, 3.12, 4.2.7, 5.2.1, 5.2.3, 7.3.4, 9.2, 9.3, 9.8,
 9.9.1, 9.10.2, 9.10.3
Submittal Schedule
 3.10.2, 3.12.5, 4.2.7
Subrogation, Waivers of
 6.1.1, 11.3
Substances, Hazardous
 10.3
Substantial Completion
 4.2.9, 8.1.1, 8.1.3, 8.2.3, 9.4.2, 9.8, 9.9.1, 9.10.3, 12.2,
 15.1.2
Substantial Completion, Definition of
 9.8.1
Substitution of Subcontractors
 5.2.3, 5.2.4
Substitution of Architect
 2.3.3
Substitutions of Materials
 3.4.2, 3.5, 7.3.8
Sub-subcontractor, Definition of
 5.1.2

Init.

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8

(1198871668)

Subsurface Conditions
3.7.4
Successors and Assigns
13.2
Superintendent
3.9, 10.2.6
Supervision and Construction Procedures
1.2.2, 3.3, 3.4, 3.12.10, 4.2.2, 4.2.7, 6.1.3, 6.2.4, 7.1.3,
7.3.4, 8.2, 8.3.1, 9.4.2, 10, 12, 14, 15.1.4
Suppliers
1.5, 3.12.1, 4.2.4, 4.2.6, 5.2.1, 9.3, 9.4.2, 9.5.4, 9.6,
9.10.5, 14.2.1
Surety
5.4.1.2, 9.6.8, 9.8.5, 9.10.2, 9.10.3, 11.1.2, 14.2.2,
15.2.7
Surety, Consent of
9.8.5, 9.10.2, 9.10.3
Surveys
1.1.7, 2.3.4
Suspension by the Owner for Convenience
14.3
Suspension of the Work
3.7.5, 5.4.2, 14.3
Suspension or Termination of the Contract
5.4.1.1, 14
Taxes
3.6, 3.8.2.1, 7.3.4.4
Termination by the Contractor
14.1, 15.1.7
Termination by the Owner for Cause
5.4.1.1, 14.2, 15.1.7
Termination by the Owner for Convenience
14.4
Termination of the Architect
2.3.3
Termination of the Contractor Employment
14.2.2

TERMINATION OR SUSPENSION OF THE CONTRACT
14
Tests and Inspections
3.1.3, 3.3.3, 3.7.1, 4.2.2, 4.2.6, 4.2.9, 9.4.2, 9.8.3,
9.9.2, 9.10.1, 10.3.2, 12.2.1, 13.4
TIME
8
Time, Delays and Extensions of
3.2.4, 3.7.4, 5.2.3, 7.2.1, 7.3.1, 7.4, 8.3, 9.5.1, 9.7,
10.3.2, 10.4, 14.3.2, 15.1.6, 15.2.5

Time Limits
2.1.2, 2.2, 2.5, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2,
5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1,
9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 12.2, 13.4, 14, 15.1.2,
15.1.3, 15.4
Time Limits on Claims
3.7.4, 10.2.8, 15.1.2, 15.1.3
Title to Work
9.3.2, 9.3.3
UNCOVERING AND CORRECTION OF WORK
12
Uncovering of Work
12.1
Unforeseen Conditions, Concealed or Unknown
3.7.4, 8.3.1, 10.3
Unit Prices
7.3.3.2, 9.1.2
Use of Documents
1.1.1, 1.5, 2.3.6, 3.12.6, 5.3
Use of Site
3.13, 6.1.1, 6.2.1
Values, Schedule of
9.2, 9.3.1
Waiver of Claims by the Architect
13.3.2
Waiver of Claims by the Contractor
9.10.5, 13.3.2, 15.1.7
Waiver of Claims by the Owner
9.9.3, 9.10.3, 9.10.4, 12.2.2.1, 13.3.2, 14.2.4, 15.1.7
Waiver of Consequential Damages
14.2.4, 15.1.7
Waiver of Liens
9.3, 9.10.2, 9.10.4
Waivers of Subrogation
6.1.1, 11.3
Warranty
3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.2, 9.10.4, 12.2.2,
15.1.2
Weather Delays
8.3, 15.1.6.2
Work, Definition of
1.1.3
Written Consent
1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3,
13.2, 13.3.2, 15.4.4.2
Written Interpretations
4.2.11, 4.2.12
Written Orders
1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

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

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

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

§ 1.1.4 The Project

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

§ 1.1.5 The Drawings

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

§ 1.1.6 The Specifications

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

Commented [KN1]: Purpose for adding "contained in Proj Man"? Addenda? What if specs are on drawings?

§ 1.1.7 Instruments of Service

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

§ 1.1.8 Initial Decision Maker

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

§ 1.1.9 Definition of "Certify"

As used herein, the word "certify" shall be an expression of the Architect's professional opinion to the best of its information, knowledge and belief, and does not constitute a warranty or guarantee by the Architect.

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§ 1.2 Correlation and Intent of the Contract Documents

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

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

§ 1.2.1.2 In the event of conflicts or discrepancies among Contract Documents, interpretations will give precedence in the following order: (1) The Agreement; (2) Addenda, with those of later date having precedence over those of earlier date; (3) General Conditions; and (4) Specifications and (5) Drawings. If there is any inconsistency between the Drawings, Schedules, or Specifications, the Contractor shall make an inquiry to the Architect and Owner to determine how to proceed. Unless otherwise order in writing by the Architect or the Owner, the Contractor shall provide the better quality of, or greater quantity of, any work or materials, as reasonably interpreted by the Architect or the Owner, at no change in the Contract Sum or Contract Time. In the event that Work is shown on Drawings but not contained in the Specifications or Schedules or contained in the Specifications or Schedules but not shown on the Drawings, the Work shown shall be provided at no change in the Contract Sum or Contract Time, according to the Specifications or Drawings to be issued by the Architect and consistent with and reasonably inferable from the Work shown.

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

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

§ 1.3 Capitalization

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

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. Where an article, device or piece of equipment is referred to in singular number, such reference applies to all such articles shown on drawings or required to complete the installation.

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

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

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

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§ 1.6 Notice

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

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

§ 1.7 Digital Data Use and Transmission

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

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

§ 1.9 Execution of Contract Execution of the Contract by the Contractor is a representation that the Contract Documents are sufficient to have enabled the Contractor to determine the cost of the Work thereof, to enter into the Contract, and to accomplish the Work for an amount not in excess of the Contract Sum within the Contract Time provided for in the Contract Documents. The Contractor further represents and warrants that prior to execution of the Contract it has visited and examined the Project site, examined all physical, legal, and other conditions affecting the Work and is fully familiar with all of the conditions affecting the same, including without limitation (1) the nature, location and character of the general area in which the Project is located, including all soils, structures and obstructions thereon and thereunder affecting the Work, both natural and man-made; (2) the nature, location and character of the general area in which the Project is located including without limitation, its climactic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; and (3) the quality and quantity of all materials, supplies, tools, equipment, labor, and professional services necessary to complete the Work in the manner and within the cost and time frame required by 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 The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 Evidence of the Owner's Financial Arrangements

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

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12

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

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

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

§ 2.3 Information and Services Required of the Owner

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

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

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

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Such surveys and the drawings show physical characteristics and utility locations based upon information readily available at the time of their preparation. To the extent the surveys or drawings depict expected location of underground utilities or wires, pipes, or similar plumbing or electrical locations which are hidden behind walls, the Contractor understands and assumes the risk that the exact locations may be somewhat different. The Contractor shall use care in exploring and locating such underground or behind wall utilities, plumbing, and electrical runs and shall adjust any necessary Work or connections related to such existing utility, plumbing, and electrical locations without additional costs to the Owner.

§ 2.3.4.1 The Contractor shall be fully responsible for performing all utilities investigation and location work to determine the precise locations thereof. The Contractor shall exercise the greatest care possible not to damage or interrupt utilities services of any and every kind or nature. The Contractor shall have and bear the full risk of loss of any and all sorts arising out of its Work which directly or indirectly harms or damages any utilities or utilities services, or causes or contributes to damages of any and all kind or nature, including, without limitation, all special, incidental and consequential damages (such as lost profits and business interruption, for instance).

§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and

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relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

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

§ 2.4 Owner's Right to Stop the Work

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

§ 2.5 Owner's Right to Carry Out the Work

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. In the event deficiencies threaten the health or safety of employees or occupants, the Owner may proceed to correct such deficiencies with such notice to the Contractor as is reasonable under the circumstances. When the Owner has undertaken to carry out a portion of the Work prior to final acceptance of the Contract, an appropriate Modification shall be issued deducting from payments then or thereafter due the Contractor for cost of correcting such deficiencies, including compensation for the Architect's additional service and expenses made necessary by such default, neglect or failure; and the amounts charged to the Contractor are subject to the prior approval of the Architect. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

§ 2.6 Owner's Rights and Responsibilities

§ 2.6.1 The Owner shall have the authority and discretion to call, schedule, and conduct job meetings, to be attended by the Contractor and representatives of his subcontractors, to discuss such matters as administrative procedures, progress, problems, and scheduling.

§ 2.6.2 The Owner will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Paragraph 3.3. The Owner will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents. The Owner 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 performing portions of the Work.

§ 2.6.3 In the exercise of the Owner's right to carry out the Work under Paragraph 2.4, the Owner shall have the right to use the Owner's own forces or hire another Contractor to carry out such work.

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. The Contractor shall also be responsible for the quality of the Work, quality of the finish, performance of subcontractors, and all problems with equipment startup and performance. Any and all problems associated with these areas from the date of the Notice to Proceed until the end of the one-year correction period shall be remedied by the Contractor at no additional expense to the Owner.

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

§ 3.2 Review of Contract Documents and Field Conditions by Contractor

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to the entirety of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. The Contractor shall at once report to the Architect errors, inconsistencies or omissions discovered. The contractor shall not be liable to the Owner or the Architect for damage resulting in errors, inconsistencies or omissions in the Contract Documents or the Owner Furnished Information, which reasonably would not have been discovered by a prudent and experienced Contractor, unless the Contractor recognized, or reasonably should have recognized, such error, inconsistency or omission and failed to report it to the Architect. If the Contractor performs any construction activity, which Contractor knows or reasonably should have known involves an error, inconsistency or omission in the Contract Documents or the Owner Furnished Information, the Contractor shall assume complete responsibility for such performance and shall bear the full amount of the attributable cost for correction, as well as all consequential damages resulting therefrom. THE FAILURE OF THE CONTRACTOR FULLY TO ACQUAINT ITSELF WITH ANY APPLICABLE SITE CONDITION, OR ANY PROVISION OF THE CONTRACT DOCUMENTS SHALL NOT IN ANY WAY RELIEVE IT FROM THE RESPONSIBILITY OF PERFORMING THE WORK IN ACCORDANCE WITH THE CONTRACT DOCUMENTS FOR THE CONTRACT SUM AND WITHIN THE CONTRACT TIME.

§ 3.2.3 INTENTIONALLY DELETED

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Section 3.2.2, the Contractor shall submit Claims as provided in Article 15 and all Subparagraphs and Sub-Subparagraphs thereof. If the Contractor fails to perform the obligations of Sections 3.2.1 or 3.2.2, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations (which costs and damages are acknowledged by the parties to be direct damages and not consequential damages waived by operation of Subparagraph 15.1.7 thereof). The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, unless the Contractor recognized or reasonably could have recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect.

§ 3.2.5 The Contractor shall allow a minimum of 7 working days for the response to written request for information. If an RFI is transmitted to the Architect after 1:00 p.m. on Friday of any week or the day before a holiday, the day count shall begin at 8:00 a.m. on the following working day.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures. The Contractor will establish and maintain existing lot lines, restrictions and benchmarks shown on the drawings. The Contractor shall establish and maintain all other line levels and bench marks necessary for the execution of the Work, and take such steps as are necessary to prevent their dislocation or

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15

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destruction. The Contractor shall employ a professional land surveyor registered in the State of Washington to lay out the Work and be responsible for the accuracy of same.

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

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

§ 3.3.4 The Contractor has the responsibility to ensure that all of its employees, Subcontractors, suppliers and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions and that they provide materials on time. The Contractor shall coordinate its Work with that of all others on the Project including deliveries, storage, installations, and construction utilities. The Contractor shall be responsible for the space requirements, locations and routing of its equipment. In areas and locations where the proper and most effective space requirements, locations, and routing cannot be made as indicated, the Contractor shall meet with the Architect and all others involved, before installation, to plan the most effective and efficient method of overall installation.

§ 3.4 Labor and Materials

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

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

§ 3.4.2.1 After the Contract has been executed, the Owner and the Architect may consider a formal request for the substitution of the products in place of those specified only under exceptional conditions. By making requests for substitutions, the Contractor: (1) Represents that the Contractor has personally investigated the proposed substitute product and determined it is equal or superior in all respects to that specified; (2) represents the Contractor will provide the same or greater warranty for the substitution that the Contractor would for the specified; (3) certifies the cost data presented is complete and includes all related costs under this Contract except the Architect's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and (4) will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

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

§ 3.5 Warranty

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

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completion, final acceptance and final payment. This warranty is in addition to Contractor's one-year correction obligations under Article 12.

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

§ 3.5.3 In addition to Article 12 herein, the Contractor explicitly understands that fully functional equipment, systems and furnishings are critical to the successful completion of constructing this project. As such, the Contractor hereby accepts all warranty responsibility for all such components (specifically including disputes between subcontractors) as specified by the Project Manual. The Contractor will not be released from responsibility for equipment, systems, and furnishings placed by the Contractor and/or all subcontractors regardless of the cause unless and until the following process is strictly adhered to. The following process does not relieve the Contractor from requirements of Article 12 herein, or relieve the Contractor if a dispute between two or more subcontractors exists, nor does the process preclude the Owner or the Contractor from seeking other remedies available by law.

§ 3.5.4 Warranties must be obtained from each subcontractor for each item or, where appropriate, each set of equipment/system/finish installed/used in the facility. Warranties must contain the responsible subcontractor and/or supplier's name, effective beginning date of warranty (which in all but exceptional cases should be the date of the Project's substantial completion), the period of warranty time, and a description of the product/equipment being warranted. In many cases, the standard warranties available from suppliers will meet the requirements of form and content and will be acceptable to the Owner. Should a standard warranty not be available, the Contractor shall obtain said warranty with the content as stated above. The Contractor shall endeavor to obtain warranties prior to installation of equipment, systems or furnishings and review with the Architect and/or Owner. No later than upon substantial completion, all warranties shall be organized in a bound manual and submitted to the Architect and Owner.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. Taxes to be paid by Contractor include those imposed by federal, state, county, and city governments, excepting only real estate taxes on the property. State, county, and city retail sales tax are not permitted to be included in the proposal sums; the Owner shall pay sales taxes proportionately with each periodic and final estimate in addition to the amount allowed on the payment certificate and Contractor shall pay such taxes to the authority as required by law.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, utility connection fees, 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. The Owner will pay fees as indicated in paragraph 2.3.1.

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

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

§ 3.7.4 Concealed or Unknown Conditions

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or

Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

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

§ 3.7.6 If the Contractor performs Work, (including, without limitation, the installation of any materials or equipment) that it knows or reasonably should have known is contrary to laws, statutes, ordinances, building codes, or rules and regulations, the Contractor shall assume full responsibility for such Work and shall bear all costs attributable to the correction thereof or related thereto (including fines, penalties and all consequential damages), which costs shall not be considered consequential damages waived by operation of Subparagraph 15.1.7 hereof.

§ 3.7.7 The project shall conform to all codes and ordinances currently in effect in the local jurisdiction, and the State of Washington. At a minimum, some of these codes are: International Building Code, International Fire Code, Uniform Plumbing Code, International Mechanical Code, ANSI A-117.1, National Electrical Code, NFPA, Washington State Building Code, Washington State Non-Residential Energy Code, Americans With Disabilities Act (ADA), Applicable State of Washington Labor and Industries requirements, and Applicable Washington State Department of Health, Construction Review requirements.

§ 3.7.8 Before commencement of work on this public works contract, the Contractor shall file with the Owner and the Director of Labor and Industries a notarized Statement of Intent to Pay Prevailing Wages including fringe benefits for itself and all subcontractors; to be followed at the conclusion of the contract, before release of the retained percentage, with the submission of an Affidavit of Wages Paid for certification by the Director, Department of Labor and Industries, in accordance with RCW 39.12.040.

§ 3.7.9 Statements of Intent to Pay Prevailing Wages forwarded to the State Agency or department shall be accompanied by a listing of each Contractor and all their subcontractors. Each such listing shall be identified with the State project number.

§ 3.7.10 In accordance with RCW 39.12.040 the retained percentage withheld on a public works contract cannot be paid until there is on file an Affidavit of Wages Paid, properly certified by the Department of Labor and Industries, for the Contractor and each of his subcontractors. Contractors are responsible for obtaining and filing Affidavits of their subcontractors.

§ 3.7.11 Prior to commencement of the Work, the Contractor shall post on site at a location readily visible to workers a Notice containing a copy of Statement of Intent to Pay Prevailing Wages and the address/telephone number of industrial statistician of WSDLI for the purpose of making inquiries or complaints.

§ 3.7.12 The Contractor shall comply with the hours of labor requirements set forth in Ch. 49.28 RCW.

§ 3.7.13 The Contractor shall maintain a hazardous material survey and shall comply with safety requirements for all trench excavations.

§ 3.7.14 Pursuant to RCW 51.12.050, the Owner shall have the right, but not the obligation, to make direct payments into the accident fund maintained by WSDLI and under the Industrial Insurance Act on behalf of the Contractor and all subcontractors to offset the amount of such direct payments from the Contract Sum and Progress Payments to which the Contractor is entitled. With each application for payment the Contractor shall furnish copies of its certified payroll and those of the subcontractors.

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§ 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 in sufficient time to avoid delay in the Work.

§ 3.9 Superintendent and Project Manager

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

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

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

§ 3.9.4 The Contractor's Project Manager shall be the principal contact person for Contractor and shall have primary responsibility for coordinating and supervising all services and work performed by Contractor under the Contract Documents. Project Manager shall sign all change orders, applications for payments and Certificates of Substantial Completion and Final Completion to indicate his or her review and approval thereof.

§ 3.9.5 Project Manager and Project Superintendent shall not be discharged or replaced without the prior written consent of Owner, which shall not be unreasonably withheld or delayed. The Project Superintendent shall be on site fulltime until Substantial Completion is achieved.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule (or "Project Schedule") for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The Project Schedule shall utilize scheduling software acceptable to Owner in its sole discretion and shall clearly show the critical path activities and indicate areas of responsibility and any other pertinent information deemed necessary by the Owner. Contractor shall produce the Project Schedule in arrow diagram, or bar chart format, or in such other format as the Owner may from time to time request. The Project Schedule shall provide for expeditious and practicable execution of the Work. The Project Schedule shall not be modified or extended without the prior written approval of the Owner in each instance.

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§ 3.10.1.1 The Project Schedule shall be reviewed on a weekly basis and updated by Contractor monthly for submittal with Applications for Payment. Each updated Project Schedule shall contain a comparison of actual progress with the estimated progress for such point in time stated in the original Project Schedule. If any Project Schedule submitted sets forth a date for Substantial Completion for the Work or any phase of the Work beyond the Date(s) of Substantial Completion established in the Contract (as the same may be extended as provided in the Contract Documents), then Contractor shall submit to the Architect and Owner for their review and approval a narrative description of the means and methods which Contractor proposes to employ to expedite the progress of the Work to ensure timely completion of the various Phases of the Work as well as the totality of the Work. If the Owner or the Architect are not responsible for the delay, the Contractor shall take all necessary action to bring the Project back into compliance with the Project Schedule including, without limitation, increasing the number of personnel on the Project and implementing overtime and double shifts, and in that event, the Contractor shall not be entitled to an adjustment in the Contract Sum, Contract Time or the Project Schedule.

§ 3.10.2 The Contractor shall prepare, and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals.

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

§ 3.10.4 Contractor shall promptly notify Owner and Architect in writing of any proposed changes in the Project Schedule or the Contract Time or of any event which could delay performance or supplying of any item of the Work and shall indicate the expected duration of the delay, the anticipated effect of the delay on the Project Schedule and the action being taken to correct the delay situation.

§ 3.10.4.1 CONTRACTOR SHALL GIVE WRITTEN NOTICE TO OWNER OF ANY DELAY OR ASSOCIATED CLAIM PURSUANT TO ARTICLE 15. FAILURE OF CONTRACTOR TO PROVIDE THE PROJECT SCHEDULE(S) AND UPDATE(S) THERETO CALLED FOR UNDER THE CONTRACT DOCUMENTS, AND PARTICULARLY WITHOUT LIMITATION UNDER PARAGRAPH 3.10, IS AGREED BY CONTRACTOR TO CONSTITUTE A FAILURE TO GIVE PROPER NOTICE OF ANY DELAY OR IMPACT OR ASSOCIATED CLAIM, AND THUS SHALL CONSTITUTE AN ABSOLUTE AND UNCONDITIONAL WAIVER, BAR AND RELEASE OF SUCH DELAY OR IMPACT OR ASSOCIATED CLAIM FOR TIME OR MONEY OR OTHER RELIEF DUE TO LACK OF PROPER NOTICE.

§ 3.10.5 Contractor shall attain Final Completion of the Work in accordance with the Contract within thirty (30) days after the date of Substantial Completion.

§ 3.10.6 During the period starting with the date of commencement of the Work stated in the Contract and ending with the date for Final Completion of the Work, Contractor shall attend and participate in: (a) regularly scheduled project status meetings scheduled by Owner or by Architect to review progress of the Work, to discuss Contractor's progress reports, to obtain necessary Owner's or Architect's approval(s) and generally to keep Owner and Architect informed and involved in the decision-making process; and (b) regular on-site meetings scheduled by Owner or by Architect to review progress of the Work and other pertinent materials. At each project status meeting, the Contractor must present an updated three-week progress schedule which clearly updates and identifies the progress of the Project. Contractor shall furnish to Owner and Architect accurate written minutes of each meeting within 5 days thereafter. Owner and Architect's failure to correct such minutes shall not be deemed to represent their agreement that the minutes are accurate.

§ 3.11 Documents and Samples at the Site

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

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20

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§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

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

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

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

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

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

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions. The Contractor shall make any corrections required by the Architect and shall resubmit the required number of corrected copies of shop drawings or new samples. Re-submittal of shop drawings or samples necessitated by required corrections shall not be a cause for extension of time. No portion of the work requiring submission of shop drawings, product data, or samples shall be commenced until the submittal has been reviewed by the Architect. All such portions of the work shall be in accordance with the reviewed submittals.

§ 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.

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

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

§ 3.12.11 The Contractor shall keep any shop drawings, product data and samples, maintenance manuals, and training manuals available to the Owner during construction. Prior to Final Payment these drawings, data and samples, maintenance manuals, and training manuals will be turned over to the Owner as per section 3.11. As reasonably possible, the Contractor will help facilitate Owner training on installed equipment, systems, and materials.

§ 3.13 Use of Site

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

§ 3.13.2 The Contractor is expected to provide water, electricity and lighting required for construction operation with branch wiring and distribution boxes located as needed by the Contractor.

§ 3.13.3 The Contractor shall provide protection to construction, stored materials, and personal equipment from weather and possible vandalism or theft. Barriers to prevent public injury and/or entry during construction are mandatory.

§ 3.13.4 All temporary construction materials, equipment, and services shall be removed prior to substantial completion inspection. Any damage caused by the construction or use of temporary services shall be repaired to a similar condition prior to construction.

§ 3.13.5 The Contractor is responsible for all utility hookups and their related costs.

§ 3.13.6 Contractor shall protect from damage all existing structures, equipment, improvements, utilities, and vegetation at or near the Project site: and on adjacent property of any third party, the locations of which are made known to or should be known by Contractor. Contractor shall repair any damage, including that to the property of a third party, resulting from failure to comply with the requirements of the Contract Documents or failure to exercise reasonable care in performing the Work, at Contractor's sole cost and on Contractor's own time. If Contractor fails or refuses to repair the damage within a reasonable period of time, not to exceed thirty (30) days. Owner may have the necessary work performed and charge the cost thereof and all consequential and impact damages resulting therefrom to Contractor.

§ 3.13.7 The Contractor acknowledges that the Project site is crowded and that Contractor has already taken such fact into account in agreeing to the Contract Sum and Contract Time. The Contractor shall diligently coordinate the Work with the Owner's and others' use of the Project site and adjacent areas, and the Contractor otherwise shall take all reasonable actions to minimize any interference or disruption of the operations of the Owner and others.

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§ 3.13.8 Contractor shall assure free, convenient, unencumbered and direct access to and through the buildings and surrounding common areas on or in the vicinity of the Project site. Contractor shall keep the Project site in a clean and neat condition. To the extent practicable, Contractor shall keep the Project Site and surrounding areas free of dust and debris. Contractor shall also ensure that its employees, and Subcontractors and suppliers and their employees, are familiar with and strictly comply with a Site Use/Logistic Plan, including, without limitation, any parking restrictions set forth therein, which plan Contractor will establish prior to Commencement of the Work and will update monthly. Contractor will submit said plan and all updates thereto to Owner and Architect for their approval prior to Commencement of the Work.

§ 3.13.9 The Contractor shall assign space to its Subcontractors for storage of their materials, and storage of all materials shall be confined to those spaces. Should the Owner direct the Contractor at any time to move such materials, the Contractor shall move the same as directed by the Owner upon reasonable notice, which cost shall be borne solely by Contractor and not Owner.

§ 3.13.10 No signs shall be erected or maintained on the Project site displaying the name of the Contractor or its subcontractors or suppliers without the written consent of the Owner.

§ 3.14 Cutting and Patching

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

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

§ 3.15 Cleaning Up

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

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

§ 3.15.3 A final cleaning shall be made to remove items such as grease, dirt, stains, label, and other foreign materials from the finished product/construction. Do not remove certifying labels such as hazard labels or equipment data labels. Marred surfaces shall be replaced, repaired, patched, or touched up to a quality finish/new condition.

§ 3.16 Access to Work

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

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

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

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

§ 3.18.3 EXTENT OF INDEMNIFICATION. It is the intent of the indemnification paragraphs herein above to require the Contractor to indemnify the named parties to the fullest extent permitted by RCW 4.24.115 as it now exists or is hereafter amended. It is specifically intended that the Contractor's indemnity shall cover allegations of concurrent negligence of indemnitor and indemnitee, their agent or employees; and that the duty to so indemnify shall cover all costs of defense of such claims. The Contractor's indemnity obligations shall not cover allegations or adjudicated determinations that the liability arises from the sole negligence of an indemnitee. In claims against any indemnitee 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 hereunder shall not be limited by the Washington State worker's compensation law, RCW Title 51. The Contractor shall provide insurance covering such indemnity obligations subject to the terms and conditions provided in Article 11 including the naming of Owner and Architect as additional insured upon such policy. Only to the extent an indemnification is not covered by insurance, the signing of the Contract by the Contractor shall operate as a waiver of the Contractor's immunity from suit under RCW Title 51. This waiver does not apply to a claim made by an employee of the Contractor against the Contractor itself.

ARTICLE 4 ARCHITECT

§ 4.1 General

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

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

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative (1) during construction, (2) until Final Payment is due, and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions in the Contract. The presence of the Architect or any of the Architect's representatives or consultants on the site, their knowledge, their acts or omissions, their statements or silence shall not give rise to any apparent authority beyond that authority specifically stated in the Contract Documents; nor shall such operate as a waiver of any of the requirements of the Contract Documents including the requirements for any written notice required by 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

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24

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for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

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

§ 4.2.4 Communications

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols. Communications between the Contractor or subcontractor and Architect's consultants, Owner's maintenance staff or occupants of occupied buildings shall be limited to matters of information, security arrangements, or incidental access to occupied buildings; but in no case shall such communication relate to or authorize changes to the Work or give rise to claims for additional work. Should any party to the Contract believe unauthorized communications are being made by any person, such shall be reported in writing to the Architect and Contractor's Superintendent.

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

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

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

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

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

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25

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

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

§ 4.2.11 The Architect will interpret and make recommendations 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. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until fifteen (15) days after written request is made for them. The Architect's interpretations and recommendations shall be made no later than fifteen (15) days after a written request is submitted. Unless a party delivers written notice of rejection of the Architect's interpretation or recommendation to the other party and the Architect within seven (7) days after the Architect's interpretation or recommendation is issued to both parties, the interpretation or recommendation shall be deemed approved by such party.

§ 4.2.12 Interpretations and recommendations 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 recommendations, 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 recommendations rendered in good faith.

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

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

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

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

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

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

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but

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rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

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

§ 5.2.5 The provisions of subparagraphs 5.2.1 through 5.2.4 shall be superseded to the extent of conflicting provisions, if any, in; (1) the Form of Proposal, if listing of subcontractors is required therein; or (2) the Affirmative Action requirements of the Owner.

§ 5.3 Subcontractual Relations

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

§ 5.3.2 Contractor shall first pay out of payments received under this Agreement (and secure the discharge of any claims or liens asserted by) all persons furnishing labor, equipment, materials or other items in connection with the performance of the Work (including, but not limited to, any Subcontractors and suppliers). Contractor agrees that, provided Owner has paid Contractor in accordance with this Agreement, Owner has the right to a lien and claim free Project. Owner may, at its discretion, make joint payments to Contractor and its creditors. Owner reserves the right in the event any claim is made against Owner arising out of any obligation incurred by Contractor under this Agreement or in connection with performance of the Work, to withhold payments due to or become due, to Contractor, in such amounts as are necessary to cover the claim(s) and any costs or expenses arising in connection with the legal settlement thereof. Contractor further agrees that if any lien or claim is filed or made against the job site, Project or Owner as a result of Contractor's failure to meet its obligations, Owner upon fourteen (14) days prior written notice shall have the right to settle said lien or claim directly and deduct the cost of the settlement from payments due Contractor (and, if the amount still due Contractor is insufficient to cover such costs, to recover the shortfall from Contractor directly), provided that Contractor within such fourteen (14) day period has not settled such lien or claim or bonded around such lien or claim in a manner satisfactory to Owner.

§ 5.3.3 Contractor shall require that all agreements with Subcontractors specify that Subcontractors shall carry liability and other insurance that meet the requirements of this Contract and that names Owner as an additional insured. Provided however that minimum limits for Subcontractors may be reduced by Owner at Owner's sole discretion. Each subcontract shall contain a provision whereby the Subcontractor agrees to perform its subcontract obligations directly to Owner, should Owner elect to take over the Work following termination of Contractor and assume such subcontract. Contractor shall be responsible for the preparation of subcontracts and the payment of all Subcontractors. Contractor shall submit to Owner a copy of each subcontract with each Subcontractor, promptly following execution.

§ 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

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

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

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

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

§ 6.2 Mutual Responsibility

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

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

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

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responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

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

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

§ 6.2.6 In the event there is more than one Contractor engaged on the project site, each such contractor shall be responsible to the other for damages to the Work, injury to any person or persons, or for any loss, cost, claims or damages arising out of or in connection with the Work required by its Contract or any loss, cost, expense, or damage caused by Contractor's neglect or failure to finish or satisfactorily complete its part of the Work within the time prescribed. In all events, the provisions of Paragraph 3.18 shall be applicable.

§ 6.2.7 If such separate Contractor sues or initiates a proceeding against the Owner, and/or Architect on account of any damage alleged to have been caused by a Contractor, the Owner shall notify such Contractor who shall defend such proceedings at this own expense, and if any judgment or award against the Owner, and/or the Architect arises therefrom, the Contractor shall pay or satisfy it and shall reimburse the Owner, and/or the Architect for all attorney fees, court and other costs which the Owner, and/or the Architect have incurred.

§ 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 Contractor shall not be entitled to any adjustment to the Contract Time or the Contract Sum or any other additional compensation or extensions of time for work performed which is additional to or different from the Work specified in the Contract Documents unless such additional or different work is authorized by a Change Order or a Construction Change Directive signed by Owner prior to the additional or different work being commenced. Any change request first submitted after the work is performed will not be accepted or paid. To be valid, Change Orders will be prepared using the KDA standard Change Order form with no modifications and Construction Change Directives will be prepared using the standard KDA Construction Change Directive form with no modifications. The procedures and methods set forth in the Contract Documents for determining and establishing adjustments to the Contract Sum and Contract Time shall also govern any Contractor Claims for additional compensation and/or extensions of time for performance. The Contractor shall be responsible for notifying the bonding and insurance company(s) of changes in the Work.

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

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

§ 7.1.4 The Contractor shall mark all changes to construction on a clean set of record drawings. This set of marked drawings shall be kept up to date at all times and available for inspection by the Architect or Owner's Project Director.

§ 7.2 Change Orders

§ 7.2.1 The Owner and Contractor specifically acknowledge and agree that it is contemplated that Changes in the Work will occur during the course of the Work. A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:

- .1 a change in the Work;
- .2 the amount of the adjustment, if any, in the Contract Sum; and

.3 the extent of the adjustment, if any, in the Contract Time.

The parties agree and acknowledge that the adjustments to Contract Sum and Time, if any, contained in a Change Order shall constitute the total and complete compensation and remedy for the Change in the Work, including any effect of the individual change and any cumulative effects of prior Change Orders on the Work as a whole, and all direct and indirect costs of whatsoever kind or nature, including, without limitation, overhead, extended overhead, profit, impact costs, ripple costs, delay costs, inefficiency costs, and all other special, incidental and consequential damages

§ 7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

§ 7.2.3 The allowances for limitations on overhead and profit as provided in Paragraph 7.3 (as amended and supplemented) shall apply to Change Orders and cost proposal changes.

§ 7.3 Construction Change Directives

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

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

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

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

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

- 1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- 2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- 3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others. Said rental prices charged by Contractor not to exceed rental rates generally available in the community;
- 4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change.

The term "reasonable allowance for overhead and profit" as used in this paragraph and elsewhere in the Contract Documents is defined as and shall be limited to an allowance, which shall not exceed an aggregate of thirty percent (30%) of the net increase in allowable costs. Such allowances for overhead and profit shall be limited to the following: (a) For the Contractor, for any work performed by the Contractor's own forces, twelve percent (12%) of the cost, (b) For the Contractor, for work performed by a subcontractor, eight percent (8%) of the amount due the subcontractor, (c) For each subcontractor involved, for any work performed by that subcontractor's own forces, twelve percent (12%) of the cost, (d) For each subcontractor, for work performed by sub-subcontractors, five percent (5%) of the amount due

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the sub-subcontractor, (e) Cost to which overhead and profit is to be applied shall be determined in accordance with subparagraphs 7.3.4.1 through 7.3.4.4.(f) In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials, and subcontractors. Where major cost items are subcontracts, the subcontractor shall provide through the Contractor the itemization of their proposals, (g) The costs and allowances for overhead and profit as calculated in accordance with this paragraph shall constitute the Contractor's full entitlement to compensations or equitable adjustment for the changed work, relating thereto, or resulting therefrom. No additional compensation shall be allowed for items including, but not limited to, direct, indirect or impact damages, costs of delay or acceleration, home office overhead, small tools, expendables, consumable supplies, fuel, oil, maintenance on equipment, safety, document review and record drawing updates. Additional costs of project management, supervision and field office personnel of the Contractor and its subcontractors of every tier directly or indirectly attributable to change in the Work (but excluding the cost of direct field supervision relating to extensions of Contract Time) shall be included in "overhead and profit" as calculated above.

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

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

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

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

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

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive. In the event the Owner or Contractor do not agree with the determination of the Architect, in any subsequent proceedings or dispute resolution, the total, compensation or credit for the changed work, relating thereto, or resulting therefrom shall be limited to costs (plus overhead and profit) as described and limited in Paragraph 7.3.6 herein above as supplemented. If either the Contractor or Owner disagrees with the Architect's determination of the change in the dollar amount or change in the Contract time, a written notice of claim must be submitted to the Architect within twenty-one (21) days after the issuance of the Architect's determination. Failure to timely submit such written notice of claim shall operate as waiver of any right to adjustment of the Contract sum or time other than as contained in the Architect's previously issued determination.

§ 7.4 Minor Changes in the Work

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

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prior notice to the Architect that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

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

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

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time. After Substantial Completion the Contractor shall carry the work forward expeditiously with adequate forces and shall achieve final completion, satisfying all requirements necessary for the Owner's acceptance of the project, within thirty (30) calendar days after Substantial Completion.

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the progress of the Work by an act or neglect of the Owner or Architect, or by their employees, or of a separate contractor employed by the Owner; or by changes in the Work; or by occurrences beyond the control and without the fault or negligence of the Contractor and which by the exercise of reasonable diligence the Contractor is unable to prevent or provide against, including labor disputes (not including disputes to the work force of, or provided by, the Contractor or its subcontractors of any tier), fire, unusual delay in deliveries not reasonably anticipatable, unavoidable casualties or other occurrence which the Architect, subject to the Owner's approval, determines may justify delay, then provided the Contractor is in compliance with Article 15 hereof, the Contract Time shall be extended by Change Order or Construction Change Directive for the length of time the overall completion of the Work is actually and directly delayed by such occurrence as determined by the Architect and approved by the Owner (such approval not to be unreasonably withheld, delayed, or conditioned). Such extension of Contract Time shall be net of any delays caused by or due to the fault or negligence of the Contractor or which are otherwise the responsibility of the Contractor and shall also be net of any contingency or "float" time allowance included in the Contractor's construction schedule. "Float" time shall belong to the Project, rather than to the Owner or the Contractor exclusively. The Contractor shall in the event of any occurrence likely to cause a delay, cooperate in good faith with the Architect and the Owner to minimize and mitigate the impact of any such occurrence and do all things reasonable under the circumstances to achieve this goal.

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

§ 8.3.3 Contractor shall be entitled to an equitable adjustment in the Contract Time for changes in the time of performance directly attributable to a Force Majeure Event, as defined in subparagraph 8.3.4 below, provided it makes a notice of Claim in accordance with Article 15. However, Contractor shall not be entitled to any adjustment in the Contract Sum resulting from a Force Majeure Event. Contractor shall be entitled to an equitable adjustment in Contract Time, and may be entitled to an equitable adjustment in Contract Sum, if the cost of Contractor's performance or the length of time of overall completion of the Work is increased due to the fault or negligence of the Owner, provide the Contractor makes a notice of claim in accordance with subparagraph 15.1.5. Contractor shall not be entitled to any adjustment in Contract Time or in the Contract Sum for any delay or failure of performance to the extent such delay or failure was caused or contributed to by Contractor or anyone for whose acts Contractor is responsible. To the extent any delay or failure of performance was concurrently caused by the Owner and Contractor,

Contractor shall not be entitled to an adjustment in the Contract Time or to any adjustment in Contract Sum. Contractor shall make all reasonable efforts to prevent and mitigate the effects of any delay, whether occasioned by a Force Majeure Event or otherwise. The parties acknowledge and agree that the Contract Documents do not impermissibly preclude recovery of delay damages by either party.

§ 8.3.4 As used herein, a Force Majeure Event is an event, circumstance or condition that was unforeseeable and beyond the control of either party or their respective contractors, subcontractors, or suppliers at any tier below them. Force Majeure Events include but are not limited to:

- .1 Acts of God or the public enemy;
- .2 Acts or omissions of any government entity;
- .3 Fire or other casualty for which Contractor or its subcontractors at any tier were not responsible;
- .4 Quarantine or epidemic;
- .5 Strike or defensive lockout; and
- .6 Unusually severe weather conditions which could not have been reasonably anticipated.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. Any changes to the schedule of values shall be submitted to the Architect and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment. The Schedule of Values shall allocate two percent (2%) of the Contract sum to a category which shall be entitled "Achieving Final Completion." Such sum shall cover all work and services necessary for the Contractor to proceed from Substantial Completion through satisfying all requirements for Owner acceptance, including completion of all punch list work and the requirements contained in Section 9.10. No portion of such sum shall be due the Contractor until all requirements for Owner acceptance are satisfied.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. If an Application for Payment is submitted on a Saturday, Sunday or holiday, the period for making the Progress Payment shall not commence until the next business day occurring after the Application for Payment was submitted. The Application for Payment shall be in a format acceptable to the Architect and the Owner. Each item shall show its total scheduled value, value of previous applications, value of the application, percentage completed, value completed and value yet to be completed. Values for materials and equipment stored offsite shall be shown in a separate column. All blanks and columns must be filled in, including every percentage completed figure. Any allowance included in the Application for Payment shall be separately itemized with supporting data attached. The Application for Payment shall act as a representation and certification by the Contractor that: there are no known mechanics' materialmen's or laborers' liens or claims or any other liens or claims outstanding or known to exist at the date of this Application; all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current Application and there is no known basis for the filing of any mechanics', materialmen's or laborers' liens or claim or any other lien or claim on the Work; and waivers and releases

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(called for under this Contract) from all subcontractors, laborers, and materialmen for work done and materials furnished have been obtained in such form as to contribute an effective waiver and release of all such liens and claims.

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

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

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

§ 9.3.3 The Contractor warrants and agrees that title to all Work will pass to the Owner upon receipt of payment therefore by the Contractor, free and clear of all liens, claims, security interests, or encumbrances whatsoever, that the vesting of such title shall not impose any obligations on the Owner or relieve the Contractor of any of its obligations under the Contract, that the Contractor shall remain responsible for damage to or loss of the Work, whether completed or under construction, until responsibility for the Work has been accepted by the Owner in the manner set forth in the Contract Documents, and that no Work covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing Work at the site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

§ 9.3.4 Attached to each Application for Payment for Progress Payment and Final Payment shall be executed Interim Lien or Claim Waivers and Releases in form acceptable to Owner and Architect from the Contractor and from each subcontractor and supplier of every tier who performed work or delivered materials or equipment for the period covered by the current Application for Payment and who are still performing work or delivering materials or equipment in connection with the Project; and executed Final Lien or Claim Waivers and Releases in form acceptable to Owner and Architect from Contractor and those subcontractors and suppliers of every tier who completed their work or delivery of materials or equipment during the period covered by the previous Application for Payment.

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1. The Architect shall include, in the written statement of specific reasons for withholding certification of payment, a statement of what remedial action must be taken by the Contractor to receive the amount for which certification is withheld. The Owner shall have until close of business of the eighth (8th) working day after the Architect's receipt of the Payment Request in which to provide in writing to Contractor and Architect the Owner's own statement of reasons and remedial action; provided that in the absence of Owner action within the stated time, the Owner shall be deemed, as of close of business on the eighth (8th) working day, to have adopted and ratified, as its own, the Architect's statement of reasons and remedial actions as required by RCW 39.76.011.

§ 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 site observations and evaluation of the Work and the data in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the

Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.4.3 Subject to partial payments as provided in Subparagraph 9.5.1., if an Application for Payment is disapproved by the Architect or is not certified by the Architect, Contractor shall promptly correct the deficiencies in the Application for Payment and resubmit an Application for Payment for those items of the Application for Payment previously disapproved or not certified. Such a resubmitted Application for Payment shall then be processed as a separate Application for Payment with the next monthly Application for Payment submitted.

§ 9.5 Decisions to Withhold Certification

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 repeated failure to carry out the Work in accordance with the Contract Documents; or
- .8 failure or refusal of the Contractor; to fully comply with requirements in the Contract Documents for preparation and submission of scheduling of the Work and updates thereof; failure to present affidavits pertaining to wages paid as required by statute; or failure to comply with any applicable equal employment or affirmative action requirements.

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

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

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

§ 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, and it has been approved by the Owner, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. The Owner shall withhold as retainage a sum equal to five percent (5%) of each such progress payment. The

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retainage, its management and payment shall be in accordance with RCW 60.28 as it now exists or is hereafter amended, and in accordance with other applicable laws of the State of Washington.

§ 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. Contractors and subcontractors are limited in the extent to which they may withhold retainage and they shall be governed by the provisions of RCW 60.28. The Architect or Owner may require as a condition to issuance of a progress payment proof of payments to subcontractors in accordance with the Contract Documents and applicable statutes. No work shall commence until the Contractor has submitted for Contractor and each subcontractor an approved "Statement of Intent to Pay Prevailing Wages." Each Application for payment shall include the Contractor's statement that the prevailing wages have been paid in accordance with the approved Statements of Intent.

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

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

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

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

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

§ 9.7 Failure of Payment

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

§ 9.8 Substantial Completion

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

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Work for its intended use. All Work other than incidental corrective or punch list Work and final cleaning shall be completed, including, but not limited to the following:

- (1) Obtain applicable occupancy permits, including fire/life safety systems and health department approval, pressure vessel permits, elevator permits, and similar approvals or certificates by governing authorities and franchised services, assuring the Owner's full access and use of completed Work.
- (2) Submit the Contractor's punch list of items to be completed or corrected and written request for inspection.
- (3) Complete final start-up, testing, and provide instruction and training sessions on all major building systems including HVAC and controls, intercom, data communications, fire alarm, telephone, fire sprinkler, security, and clocks, and establish a Date of Commissioning.
- (4) Make final changeover of locks and transmit new keys to the Owner, and advise the Owner of the changeover in security provisions.
- (5) Discontinue or change over and remove temporary facilities and services from the project site.
- (6) Advise the Owner on coordination of shifting insurance coverages, including proof of extended coverages as required.
- (7) Complete Final Cleaning.

The Work is not Substantially Complete unless the Owner and Architect reasonably judge that the Work can achieve Final Completion within thirty (30) days (or such other period of time as is specified in the Contract Documents), final cleaning has occurred, all designated systems and parts are commissioned and usable, including balancing of the HVAC system, utilities are connected and operating normally and training sessions have occurred, all required occupancy permits, pressure vessel permits, elevator permits, and similar approvals or certificates by governing authorities and franchised services, assuring the Owner's full access to the Work have been issued, O & M manuals, have been submitted for review, and the Work is accessible by normal vehicular and pedestrian traffic routes. The fact that the local jurisdiction may issue a certificate of occupancy or the owner may occupy the Work or a designated portion of the Project site does not indicate that the Work is Substantially Complete or is acceptable in whole or in part, nor does such occupation toll or change any liquidated damages due to the Owner.

§ 9.8.1.1 Date of Commissioning of Selected Equipment and Systems. The equipment and systems identified for commissioning in the Contract Documents are considered "Selected Equipment and Systems". When the Contractor considers that all Selected Equipment and Systems are complete, fully functional, ready for normal operation and functional performance testing, and all pre-commissioning checklists are completed, the Contractor shall so notify the Architect and Owner in writing, which shall be a minimum of fourteen (14) days prior to the Date of Substantial Completion (or such other date as may be established in the Contract Documents). A reasonable period shall be allowed for the Architect and commissioning agent to schedule and observe the functional performance tests of the systems identified in the Contract Documents. If the review discloses that any item is not in accordance with the requirements of the Contract Documents, the Contractor shall expeditiously, and before the Date of Commissioning, complete or correct such item upon notification by the Architect or commissioning agent. The Contractor shall then submit a request for another review to determine completion of those Selected Equipment and Systems and pay the costs associated with the re-review, including fees of the Architect, commissioning agent and their consultants. When all the Selected Equipment and Systems are complete, the Owner's commissioning agent will notify the Owner in writing, which shall establish the Date of Commissioning. Training of Owner personnel shall begin immediately after the Date of Commissioning and shall be conducted by appropriate Subcontractor personnel on site who are knowledgeable with the construction and operation of each system prior to departure of the installing entity from the site. Warranties on any Selected Equipment and Systems required by the Contract Documents shall commence on the Date of Commissioning, unless otherwise provided, but the Contractor shall retain the responsibility to maintain the system until Final Acceptance. The Date of Commissioning shall not have an effect on the duties of the parties at Substantial Completion.

§ 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. The Contractor shall proceed promptly to complete and correct the items on the list. 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.

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

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

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

§ 9.8.6 At the time the Contractor signs the Certificate of Substantial Completion, the Contractor shall cause to be attached thereto a written list identifying each claim that is outstanding and unresolved at that time. Any claim by the Contractor which is not so identified and attached to the Certificate of Substantial Completion is waived, except for: Contract sums not due then; retainage; and events which may occur after the signing of the Certificate of Substantial Completion.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect. Upon the issuance of a Certificate of Substantial Completion for any portion of the project, the Owner shall have the right unilaterally and without consent of the Contractor to occupy such portion of the Work; and the Contractor shall not be entitled to any additional compensation or adjustment in the contract sum for the direct or indirect results of such occupancy after substantial completion of that portion.

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

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

§ 9.10 Final Completion and Final Payment

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

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

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims. Retainage shall not be paid until the Contractor has obtained certification or approvals required by law, including the approval of the Department of Labor & Industries of "Affidavit of Wages Paid" and the certification of the Washington Department of Revenue regarding taxes pursuant to RCW 60.28.051. The disposition of retainage shall be fully subject to all rights and requirements stated in RCW 60.28. "Final Completion" "acceptance," and "completion of all contract work" shall mean passage of a resolution of acceptance by the Board of Commissioners. Such acceptance shall be due promptly upon the issuance of the Architect's final Certificate for Payment and Owner's receipt of Contractor's submissions required by this Section 9.10.

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

§ 9.10.6 Prior to submission of Final Payment, evidence of compliance with governing authorities shall be delivered to the Owner. Examples include such items as an Affidavit of Wages, Certificate of Inspection for mechanical work, Certificate of Inspection for electrical work and other special testing.

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. As part of this responsibility, Contractor shall develop a specific safety program for the Project, which Contractor will submit to Owner and Architect prior to Commencement of the Work. Contractor will update such program on a monthly basis and provide said updates to Owner and Architect. The safety program shall specifically address worker and public safety as related to the Project. Contractor shall implement, monitor and maintain the safety program in full compliance with all federal, state, and local regulations. Contractor shall have on staff a full time corporate safety director that shall provide guidance and direction to Contractor's staff concerning safety related issues. (The safety director need not be on site full time, but shall be expected to inspect the Project on no less than a weekly basis.)

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§ 10.2 Safety of Persons and Property

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

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

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

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

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

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

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

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

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.3 Hazardous Materials and Substances

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

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or

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substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

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

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

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

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

§ 10.4 Emergencies

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

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

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

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

§ 11.1.4 **Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

§ 11.2 Owner's Insurance

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

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

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

§ 11.3 Waivers of Subrogation

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

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

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

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

§ 11.5 Adjustment and Settlement of Insured Loss

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

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

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

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

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the

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43

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Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to commence and diligently prosecute the correction of nonconforming Work within (3) days of date of receipt of the notice from Owner, the Owner may correct it in accordance with Paragraph 2.4. In such a case, Contractor agrees to pay Owner all reasonable costs to correct nonconforming Work, plus interest thereon at the rate of the lesser of the maximum interest rate allowable under law or eighteen percent (18%) per annum from the date of each expenditure.

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

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

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

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

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

§ 12.3 Acceptance of Nonconforming Work

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

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

§ 13.1.1 In the event of any arbitration proceeding or litigation, the prevailing party shall be entitled to recover their costs and reasonable attorney fees from the losing party incurred in the arbitration or litigation proceedings, or an appeal therefrom.

§ 13.2 Successors and Assigns

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

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

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§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

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

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

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

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

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

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

§ 13.5 Interest

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

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

§ 14.1.1 The Contractor

(Paragraphs deleted)

shall have the right to terminate the Contract only under the circumstances and within the rights and remedies provided in RCW 60.28.080.

§ 14.1.2 If the entire Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents

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with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.1.3 For Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages in accordance with Subparagraph 14.4.1.

(Paragraph deleted)

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 is guilty of substantial breach of a provision of the Contract Documents;
- .5 fails to provide to Owner a Project Schedule, Project Schedule updates, certificates of insurance or any required payment and performance bond in the form and within the time required under the Contract Documents; or
- .6 fails to achieve Substantial Completion or Final Completion on or before the dates specified in the Contract Documents or otherwise fails to adhere to the Project Schedule in performing the Work.

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

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

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

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

§ 14.3 Suspension by the Owner for Convenience

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

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

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

Allowance for overhead and profit as provided in this Paragraph 14.3 shall be limited to those allowances provided in Paragraph 7.3 as supplemented.

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§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner reserves the right to terminate the Contractor at any time without cause or regard to fault or breach upon written notice to Contractor effective immediately unless otherwise provided in such notice. In the event of such termination, Owner shall be liable to Contractor in connection with this Project only for: (i) sums due for Work performed up to the termination date including allowable profit and overhead relative to such performed Work (except any retainage sums which shall not be released for at least thirty (30) days following termination); (ii) the cost of materials ordered prior to the termination date, provided that such ordered materials are subsequently delivered to Owner with a clean bill of sale; and (iii) reasonable demobilization costs actually incurred and documented by Contractor, which demobilization costs shall in no event exceed One Thousand Dollars (\$1,000.00). Payment of the sums due to Contractor in connection with such termination shall be made subject to the conditions for and in accordance with the procedures for final payment set forth in Article 5 of the Agreement and Article 9 of the General Conditions, as modified, to the extent applicable. Nothing in this Paragraph limits Owner's right to terminate for cause.

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

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

§ 14.4.3 In connection with any termination of this Contract by Owner for convenience or cause, it is agreed and understood that: (i) no fee shall be due or payable with respect to unperformed Work; (ii) in no event shall Owner be liable for lost profits or overhead on unperformed Work; and (iii) in no event shall Contractor be entitled to a termination payment that would in the aggregate with all prior payments by Owner to Contractor exceed the Contract Sum, including any written change orders.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

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

§ 15.1.2 Time Limits on Claims

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

§ 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. FAILURE TO GIVE NOTICE OF CLAIM WITHIN THE TWENTY-ONE (21) DAY PERIOD AND IN THE MANNER DESCRIBED IN THIS AGREEMENT SHALL CONSTITUTE AN ABSOLUTE AND UNCONDITIONAL WAIVER, BAR AND RELEASE OF SUCH CLAIM. For purposes of this provision, giving notice to Owner shall be deemed to mean notice delivered by hand or by mail to Owner's Representative and Architect or such other person as the Owner may designate in writing from time to time.

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

§ 15.1.3.3 A notice of Claim from the Contractor shall set forth, at a minimum, the following: (i) the date and a detailed and complete description of the event giving rise to the request for an adjustment or interpretation of Contract terms, a payment of money, an extension of time or other relief with respect to the terms of the Contract; (ii) a detailed and complete statement of the nature of all impacts to the Contractor, its Subcontractors, if any, and all others, if any affected by the Claim event; (iii) a detailed and complete breakdown and calculation of the full and total amount of the adjustment in Contract Sum, if any, sought by the Contractor for itself and for others, if any, together with complete substantiation and backup for all costs; (iv) a detailed and complete analysis and explanation of the amount of the adjustment to Contract Time, if any, sought by the Contractor, together with critical path method (CPM) schedule and analysis showing the claimed impact on the Project completion date asserted by the Contractor; (v) a detailed and complete analysis and substantiation for other relief, if any, with respect to the terms of the Contract; and (vi) a complete and detailed statement of all provisions of the Contract Documents upon which the Claim is based.

§ 15.1.4 Continuing Contract Performance

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

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

§ 15.1.5 Claims for Additional Cost

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

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, the Contractor shall fully update its Notice of Claim submitted pursuant to sub-paragraph 15.1.2.1 no later than every twenty-one (21) days. CONTRACTOR'S FAILURE TO FULLY AND TIMELY UPDATE ITS NOTICE OF CLAIM SHALL CONSTITUTE AN ABSOLUTE AND COMPLETE WAIVER, RELEASE AND BAR OF SUCH CLAIM FOR CONTINUOUS DELAY.

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

§ 15.1.6.3 Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such Claim as provided herein of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding twenty-one (21) days after occurrence of the event giving rise to such injury or damage, or the date when such injury or damage should reasonably have been discovered. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 15.1.6.4 Waiver of Particular Claims. The Contractor and Owner acknowledge and agree that this subparagraph has been specifically negotiated and they hereby waive all claim against each other for the following damages which may arise out of or relate to this Contract and Project. This mutual waiver does not restrict other waivers contained in the Contract Documents. This mutual waiver is applicable, without limitation, to all such damages due to either party's termination in accordance with Article 14. Nothing contained in this subparagraph 15.1.6.4 shall be deemed to preclude an award of liquidated direct damages to Owner, when applicable, in accordance with the Contract Documents.

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§ 15.1.6.4.1 Damages incurred by the Owner for loss of management or employee productivity or of the services of such persons, and;

§ 15.1.6.4.2 Damages incurred by the Contractor (and those for whom Contractor is responsible) for principal or home office expenses including, without limitation, the compensation of personnel stationed there, for losses of bonding capacity, and for loss of profit other than anticipated profits arising directly from performed Work.

§ 15.1.7 Waiver of Claims for Consequential Damages

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

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

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

§ 15.2 Initial Decision

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

§ 15.2.2 The Initial Decision Maker will review Claims and within fourteen 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) recommend rejection of the Claim in whole or in part, (3) recommend approval of the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

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

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

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

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

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

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

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

§ 15.3 Mediation and Arbitration

§ 15.3.1 All claims, if not informally resolved through bonafied written communication between the Contractor, Owner and Architect, shall be subject to Mediation and Arbitration as provided herein.

§ 15.3.2 The Claimant may not initiate arbitration or litigation against the other party unless the Claim has first been subjected to non-binding mediation before a single mediator experienced in the matter of construction disputes. Any aggrieved Claimant may make demand for mediation within ten days following the last bona fide communication issued by a party to resolve a dispute. The officers of the Contractor and the Owner, both having full authority to settle the Claim, shall attend the mediation session. To the extent there are other parties in interest, such as subcontractors or suppliers, or their representatives, with full authority to settle the Claim, shall attend the mediation session. Unless the Owner and the Contractor mutually agree otherwise, each item shall be as it arises, and if mutually agreed, may be mediated with other claims in a single mediation session. Each party shall be responsible for payment of one-half of the fees charged by the selected mediator.

§ 15.3.3 Any claims not satisfactorily resolved by mediation, shall be subject to binding arbitration pursuant to the Construction Industry Rules of the American Arbitration Association. If the mediation process has not resolved the Claim within thirty days following assertion of the Claim by a Claimant, the aggrieved party may, at its option, initiate binding arbitration any time thereafter. The demand for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association, and a copy filed with the Architect. The obligation of a party to participate in binding arbitration shall be enforceable in a Court having jurisdiction over the Claim, and shall not preclude a party from initiating litigation as may be necessary to obtain immediate or injunctive relief pending initiation of the arbitration proceeding required under this Contract. 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.

(Paragraph deleted)

§ 15.4 Arbitration

§ 15.4.1 INTENTIONALLY DELETED

§ 15.4.1.1 INTENTIONALLY DELETED

§ 15.4.2 INTENTIONALLY DELETED

§ 15.4.3 INTENTIONALLY DELETED

§ 15.4.4 Consolidation or Joinder

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

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined

Init.

consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

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

ARTICLE 16 ADDITIONAL REQUIREMENTS

§ 16.1 Governance

§ 16.1.1 All provisions to the revised Code of Washington (RCW) are specifically included in the General Conditions by reference, including the following (in the event of conflict between these and other provisions of the General Conditions, these shall govern):

- .1 RCW Chapter 39.04: Relating to plans and specifications on work done for public bodies, estimates of costs of the work, supplemental plans and specifications, supplemental estimates, accounts and records of costs, engineer's certificate.
- .2 RCW Chapter 39.08: Relating to form of Contractor's bonds and liens.
- .3 RCW Chapter 39.12: Concerning the prevailing wage rates to be paid to labor on public works, the certificates required by the state, the arbitration of disputes over wages, and penalties.
- .4 RCW Chapter 60.28: Relating to labor and materials liens and taxes and retainage.
- .5 RCW Chapter 49.28: Relating to hours of labor.
- .6 RCW Chapter 18.27: Relating to registration of contractors.
- .7 RCW Chapter 28A.400.303: Relating to record checks for employees.
- .8 RCW Chapter 49.60: Relating to unfair or discriminatory practices.
- .9 RCW Chapter 70.92: Relating to the aged and handicapped.
- .10 The Americans With Disabilities Act.

ARTICLE 17 EQUAL EMPLOYMENT OPPORTUNITY

§ 17.1 The Contractor and subcontractors shall not discriminate against any employee or application for employment because of race, religion, color, sex, or national origin. The Contractor shall take affirmative action to ensure that applications and employees are treated equally without regard to their race, religion, color, sex, or national origin.

§ 17.2 The Contractor agrees to maintain policies of employment in conformance to Executive Order 11246 entitled "Equal Employment Opportunity" as amended by Executive Order 11375 and supplemented in Department of Labor regulations.

ARTICLE 18 LIENS

§ 18.1 The Contractor shall promptly pay (and secure the discharge of any liens asserted by) all persons furnishing labor, equipment, materials, or other items in connection with the performance of the work (including, but not limited to) any subcontractors. The Contractor shall furnish to the Owner such releases of claims and other documents as may be requested by the Owner from time to time to evidence such payment and discharge. The Owner may, at its option, withhold payment, in whole or in part, to the Contractor until such documents are so furnished. If any of such persons are not promptly paid (or if any liens are not promptly discharged) the Owner may pay such amounts as required and charge to or otherwise recover (e.g. by offset against the contract sum) from the Contractor the amount of such payments and all costs (including, but not limited to, attorney's fees and processing costs) incurred by the Owner in connection with such payment (and securing such discharge).

§ 18.2 If any mechanic or materialman's lien or claim of lien is filed against the Project, or if a notice of intent to file such lien is received by Owner's Lender, Owner may provide Lender with a bond or other security acceptable to Lender in the amount of one hundred fifty percent (15%) or provide the Lender with affirmative title insurance coverage, and deduct the cost thereof, including processing costs and attorney fees, from any amount owed to Contractor.

ARTICLE 19 APPRENTICESHIP

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§ 19.1 The Contractor and its Subcontractors are required to utilize registered apprentices for the work. The utilization is to be 15% of all labor hours for all trades or as required by RCW 39.04.310. The Contractor shall provide the following information to be reported to the Department of General Administration:

- .1 Name and registration number of each apprentice.
- .2 Total number of journeymen and labor hours worked by them, categorized by trade or craft
- .3 Cumulative combined total apprentice and journeymen labor hours.
- .4 Total percentage of apprentice hours worked.

This information will be required at the start and at the completion of the project. Registered apprentices are only those individuals who are enrolled in an apprentice training program that is approved by the Washington Apprenticeship and Training Council.

The End

Init.

AIA® Document A101® – 2017

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

AGREEMENT made as of the 31st day of August in the year 2020
(In words, indicate day, month and year.)

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

Kittitas Valley Healthcare
Kittitas County Public Hospital - District #2
603 South Chestnut Street
Ellensburg, WA 98926

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

T.W. Clark Construction, LLC
1117 North Evergreen Road, Suite 1
Spokane, WA 99216

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

Ambulance Garage 201 Alpha Way
Cle Elum, WA 98922
KDA Project Number: 201838
The project consists of construction of a new, single story, slab-on-grade, wood framed, approximately 8500 square foot ambulance garage, staff quarters, office area, and site improvements as indicated in the Contract Documents enumerated in this Agreement.

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

KDA Architecture, Inc.
1310 North 16th Avenue
Yakima, WA 98902

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

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

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

TABLE OF ARTICLES

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

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

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

Contract Documents will be provided in digital format. Cost of printing Contract Documents for Contractor's use shall be borne by the Contractor and are included in the Contract Sum.

ARTICLE 2 THE WORK OF THIS CONTRACT

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

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

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

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

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

§ 3.3 Substantial Completion

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

Not later than nine months from the date of commencement of the Work.

By the following date:

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

Portion of Work	Substantial Completion Date
-----------------	-----------------------------

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

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Two Million Five Hundred Eighty Nine Thousand dollars (\$ 2,589,000.00), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

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

Item	Price
None	

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

Item	Price	Conditions for Acceptance
------	-------	---------------------------

(Table deleted)
(Paragraphs deleted)

§ 4.4 Unit prices, if any:

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

Item	Units and Limitations	Price per Unit (\$0.00)
Compacted Structural Fill	Cubic Yard	\$74.00

§ 4.5 Liquidated damages, if any:

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

The Owner will incur serious and substantial special, incidental, and consequential damages if the work is not completed by the date stipulated in the agreement. Therefore, liquidated damages shall be assessed as compensation to the Owner for damages incurred by the loss of the project not being completed on time, but not as a penalty to the Contractor. Liquidated damages shall be assessed as follows: For each calendar day after 30 days past the date fixed for Substantial Completion, the Contractor shall pay the Owner the sum of One Thousand Dollars (\$1,000.00) per day.

§ 4.6 Other:

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

None

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ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

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

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the 5th day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the 30th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than 45 (forty-five) days after the Architect receives the Application for Payment.

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

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

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

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

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

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

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

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

§ 5.1.7 Retainage

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

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

Retainage shall be as indicated in Article 9 of the General Conditions.

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§ 5.1.7.1.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

Retainage shall be as indicated in Article 9 of the General Conditions.

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

Retainage shall be as indicated in Article 9 of the General Conditions.

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

Retainage shall be as indicated in Article 9 of the General Conditions.

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

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

§ 5.2 Final Payment

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

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

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment.

§ 5.3 Interest

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

5% per annum.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 Initial Decision Maker

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

§ 6.2 Binding Dispute Resolution

Claims shall be resolved pursuant to Article 15 of AIA Document A201–2017.
(Paragraphs deleted)

ARTICLE 7 TERMINATION OR SUSPENSION

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

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§ 7.1.1

(Paragraphs deleted)

Intentionally Deleted

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

ARTICLE 8 MISCELLANEOUS PROVISIONS

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

§ 8.2 The Owner's representative:

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

Ron Urlacher, Director of Facilities
Kittitas Valley Healthcare
603 East Chestnut Street
Ellensburg, WA 98926
rurlacher@kvhealthcare.org

§ 8.3 The Contractor's representative:

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

Matt Wheelwright, Project Manager
T.W. Clark Construction, LLC
1117 North Evergreen Road, Suite 1
Spokane, WA 99216
matt@twclark.com

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

§ 8.5 Insurance and Bonds

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

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

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document

(Paragraphs deleted)

A201–2017.

§ 8.7 Other provisions:

None

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™–2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction
- .4 Intentionally Deleted
- .5 Drawings are enumerated in Exhibit B.

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.6 The Project Manual (Specifications and General Requirements) are enumerated in Exhibit C.

.7 Addenda, if any:

Number	Date	Pages
1	July 28, 2020	61
2	August 5, 2020	14
3	August 7, 2020	3

(Paragraphs deleted)

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

.8 Intentionally Deleted


(Row deleted)

.9

(Paragraphs deleted)

Intentionally Deleted

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



OWNER *(Signature)*

CONTRACTOR *(Signature)*

(Printed name and title)

Stacie Sunko, Manager

(Printed name and title)

Init.



AIA® Document A101® – 2017 Exhibit A

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the 31st day of August in the year 2020.

(In words, indicate day, month and year.)

for the following PROJECT:

(Name and location or address)

Ambulance Garage
201 Alpha Way
Cle Elum, WA 98922

THE OWNER:

(Name, legal status and address)

Kittitas Valley Healthcare
Kittitas County Public Hospital - District #2
603 South Chestnut Street
Ellensburg, WA 98926

THE CONTRACTOR:

(Name, legal status and address)

T.W. Clark Construction, LLC
1117 North Evergreen Road, Suite 1
Spokane, WA 99216

TABLE OF ARTICLES

- A.1 GENERAL
- A.2 OWNER'S INSURANCE
- A.3 CONTRACTOR'S INSURANCE AND BONDS
- A.4 SPECIAL TERMS AND CONDITIONS

ARTICLE A.1 GENERAL

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

ARTICLE A.2 OWNER'S INSURANCE

§ A.2.1 General

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

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.

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

§ A.2.2 Liability Insurance

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

§ A.2.3 Required Property Insurance

§ A.2.3.1 Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder’s risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner’s property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ A.2.3.1.1 Causes of Loss. The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

(Indicate below the cause of loss and any applicable sub-limit.)

Causes of Loss	Sub-Limit
----------------	-----------

§ A.2.3.1.2 Specific Required Coverages. The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect’s and Contractor’s services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage	Sub-Limit
----------	-----------

§ A.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ A.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

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

§ A.2.3.3 Insurance for Existing Structures

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

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§ A.2.4 Optional Extended Property Insurance.

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

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

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

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

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

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

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

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

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

§ A.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

Init.

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

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

§ A.2.5.2 Other Insurance
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage

Limits

ARTICLE A.3 CONTRACTOR'S INSURANCE AND BONDS

§ A.3.1 General

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

§ A.3.1.2 Deductibles and Self-Insured Retentions. The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

§ A.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage 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 Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

§ A.3.2 Contractor's Required Insurance Coverage

§ A.3.2.1 The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:
(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

§ A.3.2.2 Commercial General Liability

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than five million dollars (\$5,000,000.00) each occurrence, five million dollars (\$5,000,000.00) general aggregate, and five million dollars (\$5,000,000.00) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;

Init.

- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

§ A.3.2.2.2 The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than one million dollars (\$1,000,000.00) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ A.3.2.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ A.3.2.5 Workers' Compensation at statutory limits.

§ A.3.2.6 Employers' Liability with policy limits not less than one million dollars (\$1,000,000.00) each accident, one million dollars (\$1,000,000.00) each employee, and one million dollars (\$1,000,000.00) policy limit.

§ A.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than one million dollars (\$1,000,000.00) per claim and one million dollars (\$1,000,000.00) in the aggregate.

Init.

§ A.3.2.10 Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than one million dollars (\$1,000,000.00) per claim and two million dollars (\$2,000,000.00) in the aggregate.

§ A.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ A.3.3 Contractor's Other Insurance Coverage

§ A.3.3.1 Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

§ A.3.3.2 The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

§ A.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:
(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

§ A.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for Work within fifty (50) feet of railroad property.

§ A.3.3.2.3 Asbestos Abatement Liability Insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

§ A.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

§ A.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.

Init.

[] § A.3.3.2.6 Other Insurance
 (List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage	Limits
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§ A.3.4 Performance Bond and Payment Bond

The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:
 (Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Payment Bond	A dollar amount equal to the Contract Sum.
Performance Bond	A dollar amount equal to the Contract Sum.

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

ARTICLE A.4 SPECIAL TERMS AND CONDITIONS

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

Init.

ENUMERATION OF DRAWINGS (except survey) DATED 06/30/2020

GENERAL

- G0.1 Title Sheet
- G0.2 Abbreviations, Wall Types
- G0.3 Code Plan
- G0.4 Site Code Plan (Addendum 3)
- G0.5 Exterior Perspectives

SURVEY

- 1 OF 4 Boundary and Topographic Survey (Addendum 1), dated 07/23/2020
- 2 OF 4 Boundary and Topographic Survey (Addendum 1), dated 07/23/2020
- 3 OF 4 Boundary and Topographic Survey (Addendum 1), dated 07/23/2020
- 4 OF 4 Boundary and Topographic Survey (Addendum 1), dated 07/23/2020

CIVIL

- C1.0 Cover Sheet (Addendum 3)
- C1.1 General Notes, Legend, and Abbreviations
- C2.0 TESC Plan & Notes (Addendum 3)
- C2.1 TESC Plan & Details
- C3.0 Site Layout and Horizontal Control Plan (Addendum 3)
- C4.0 Grading and Drainage Plan (Addendum 3)
- C4.1 Detailed Grading Plan
- C4.2 Stormwater Management Facility Details and Notes (Addendum 3)
- C5.0 Utility Plan
- C6.0 Davis Street Improvements Plan and Profile
- C6.1 Davis Street Improvements Details
- C6.2 Davis Street Improvements Details
- C7.0 Construction Details (Addendum 3)
- C7.1 Construction Details

LANDSCAPE

- L-100 Planting Plan (Addendum 3)
- L-101 Planting & Site Details (Addendum 3)
- L-200 Irrigation Plan (Addendum 3)
- L-201 Irrigation Sched. & Details (Addendum 3)

ARCHITECTURAL

- A2.1 Floor Plan
- A2.2 Ambulance Bay Slab Plan
- A2.3 Reflected Ceiling Plan
- A3.1 Door Schedule
- A3.2 Finish Schedule
- A4.1 Exterior Elevations
- A4.2 Exterior Elevations
- A4.3 Building Sections
- A4.4 Building Sections
- A4.5 Building Sections
- A4.6 Building Sections

A4.7 Wall Sections
A4.8 Wall Sections
A4.9 Wall Sections
A5.1 Roof Plan
A5.2 Roof Details
A7.1 Enlarged Plans and Interior Elevations
A7.2 Interior Elevations
A7.3 Interior Elevations
A8.1 Details
A8.2 Details
A8.3 Details
A8.4 Details
A9.1 Equipment Plan

STRUCTURAL

S0.0 General Structural Notes
S1.0 Foundation Plan
S1.1 Roof Framing Plan
S1.2 Ceiling Framing Plan
S4.0 Truss Profiles
S5.1 Foundation Details
S5.2 Foundation Details
S5.3 Roof Framing Details
S5.4 Ceiling Framing Details
S5.5 Misc. Details

MECHANICAL

M0.1 Equipment Schedules
M0.2 Equipment Schedules
M1.1 Plumbing Plan
M1.2 Plumbing Plan
M2.1 HVAC Plan
M2.2 HVAC Plan
M3.1 Hydronic Plan

ELECTRICAL

E0.0 Electrical Notes (Addendum 2)
E0.1 Site Electrical (Addendum 2)
E1.0 Power Plan
E1.1 Enlarged Power Plans
E2.0 Lighting Plan
E3.0 Mechanical Power Plan
E4.0 One-Line Diagram
E5.0 Panel Schedules
E9.0 Special Systems Plan
E9.1 Fire Alarm Plan

END OF EXHIBIT

ENUMERATION OF SPECIFICATIONS AND GENERAL REQUIREMENTS CONTAINED IN THE PROJECT
MANUAL DATED 30 June 2020

COVER PAGE

DIVISION 00 – PROCUREMENT AND CONTRACTING REQUIREMENTS

- 00 01 10 Table of Contents
- 00 11 13 Advertisement for Bids
- 00 21 13 Instructions to Bidders
- 00 31 19 Existing Condition Information
- 00 31 20 Inadvertent Discovery Plan
- 00 31 32 Geotechnical Data
- 00 31 33 Geotechnical Report
- 00 41 13 Bid Form - Stipulated Sum (Single-Prime Contract)
- 00 50 00 Agreement Form
 - A.I.A. Document A101, 2017 Edition, Standard Form of Agreement Between Owner and Contractor, as revised.
- 00 50 03 Exhibit "A"
 - AIA Document A101 – 2017 Exhibit A, Insurance and Bonds
- 00 70 00 General Conditions
 - A.I.A. Document A201, 2017 Edition, General Conditions of the Contract for Construction, as revised

DIVISION 01 – GENERAL REQUIREMENTS

- 01 10 00 Summary
- 01 25 00 Substitution Procedures
- 01 26 00 Contract Modification Procedures
- 01 29 00 Payment Procedures
- 01 31 00 Project Management and Coordination
- 01 32 00 Construction Progress Documentation
- 01 33 00 Submittal Procedures
- 01 40 00 Quality Requirements
- 01 50 00 Temporary Facilities and Controls
- 01 60 00 Product Requirements
- 01 73 00 Execution
- 01 74 19 Construction Waste Management and Disposal
- 01 77 00 Closeout Procedures
- 01 78 23 Operation and Maintenance Data
- 01 78 39 Project Record Documents
- 01 79 00 Demonstration and Training

DIVISION 02 – EXISTING CONDITIONS

- 02 41 19 Selective Demolition

DIVISION 03 – CONCRETE

- 03 10 00 Concrete Forming and Accessories
- 03 20 00 Concrete Reinforcing
- 03 30 00 Cast-In-Place Concrete
- 03 45 00 Precast Architectural Concrete

DIVISION 04 – MASONRY

04 20 00 Unit Masonry
04 43 13 Anchored Stone Masonry Veneer

DIVISION 05 – METALS

05 12 00 Structural Steel Framing
05 50 00 Metal Fabrications

DIVISION 06 – WOOD, PLASTICS, AND COMPOSITES

06 10 00 Rough Carpentry
06 16 00 Sheathing
06 17 53 Shop-Fabricated Wood Trusses
06 18 00 Glued-Laminated Construction
06 41 16 Plastic-Laminate-Clad Architectural Cabinets
06 64 00 Plastic Paneling

DIVISION 07 – THERMAL AND MOISTURE PROTECTION

07 19 00 Water Repellents
07 21 00 Thermal Insulation
07 25 00 Weather Barriers
07 26 00 Vapor Retarders
07 41 14 Standing-Seam Metal Roof Panels
07 46 46 Fiber-Cement Siding
07 84 13 Penetration Firestopping
07 92 00 Joint Sealants

DIVISION 08 – OPENINGS

08 11 13 Hollow Metal Doors and Frames
08 31 13 Access Doors and Frames
08 36 13 Sectional Doors
08 53 13 Vinyl Windows
08 71 00 Door Hardware (Addendum 1)
08 80 00 Glazing

DIVISION 09 – FINISHES

09 29 00 Gypsum Board
09 51 13 Acoustical Panel Ceilings
09 65 13 Resilient Base and Accessories
09 65 16 Resilient Sheet Flooring
09 91 14 Exterior Painting (MPI Standards)
09 91 24 Interior Painting (MPI Standards)
09 93 00 Staining and Transparent Finishing

DIVISION 10 – SPECIALTIES

10 14 24 Room-Identification Panel Signage
10 26 00 Wall and Door Protection
10 28 00 Toilet, Bath, and Laundry Accessories
10 44 13 Fire Protection Cabinets
10 44 16 Fire Extinguishers
10 44 20 Knox Box
10 60 00 Gas Tank Straps

10 75 16 Ground -Set Flagpoles

DIVISION 11 – EQUIPMENT

11 30 13 Residential Appliances

DIVISION 12 – FURNISHINGS

12 21 13 Horizontal Louver Blinds

DIVISION 21 – FIRE SUPPRESSION

21 13 13 Wet Pipe Sprinkler Systems

21 13 16 Dry Pipe Sprinkler Systems

DIVISION 22 – PLUMBING

22 05 53 Identification for Plumbing Piping and Equipment

22 07 19 Plumbing Piping Insulation

22 11 16 Domestic Water Piping

22 11 19 Domestic Water Specialties

22 11 23.21 Inline, Domestic Water Pumps

22 13 16 Sanitary Waste and Vent Piping

22 13 19.13 Sanitary Drains

22 13 23 Sanitary Waste Interceptors

22 33 00 Electric, Domestic Water Heaters

22 34 00 Fuel-Fired, Domestic-Water Heaters

22 42 13.13 Commercial Water Closets

22 42 16.13 Commercial Lavatories

22 42 16.16 Commercial Sinks

22 42 23 Commercial Showers

22 45 00 Emergency Plumbing Fixtures

22 47 16 Pressure Water Coolers

DIVISION 23 – HEATING, VENTILATING AND AIR CONDITIONING

23 05 93 Testing, Adjusting, and Balancing for HVAC

23 07 13 Duct Insulation

23 07 19 HVAC Piping Insulation

23 11 23 Facility Natural-Gas Piping

23 21 13 Hydronic Piping

23 21 23 Hydronic Pumps

23 31 13 Metal Ducts

23 33 00 Air Duct Accessories

23 33 46 Flexible Ducts

23 35 00 Special Exhaust Systems

23 37 13.13 Air Diffusers

23 37 13.23 Registers and Grilles

23 52 16 Condensing Boilers

23 54 16.13 Gas-Fired Furnaces

23 72 23.19 Packaged Indoor Fixed Plate Energy Recovery Units

23 81 26 Split-System Air-Conditioners

23 82 16.14 Electric-Resistance Air Coils

23 82 39.19 Wall and Ceiling Unit Heaters

23 83 16 Radiant-Heating Hydronic Piping

DIVISION 31 – EARTHWORK

- 31 05 16 Aggregates for Earthwork
- 31 10 00 Site Clearing
- 31 23 16 Excavation
- 31 23 17 Trenching
- 31 23 23 Fill

DIVISION 32 – EXTERIOR IMPROVEMENTS

- 32 12 16 Asphalt Paving
- 32 13 16 Concrete Paving
- 32 15 40 Crushed Rock Paving (Addendum 1)
- 32 31 13 Chain Link Fences and Gates
- 32 84 00 Irrigation (Addendum 1)
- 32 91 13 Soil Preparation (Addendum 1)
- 32 92 19 Seeding (Addendum 1)
- 32 93 00 Planting (Addendum 1)

DIVISION 33 – UTILITIES

- 33 11 16 Water Utility Distribution Piping
- 33 31 00 Sanitary Utility Sewerage Piping
- 33 41 00 Storm Utility Drainage Piping

END OF EXHIBIT

