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Major Maintenance FY 12
Project No. 2012000000

00030-1
1/12/2011
Standard Form of Agreement Between Owner and Contractor where the basis of payment is a STIPULATED SUM

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

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

Wesleyan University
170 Long Lane
Middletown, CT 06459

Telephone Number: 860-685-3748
Fax Number: 860-685-3754

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

The Project is:
(Name and location)
Annual Major Maintenance FY12

The Architect is:
(Name, address and other information)
N/A

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.

AIA Document A201-1997, 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.

This document has been approved and endorsed by The Associated General Contractors of America.
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; these 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 Modifications, appears in Article 8.

ARTICLE 2  THE WORK OF THIS CONTRACT
The Contractor shall fully execute the Work described in the Contract Documents, except to the extent 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 the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.
(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

If, prior to the commencement of the Work, the Owner requires time to file mortgages, mechanic’s liens and other security interests, the Owner’s time requirement shall be as follows:

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

§ 3.3 The Contractor shall achieve Final Completion of the entire Work as follows:
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. Unless stated elsewhere in the Contract Documents, insert any requirements for earlier Substantial Completion of certain portions of the Work.)

<table>
<thead>
<tr>
<th>Portion of Work</th>
<th>Substantial Completion Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>

subject to adjustments of this Contract Time as provided in the Contract Documents.
(Insert provisions, if any, for liquidated damages relating to failure to complete on time or for bonus payments for early completion of the Work.)

N/A

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 TBD, subject to additions and deductions as provided in the Contract Documents.

4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:
(State the numbers or other identification of accepted alternates. If decisions on other alternates are to be made by the Owner subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires)

00.00 and is included in the contract amount.

§ 4.3 Unit prices, if any, are as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Units</th>
<th>Price ($0.00)</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
<td>N/A</td>
<td>N/A</td>
</tr>
</tbody>
</table>
ARTICLE 5 PAYMENTS
§ 5.1 PROGRESS PAYMENTS
§ 5.1.1 Based upon Applications for Payment submitted to the Owner by the Contractor and Certificates for Payment issued by the Owner, 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 Monthly, ending on the last day of the month.

§ 5.1.3 Provided that an Application for Payment is received by the Owner not later than the last day of the month, the Owner shall make payment to the Contractor no later than 45 days after the application for payment has been reviewed and approved by the Owner. Should modifications by the Contractor be required to the Application for Payment, the Owner shall make payment to the Contractor not later than 45 days after receipt of the corrected Application for Payment. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than 45 days after the Owner receives the Application for Payment.

§ 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 Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor’s Applications for Payment.

§ 5.1.4A Each project location and sequence number shall be identified on the Schedule of Values. Correlate sequence line item numbers in the Schedule of Values with other required administrative schedules and forms, including:

1. General Contractor’s construction schedule.
2. Application for Payment form.

Submit the Schedule of Values to Wesleyan University prior to the start of any on site construction activity, but in no case later than 7 days before the date scheduled for submittal of the initial Application for Payment. Arrange the Schedule of Values in a tabular form with separate columns to indicate the following for each item listed:

1. Generic name.
2. Dollar value.
3. Percentage of Contract Sum to the nearest percent, adjusted to total 100 percent.
4. Provide a breakdown of the Contract Sum in sufficient detail to facilitate continued evaluation of Applications for Payment and progress reports. Break principal subcontract amounts down into several line items.
5. Round amounts off to the nearest whole dollar; the total shall equal the Contract Sum.
6. For each part of the Work where an Application for Payment may include materials or equipment, purchased or fabricated and stored, but not yet installed, provide separate line items on the Schedule of Values for initial cost of the materials, for each subsequent stage of completion, and for total installed value of that part of the Work.

§ 5.1.5 Applications for Payment shall indicate 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 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

1. Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of zero percent (0%). Contractor shall incorporate in schedule of values, a line item for project closeout in the
amount of 5% of the contract sum. Pending final determination of cost to the Owner of changes in
the Work, amounts not in dispute shall be included as provided in Section 7.3.8 of AIA Document
A201-1997;

.2 Add 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), less
retainage of zero percent (0%);

.3 Subtract the aggregate of previous payments made by the Owner; and

.4 Subtract amounts, if any, for which the Owner has withheld or nullified a Certificate for Payment as
provided in Section 9.5 of AIA Document A201-1997.

.5 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of
not greater than Seven and one-half percent (7.5%). The Owner and the Contractor shall agree upon a
mutually acceptable procedure for review and approval of payments and retention for subcontracts.

.6 In accordance with Public Act No. 03-167, all retainage held by the Contractor will be placed in an
escrow account in a bank or savings and loan in the State of Connecticut. The Owner and Contractor
shall make mutually agreeable arrangements for the management and control of the funds as required
by statute. Monthly reports will be provided by the Contractor to the Owner as to the value of the
retainage being held in the escrow account and any additions to or payments from the escrow account.
Upon request by any subcontractor, the Contractor should make the monthly reports available for
review by such subcontractor.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the
following circumstances:

.1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the
full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete
Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.5 of AIA Document A201-1997 requires release of applicable retainage upon Substantial
Completion of Work with consent of surety, if any.)

.2 Add, if final completion of the Work is thereafter materially delayed through no fault of the
Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document
A201-1997.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:
(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the
percentages inserted in Sections 5.1.6.1 and 5.1.6.2 above, and this is not explained elsewhere in the Contract
Documents, insert here provisions for such reduction or limitation.)

N/A

§ 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 Section 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if
any, which extend beyond final payment; and
a final Certificate for Payment has been issued by the Owner.

§ 5.2.2 The Owner’s final payment to the Contractor shall be made no later than 45 days after the issuance of the Owner’s final Certificate for Payment, or as follows:

N/A

ARTICLE 6 TERMINATION OR SUSPENSION
§ 6.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-1997.

§ 6.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-1997.

ARTICLE 7 MISCELLANEOUS PROVISIONS
§ 7.1 Where reference is made in this Agreement to a provision of AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 7.2 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.)

(N/A per annum)

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner’s and Contractor’s principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications, and also regarding requirements such as written disclosures or waivers.)

§ 7.3 The Owner’s representative is:
(Name, address and other information)

Roseann Sillasen
Wesleyan University
170 Long Lane
Middletown, CT 06459

Telephone Number: 860-685-3476
Cell Number: 860-918-3605
Fax Number: 860-685-3754

§ 7.4 The Contractor’s representative is:
(Name, address and other information)

§ 7.5 Neither the Owner’s nor the Contractor’s representative shall be changed without ten days written notice to the other party.

§ 7.6 Other provisions:

N/A

ARTICLE 8 ENUMERATION OF CONTRACT DOCUMENTS
§ 8.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:


§ 8.1.3 The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated January 12, 2011 as noted below:

<table>
<thead>
<tr>
<th>Document</th>
<th>Title</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>00800</td>
<td>Supplementary</td>
<td>60</td>
</tr>
</tbody>
</table>

§ 8.1.4 The Specifications are those contained in the Project Manual dated as in Section 8.1.3, and are as follows:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

§ 8.1.5 The Drawings/Photos are dated as noted and are as follows:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

§ 8.1.6 The Addenda, if any, are as follows:

| Number | Date | Pages |

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 8.

§ 8.1.7 Other documents, if any, forming part of the Contract Documents are as follows:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor’s bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

This Agreement is entered into as of the day and year first written above and is executed in at least two original copies, of which one is to be delivered to the Contractor, one to the Owner.

OWNER (Signature)
John C. Meerts, Vice President for Finance and Administration

(Printed name and title)

OWNER (Signature)
Joyce Topshe, Associate Vice President for Facilities

(Printed name and title)
THE OWNER:
(Name and address):
Wesleyan University
170 Long Lane
Middletown, CT 06459

THE ARCHITECT
(Name and address):

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ARTICLE 1 GENERAL PROVISIONS
§ 1.1 BASIC DEFINITIONS
§ 1.1.1 THE CONTRACT DOCUMENTS
The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter 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 other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor’s bid or portions of Addenda relating to bidding 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 Architect and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor, (3) between the Owner and Architect or (4) between any persons or entities other than the Owner and 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 or by separate contractors.

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

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

§ 1.1.7 THE PROJECT MANUAL
The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

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

§ 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 which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.
§ 1.3 CAPITALIZATION
§ 1.3.1 Terms capitalized in these General Conditions include those which 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
§ 1.4.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 EXECUTION OF CONTRACT DOCUMENTS
§ 1.5.1 The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

§ 1.5.2 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.

§ 1.6 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE
§ 1.6.1 The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect’s consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect’s consultants, and unless otherwise indicated the Architect and the Architect’s consultants shall be deemed the authors of them and will retain all public, statutory and other reserved rights, in addition to the copyrights. All copies of Instruments of Service, except the Contractor’s record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect’s consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect’s consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect’s consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect’s consultants. Submit or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect’s or Architect’s consultants’ copyrights or other reserved rights.

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 title to the property on which the Project is located, usually referred to as the site, and the Owner’s interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER
§ 2.2.1 The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner’s obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or
continuation of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

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

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

§ 2.2.4 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor’s performance of the Work under the Owner’s control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work.

§ 2.3 OWNER’S RIGHT TO STOP THE WORK
§ 2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or persistently 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.

§ 2.4 OWNER’S RIGHT TO CARRY OUT THE WORK
§ 2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Contractor a second written notice to correct such deficiencies within a three-day period. If the Contractor fails to meet such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner’s expenses and compensation for the Architect’s additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are insufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

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 term "Contractor" means the Contractor or the Contractor’s authorized representative.

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

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

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR
§ 3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the
Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor shall be reported promptly to the Architect as a request for information in such form as the Architect may require.

§ 3.2.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect, but it is recognized that the Contractor’s review is made in the Contractor’s capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Architect.

§ 3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor’s notices or requests for information pursuant to Sections 3.2.1 and 3.2.2, the Contractor shall make claims as provided in Sections 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Sections 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect.

§ 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, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage.

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

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

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

§ 3.4.2 The Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor’s employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not 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 otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor’s warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

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

§ 3.7 PERMITS, FEES AND NOTICES
§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customary secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

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

§ 3.7.3 It is not the Contractor’s responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

§ 3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 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;
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
§ 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.

§ 3.10 CONTRACTOR’S CONSTRUCTION SCHEDULES
§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner’s and Architect’s information a Contractor’s construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expedient and practicable execution of the Work.

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

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

§ 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 which 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. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. 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 which 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 with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

§ 3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has 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 requirements of the Contract Documents by the Architect’s approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing 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 written notice the Architect’s approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor’s responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional’s written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

§ 3.13 USE OF SITE
§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.14 CUTTING AND PATCHING
§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

§ 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 such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor’s consent to cutting or otherwise altering the Work.

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

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.
§ 3.16 ACCESS TO WORK
§ 3.16.1 The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

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

§ 3.18 INDEMNIFICATION
§ 3.18.1 To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Section 11.3, 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 which would otherwise exist as to a party or person described in this Section 3.18.

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

ARTICLE 4 ADMINISTRATION OF THE CONTRACT
§ 4.1 ARCHITECT
§ 4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect’s authorized representative.

§ 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.

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

§ 4.2 ARCHITECT’S 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 of the Contract.

§ 4.2.2 The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor’s operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and
deficiencies in the Work, and (3) to determine in general if the Work 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 neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor’s rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 The Architect will not be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect’s consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

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

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

§ 4.2.7 The Architect will review and approve or take other appropriate action upon the Contractor’s submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect’s action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect’s professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect’s review of the Contractor’s submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect’s review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect’s approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner, for the Owner’s review and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect’s responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.
§ 4.2.11 The Architect will interpret and decide matters concerning performance under and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect’s response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. 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 15 days after written request is made for them.

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

§ 4.3 CLAIMS AND DISPUTES

§ 4.3.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of 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. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 4.3.2 Time Limits on Claims. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Architect and the other party.

§ 4.3.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Section 9.7.1 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.

§ 4.3.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which 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, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor’s cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Section 4.4.

§ 4.3.5 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.6.

§ 4.3.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner’s suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Section 4.3.
§ 4.3.7 Claims for Additional Time

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

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

§ 4.3.8 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 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.

§ 4.3.9 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 4.3.10 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 4.3.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 4.4 RESOLUTION OF CLAIMS AND DISPUTES

§ 4.4.1 Decision of Architect. Claims, including those alleging an error or omission by the Architect but excluding those arising under Sections 10.3 through 10.5, shall be referred initially to the Architect for decision. An initial decision by the Architect shall be required as a condition precedent to mediation, arbitration or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no decision having been rendered by the Architect. The Architect will not decide disputes between the Contractor and persons or entities other than the Owner.

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

§ 4.4.3 In evaluating Claims, the Architect 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 Architect in rendering a decision. The Architect may request the Owner to authorize retention of such persons at the Owner's expense.

§ 4.4.4 If the Architect 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 such request, and shall either provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished or advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect will either reject or approve the Claim in whole or in part.
§ 4.4.5 The Architect will approve or reject Claims by written decision, which shall state the reasons therefor and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Architect shall be final and binding on the parties but subject to mediation and arbitration.

§ 4.4.6 When a written decision of the Architect states that (1) the decision is final but subject to mediation and arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said 30 days' period shall result in the Architect's decision becoming final and binding upon the Owner and Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.

§ 4.4.7 Upon receipt of a Claim against the Contractor or at any time thereafter, the Architect or 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 Architect or the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 4.4.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the Claim by the Architect, by mediation or by arbitration.

§ 4.5 MEDIATION

§ 4.5.1 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5 shall, after initial decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

§ 4.5.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

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

§ 4.6 ARBITRATION

§ 4.6.1 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5, shall, after decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Section 4.5.

§ 4.6.2 Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. 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 shall be filed with the Architect.

§ 4.6.3 A demand for arbitration shall be made within the time limits specified in Sections 4.4.6 and 4.6.1 as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Section 13.7.
§ 4.6.4 Limitation on Consolidation or Joinder. No arbitration arising out of or relating to the Contract shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Architect, Owner, Contractor and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Contractor, a separate contractor as described in Article 6 and other persons substantially involved in a common question of fact or law whose presence is required if complete relief is to be accorded in arbitration. No person or entity other than the Owner, Contractor or a separate contractor as described in Article 6 shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described therein or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 4.6.5 Claims and Timely Assertion of Claims. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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

ARTICLE 5 SUBCONTRACTORS
§ 5.1 DEFINITIONS
§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

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

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK
§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.

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

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

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

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§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor’s Work, which the Contractor, by these 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 which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

1. assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing; and

2. assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

§ 5.4.2 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.

ARTICLE 6  CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER’S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner’s own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to those including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Section 4.3.

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

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner’s own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

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

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor’s construction and operations with theirs as required by the Contract Documents.
§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP
§ 6.3.1 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

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

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

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

§ 7.2 CHANGE ORDERS
§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect, stating their agreement upon all of the following:
1. change in the Work;
2. the amount of the adjustment, if any, in the Contract Sum; and
3. the extent of the adjustment, if any, in the Contract Time.

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

§ 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 7.3.6.

§ 7.3.4 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.

§ 7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor 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.

§ 7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect 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, a reasonable allowance for overhead and profit. 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 7.3.6 shall be limited to the following:

.1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers’ compensation insurance;
.2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
.3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
.4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
.5 additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be 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.

§ 7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties’ agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs. That 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 4.

§ 7.3.9 When the Owner and Contractor agree with the 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 shall be recorded by preparation and execution of an appropriate Change Order.

§ 7.4 MINOR CHANGES IN THE WORK

§ 7.4.1 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.
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, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic’s liens and other security interests.

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

§ 8.3 DELAYS AND EXTENSIONS OF TIME
§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor’s control, or by delay authorized by the Owner pending mediation and arbitration, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section 4.3.

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

ARTICLE 9 PAYMENTS AND COMPLETION
§ 9.1 CONTRACT SUM
§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES
§ 9.2.1 Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor’s Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT
§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor’s right to
payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainer if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.8, such applications may include requests for payment on account of changes in the Work which 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 Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

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

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

§ 9.4 CERTIFICATES FOR PAYMENT
§ 9.4.1 The Architect will, within seven days after receipt of the Contractor’s Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect’s reasons for withholding certification in whole or in part as provided in Section 9.5.1.

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

§ 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;

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User Notes:
.2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
.3 failure of the Contractor to make payments properly to Subcontractors or for 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 another contractor;
.6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
.7 persistent failure to carry out the Work in accordance with the Contract Documents.

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

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

§ 9.6.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor’s portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor’s portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

§ 9.6.4 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

§ 9.6.5 Payment to material 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 and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.7 FAILURE OF PAYMENT
§ 9.7.1 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 arbitration, then the Contractor may, upon seven additional days’ written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor’s reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.
§ 9.6 SUBSTANTIAL COMPLETION

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

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

§ 9.6.3 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.

§ 9.6.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. 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.

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

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.4.1.5 and authorized by public authorities having jurisdiction over the Work. 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, retentions, 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 requirements required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of written 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 and, 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 better of the Architect’s knowledge, information and belief, and on the basis of the Architect’s on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in...
the final Certificate is due and payable. The Architect’s final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor’s being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner’s property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days’ prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys’ fees.

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

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

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

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY §
10.1 SAFETY PRECAUTIONS AND PROGRAMS
§ 10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 SAFETY OF PERSONS AND PROPERTY
§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

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

§ 10.2.2 The Contractor shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.
§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

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

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

§ 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 load or permit any part of the construction or site to be loaded so as to endanger its safety.

§ 10.3 HAZARDOUS MATERIALS
§ 10.3.1 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 cease Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architects, 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) and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

§ 10.4 The Owner shall not be responsible under Section 10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.
§ 10.5 If, without negligence on the part of the Contractor, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.6 EMERGENCIES
§ 10.6.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section 4.3 and Article 7.

ARTICLE 11 INSURANCE AND BONDS
§ 11.1 CONTRACTOR'S LIABILITY INSURANCE
§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:
1. claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
4. claims for damages insured by usual personal injury liability coverage;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
6. claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
7. claims for bodily injury or property damage arising out of completed operations; and
8. claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption until of the date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief.

§ 11.2 OWNER'S LIABILITY INSURANCE
§ 11.2.1 The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE
§ 11.3.1 Optionally, the Owner may require the Contractor to purchase and maintain Project Management Protective Liability insurance from the Contractor's usual sources as primary coverage for the Owner's, Contractor's and Architect's vicarious liability for construction operations under the Contract. Unless otherwise required by the Contract Documents, the Owner shall reimburse the Contractor by increasing the Contract Sum to the purchase of purchasing and maintaining such optional insurance coverage, and the Contractor shall not be responsible for purchasing any other liability insurance on behalf of the Owner. The minimum limits of liability purchased with such coverage shall be equal to the aggregate of the limits required for Contractor's Liability Insurance under Sections 11.1.1.2 through 11.1.1.5.
§ 11.3.2 To the extent damages are covered by Project Management Protective Liability insurance, the Owner, Contractor and Architect waive all rights against each other for damages, except such rights as they may have to the proceeds of such insurance. The policy shall provide for such waivers of subrogation by endorsement or otherwise.

§ 11.3.3 The Owner shall not require the Contractor to include the Owner, Architect or other persons or entities as additional insureds on the Contractor’s Liability Insurance coverage under Section 11.1.

§ 11.4 PROPERTY INSURANCE
§ 11.4.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder’s risk “all-risk” or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.4 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

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

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

§ 11.4.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.4.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

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

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

§ 11.4.3 Loss of Use Insurance. The Owner, at the Owner’s option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner’s property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner’s property, including consequential losses due to fire or other hazards however caused.
§ 11.4.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.4.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.4.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.4.7 Waivers of Subrogation. 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, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.4.8 A loss insured under Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.4.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.4.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or in accordance with an arbitration award in which case the procedure shall be as provided in Section 4.6. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.4.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Sections 4.5 and 4.6. The Owner as fiduciary shall, in the case of arbitration, make settlement with insurers in accordance with directions of the arbitrators. If distribution of insurance proceeds by arbitration is required, the arbitrators will direct such distribution.

§ 11.5 PERFORMANCE BOND AND PAYMENT BOND

§ 11.5.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.
§ 11.5.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall permit a copy to be made.

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 required 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 which 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, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner’s expense. If such Work is not in accordance with the Contract Documents, correction shall be at the Contractor’s expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK
§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION
§ 12.2.1.1 The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections 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 an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 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 performance 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 which are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor’s correction or removal of Work which 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 which the Contractor might have 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


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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
§ 12.3.1 If the Owner prefers to accept Work which 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
§ 13.1.1 The Contract shall be governed by the law of the place where the Project is located.

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

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner’s rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

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

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

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

§ 13.5 TESTS AND INSPECTIONS
§ 13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. 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 which do not become requirements until after bids are received or negotiations concluded.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner’s expense.
§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect’s services and expenses shall be at the Contractor’s expense.

§ 13.5.4 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.

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

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

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

§ 13.7 COMMENCEMENT OF STATUTORY LIMITATION PERIOD §
13.7.1 As between the Owner and Contractor:

.1 Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;

.2 Between Substantial Completion and Final Certificate for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and

.3 After Final Certificate for Payment. As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Section 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Section 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT §
14.1 TERMINATION BY THE CONTRACTOR
§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

.1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;

.2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;

.3 because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

.4 the Owner has failed to furnish to the Contractor promptly, upon the Contractor’s request, reasonable evidence as required by Section 2.2.1.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days’ written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

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

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

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

.1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

.3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or

.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

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

.1 take possession of the site and 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 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 Architect, 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 as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.
§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

1. cease operations as directed by the Owner in the notice;
2. take actions necessary, or that the Owner may direct, for the protection and preservation of the Work;

and

3. except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner’s convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.
SECTION 00800 - SUPPLEMENTARY CONDITIONS

GENERAL


2. Where a portion of the General Conditions is modified or deleted by these Supplementary Conditions, the unaltered portions of the General Conditions shall remain in effect, but only to the extent that they are not inconsistent with these Supplementary Conditions.

ARTICLE 1 - GENERAL PROVISIONS

1.1 Basic Definitions

MODIFY as follows:

1.1.1 First line, ADD the following after the words "The Contract Documents consist of":

the Invitation to Bid (if any), Notice and Instructions to Bidders (if any), Bid Proposal, but only to the extent accepted by the Owner, Performance and Payment Bonds,

DELETE the last sentence.

ADD the following:

1.1.1.1 Wherever the words "directed", "required", "ordered", "designated", "prescribed", or words of like import are used, it shall be understood that the "direction", "requirement", "order", "designation", or "prescription" of the Owner's Representative is intended and similarly the words "approved", "acceptable", "satisfactory", or words of like import shall mean "approved by", or "accepted to", or "satisfactory to" the Owner's Representative, unless otherwise expressly stated.

1.1.1.2 Where "as shown", "as indicated", "as detailed", or words of similar import are used, it shall be understood that the reference is made to the Contract Documents accompanying this Contract unless stated otherwise. The word "provide" as used herein with respect to the work shall be understood to mean "provide complete in place", that is, "furnished and installed."
1.1.3 All personal pronouns and titles used in this Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa as applicable. Titles of Articles, Paragraphs, and Subparagraphs are for convenience only, and neither limit nor amplify the provisions of this Contract in itself. The use herein of the word "including" with respect to the work, when following any general statement, term, or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters, set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as "without limitation", or "but not limited to", or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all items or matters that could reasonably fall within the scope of such general statement, term or matter.

1.1.2 The Contract.

ADD the following to Section 1.1.2, in the fifth line after the word "Sub-subcontractor"

"except as set forth in Paragraph 5.3 and 5.4"

1.1.8

ADD the following new subparagraph 1.1.8

"The terms "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize), and discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill and diligence required of the Contractor by the Contract Documents."

1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

ADD the following to Subparagraph 1.2.1:

In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities (subject, in each case, to Owner's rights under Section 3.2.5 below).

.1 The Agreement.
.2 Addenda, with those of later date having precedence over those of earlier date.
.3 The Supplementary Conditions.
.4 The General Conditions of the Contract for Construction.
.5 Drawings and Specifications.

In the case of an inconsistency between Drawings and Specifications or within either Document not clarified by addendum (1) the better quality and greater quantity of work shall be provided in accordance with the Architect's interpretation and (2) comply with the more stringent requirement; either or both in accordance with the Architect's interpretation. The terms and conditions of this Subparagraph 1.2.1, however, shall not relieve the Contractor of any of the obligations set forth in Paragraphs 3.2 and 3.7. In addition, the Contractor agrees that

.1 On the Drawings, large scale drawings shall take precedence over small scale drawings.

.2 Before ordering any materials or doing any Work, the Contractor and each Subcontractor shall verify measurements at the project site and shall be responsible for the correctness of such measurements. Any difference which may be found shall be submitted to the Architect for resolution before proceeding with the Work.

.3 If any change in the Work is found necessary due to actual field conditions, the Contractor shall submit detailed information (Request for Information "RFI") describing such departure for approval by the Architect before making the change.

ADD the following Subparagraph to Paragraph 1.2:

1.2.4 The Sections of Division 1 - General Requirements of the Specifications govern the execution of work of all Sections of the Specifications.

ADD the following at the end of Subparagraph 1.5.2:

"Prior to execution of the Agreement, the Contractor and each Subcontractor evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools, and equipment, and (v) other relevant issues."
The owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. Except as set forth in Paragraph 10.3, the contractor shall be solely responsible for providing a safe place for the performance of the Work. The owner shall not be required to make any adjustment in either the Contract Sum or the Contract time in connection with any failure by the Contractor or Subcontractor to have complied with the requirements of this Subparagraph 1.5.2."

1.6 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE.

ADD the following subparagraph to Paragraph 1.6.1:

1.6.1.1 The Contractor may obtain electronic copies of the Drawings for his use, only for this Project. In accepting and utilizing any drawings or other data on any form of electronic media generated and provided by the Architect, the Contractor and its agents covenant and agree that all such drawings and data are instruments of service of the Architect, who shall be deemed the author of the drawings and data, and shall retain the common law, statutory law and other rights, including copyrights. The Contractor and its agents further agree not to use these drawings and data, in whole or in part for any purpose or project other than the Project indicated. The Contractor and its agents agree to waive all claims against the Architect, resulting in damage, liability or costs, or loss of any kind, from any unauthorized changes or reuse of the drawings and data for this project or any other project, by anyone other than the Architect. In addition, the Contractor and its agents agrees to the fullest extent permitted by law to indemnify and hold the Architect and Owner harmless from any damage, liability or costs, including reasonable attorneys fees and costs of defense arising from any changes made by anyone other than the Architect or from any reuse of the drawings and data without prior written consent of the Architect.

ADD the following Paragraph:

1.7 Compliance With Laws

1.7.1 In performing its obligations under this Contract, the Contractor shall comply with all applicable statutes, laws, ordinances, regulations, codes, rules or orders of, or issued by, any governmental body having jurisdiction over the Work, location of the Work, or the Contract.

1.7.2 Whenever the requirements of the Contract Documents exceed the standards imposed under any laws, ordinances, rules, regulations,
and order of any governmental body having jurisdiction over the Work, the Contract Documents shall take precedence.

1.7.3 During the performance of this Agreement, the Contractor agrees as follows:

.1 The Contractor will not discriminate against any employee or applicant for employment because of race, creed, color or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

.2 The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

.3 The Contractor will send to each labor union or representative of workers with whom a collective bargaining agreement or other contract or understanding has been entered into, a notice, to be provided, advising said labor union or workers' representative of the Contractor's commitments under any applicable nondiscrimination laws, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

.4 The Contractor will comply with all provisions of any applicable nondiscrimination laws and the regulations and relevant orders of the United States Secretary of Labor and the State Commission on Human Rights and Opportunities (the "Commission").

.5 In the event of the Contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further work with Owner and its affiliates and such other sanctions may be imposed and remedies invoked as provided by regulations, or as otherwise provided by laws.

.6 The Contractor will include the provisions of Paragraphs (1) through
(5) in every subcontract or purchase order unless exempted; so that such provisions will be binding upon each Subcontractor or vendor.

The contractor shall comply with all Connecticut Department of Labor requirements.

ARTICLE 2 - OWNER

2.1 Definition

ADD the following:

2.1.1.1 The terms "Owner" or "Wesleyan" or "University" refer to Wesleyan University of Middletown, Connecticut.

2.1.1.2 The Owner's Representative shall be Joyce Topshe or her designee. All contact and communication with the Owner shall be Joyce Topshe or her designee. The Owner may retain the services of an outside Construction Administrator, who may be authorized to exercise certain contractual powers of the Owner's Representative and/or the Architect. Should this occur, the Contractor shall be advised in writing, as appropriate, of the scope and nature of this Construction Administrator's role pursuant to these Contract Documents.

MODIFY as follows:

2.1.2 DELETE this Subparagraph.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

MODIFY as follows:

2.2.1 DELETE this Subparagraph.

2.2.2 DELETE this Subparagraph.

DELETE Subparagraph 2.2.3 and ADD the following as new Subparagraph 2.2.3:

2.2.3.1 Owner shall provide Contractor with a copy of Owner's land survey and title commitment or title insurance policy of the Project. Data concerning site, size, access to site, staging and storing, present obstructions on or near the site, conditions of existing adjacent structures, locations and depths of sewers, conduits or pipes, gas lines, position of sidewalks, curbs and pavements, and other data, to the extent depicted or disclosed thereon, and any other information made available by Owner or its
representatives to the Contractor, is provided as a courtesy only and without representation or warranty on the part of the Owner or its professional advisors. Accuracy, reliability or completeness of such data, however, is not guaranteed and is furnished solely for accommodation of Contractor. Use of such data is made at Contractor’s sole risk and expense and Contractor shall independently seek out and obtain such information as it requires in order to complete the Work and perform its obligations under the Contract Documents.

DELETE Subparagraph 2.2.5 and substitute the following:

2.2.5 The Contractor will be furnished free of charge 1 copy of Drawings and Project Manuals. Additional sets will be furnished at the cost of reproduction, postage and handling, to be paid by Contractor.

DELETE in the third through the sixth lines of Subparagraph 2.4.1, beginning with the words “the Owner may after such seven–day period” and ending with the words “commence and continue to correct any deficiencies”.

ADD the following new Subparagraph 2.5:

"2.5 Extent of Owner’s Rights

2.5.1 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (i) granted in the Contract Documents, (ii) at law or (iii) in equity.

2.5.2 In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract documents."

ARTICLE 3 - CONTRACTOR

3.1 General

MODIFY as follows:

ADD at the end of Subparagraph 3.1.2:

"All of Contractors work shall conform to the Contract Documents. No change therefrom shall be undertaken without the prior review by the Architect and approval of the Owner. Contractor shall be responsible for details of the Work necessary to carry out the intent of the drawings and specifications or which are customarily performed. When more detailed
information is required for performance of the Work or when an interpretation of the Contract Documents is requested, the Contractor shall submit a written request to the Architect and Owner, and the Architect shall furnish such information or interpretation in the form of an Architect's Supplemental Instruction or other written or drawn form or drawing. Where only part of the Work is indicated, similar parts shall be considered repetitive. Where any detail is shown and components thereof are fully described, similar details not fully described shall be considered to incorporate the fully described details and components. In the case of inconsistency between drawings and specifications or within either document not clarified by Addendum, the better quality or greater quantity shall be provided in accordance with the Architect’s interpretation at no extra cost to Owner."

ADD the following:

3.1.4 The Contractor shall purchase and shall maintain on site the latest code manuals applicable to the work. At a minimum the Contractor shall purchase and shall maintain the 2003 IBC, 2005 CT State Fire Code, 2003 ICC Fire Code, NFPA 101 Life Safety Code, NFPA-1 Integrated Code, 2005 CT Building Code, the latest version of NECA, and the latest version of the IMC. These manuals shall become the property of the owner at the completion of the project.

3.2 Review of Contract Documents and Field Conditions by Contractor

MODIFY as follows:

3.2.1 Final two Lines after the word "Architect" ADD "and Owner." In the sixth line, after the words "errors, omissions, or inconsistencies in" and before the words "the Contract Documents", ADD the words "the design information contained in". At the end of Subparagraph 3.2.1, add the following: "The exactness of grades, elevations, dimensions or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Architect or the Owner. The Contractor shall, therefore, satisfy itself as to the accuracy of all grades elevations, dimensions and locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor’s failure to so verify all such grades, elevations, dimensions or locations shall be promptly rectified by the Contractor without any additional cost to Owner or delay in the Schedule."

3.2.2 Line two, after the word "Architect" ADD "and Owner."

ADD the following:
3.2.4 After any error, inconsistency or omission in the Contract Documents is reported by Contractor to Architect and Owner or is discovered by Architect or Owner, the Contractor shall not proceed with any portion of the Work so affected without the Owner’s written approval of the Architect’s modification of that portion of the Contract Documents.

3.2.5 In the event of a conflict between portions of the Contract Documents, Contractor shall ask for a written decision from the Owner resolving the conflict. The Owner may delegate to the Architect the responsibility for preparation of such a decision, in which event the Owner must approve the Architect’s decision in writing prior to the Contractor proceeding in reliance thereon.

3.4 LABOR AND MATERIALS

DELETE Subparagraph 3.4.2 and substitute the following Subparagraphs:

3.4.2 After the Contract has been executed, the Architect and Owner will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in the General Requirements, Division 1 of the Specifications. Owner may accept, reject or modify any such request in Owner’s sole discretion. By making requests for substitutions, the Contractor:

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

3.4.2.2 represents that the Contractor will provide the same warranty for the substitution that the Contractor would have provided for that specified;

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

3.4.2.4 shall coordinate the installation of the accepted substitution, making such changes as may be required for the Work to be complete in all respects.

3.4.2.4 shall make requests for substitutions, if any are to be requested, within 30 days of execution of contract.

3.4.2.5 agrees that no substitutes shall be considered except upon written approval by the Owner. No time extension shall be allowed nor any responsibility assumed by the Owner when the Contractor submits a request for a substitution, whether such request is approved or denied. Approval by the Owner of any such substitution shall not relieve the Contractor requesting the substitution of any responsibility for additional time, liability or costs incurred by other trades for changes made necessary to accommodate the substituted item.
3.4 Labor and Materials

ADD the following:

3.4.3.1 Smoking is strictly prohibited inside or adjoining any building or structure and within any work area. The introduction or use of drugs, spirituous or intoxicating liquors, on or about the Work embraced in this Contract or on any of the Owner's properties is strictly prohibited and shall be grounds for termination.

3.4.3.2 The Contractor shall be fully responsible to the Owner for the acts of his Subcontractors or vendors, and of persons either directly or indirectly employed by them, as the Contractor is for the acts of persons directly employed by the Contractor.

3.4.3.3 Privacy: The Contractor shall conduct all work of the Contract with the maximum effort to maintain the privacy of the Owner’s operations, students and staff. When working in occupied areas the Contractor shall not permit workers to peer into other Wesleyan University areas which may be visible from the work area. Invasion of privacy is a major infraction of the work rules.

3.4.3.4 General Conduct and Demeanor: All construction workers shall treat all other construction workers, Owner’s staff, patients, visitors and the public professionally and with respect and courtesy.

3.4.3.5 Physical Appearance: The Contractor shall require each worker to dress appropriately in a clean, neat and professional manner.

3.4.3.6 Radios and Television: The use of entertainment devices including personal devices with headphones or earphones is strictly prohibited at all times. The Contractor shall control the volume of communication radios and loudspeakers to avoid creating a nuisance.

3.4.3.7 Language: The use of foul, abusive or sexually suggestive language is strictly prohibited.

3.4.3.8 Loud Conduct: Screaming, yelling and unnecessary loud conduct is strictly prohibited.
3.4.3.9 Physical Actions: Running, horseplay, fighting and other unprofessional conduct is strictly prohibited. Fighting is a major infraction of the work rules.

3.4.3.10 Stealing: Stealing of materials, objects, furnishings, equipment, fixtures, supplies or other items is prohibited and a major infraction of the work rules.

3.4.3.11 Sexual Harassment: All forms of physical and verbal sexual harassment including, without limitation: touching, whistling, sexually explicit jokes, drawings, photos, and representations; exhibitionism; and all other sexually oriented offensive behavior is strictly prohibited and a major infraction of the work rules.

3.4.3.12 Warnings and Dismissal: For minor infractions of the rules, the Owner may issue a warning. One warning will be allowed per worker, and the second infraction shall result in the immediate dismissal of the worker from the Owner’s property. For major infractions such as invasion of privacy, the worker shall be dismissed immediately without warning and possibly subject to criminal prosecution.

3.4.3.13 Notification of Workers: The Contractor shall clearly notify and educate each worker about these Work Rules and the requirements for worker appearance and conduct. The Contractor shall document that all persons on site have been notified of these rules and shall transmit this documentation to the Owner.

3.4.3.14 Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and other individuals associated with the Project. The Contractor shall also use best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance. If any delay shall occur, or may occur, on account of a conflict involving any labor agreement or regulation, the Owner may require that other material or labor be provided pursuant to a Change Order or Construction Change Directive.

3.5 WARRANTY

ADD the following Clause to 3.5.1:

3.5.1.1 The Contractor shall submit, prior to the Application for Payment of that
item, statements from materials and systems manufacturer's, that the materials and systems manufacturers accept the conditions and requirements for warranties for their product or system. Failure to submit to the Owner the manufacturer's acceptance of any special conditions required by the Architect or Contract shall justify the withholding of, approval for payment for those materials or systems, including all labor to install or related overhead or profit charges.

ADD the following Subparagraphs 3.5.2 and 3.5.3:

3.5.2 The Contractor shall obtain written warranties from any and all materials suppliers and labor providers, including without limitation, the manufacturers and installers, and effectively transfer same to the Owner so as to permit the Owner to effectively enforce the same as the direct beneficiary thereof (with copies of the same delivered to the Architect) no later than the time at which the work covered by the warranty was delivered and installed. The Contractor shall perform the Work in a manner so as to not violate or make void any such warranties.

3.5.3 Unless otherwise specified, the Contractor shall warrant (guaranty) all Work against defects resulting from the use of material, workmanship, or equipment which is inferior, defective or not in accordance with the terms of the Contract. This warranty shall be in effect for one year from the date of issuance of the Certificate of Substantial Completion for the Project or designated portions thereof and shall be in addition to, and not a substitute for, any other rights of Owner under the Contract Documents or existing in law. All other or additional manufacturer's or installer's warranties shall be passed through to the Owner.

3.6 Taxes

DELETE Subparagraph 3.6.1 and SUBSTITUTE the following:

3.6.1 Wesleyan University is tax exempt. The Contractor shall become familiar with the current regulations of the Department of Revenue Service. The tax on materials or supplies exempted by such regulations shall not be included as part of the price for any work performed. A Sales Tax Certificate is available from the Owner upon written request.

3.7 PERMITS, FEES, AND NOTICES

MODIFY as follows:

DELETE Subparagraph 3.7.1 and insert the following in lieu thereof:
"The Contractor shall secure, pay for, and a soon as practicable but in no case later than the commencement of the Work, furnish the Owner with copies of all permits and fees, licenses, and inspections necessary for the proper execution and completion of the Work, including, without limitation, all demolition permits, building permits and certificates of occupancy. All connection charges, assessments, and inspection fees as may be imposed by any municipal agency or utility company are included in the Contract Sum and shall be the Contractor's responsibility. Before commencing the Work, the Contractor must submit a letter stating that the Contractor has obtained all required permits, listing such permits and attaching thereto copies of all such permits. The cost of obtaining such permits shall be included by the Contractor in its lump sum bid or Contract Sum.

ADD in Subparagraph 3.7.2, between the words "and lawful orders" and "of public authorities", the words "and all other requirements". At the end of Subparagraph 3.7.2, add the words "The Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the municipality in which the Project is located or by any other public or private body with jurisdiction over the Project. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary backup material, and furnish the surety with any required personal undertakings. The Contractor shall also obtain and pay all charges for approvals for street closings, parking meter removal and any other similar matters as may be necessary or appropriate from time to time for the performance of the Work."

3.7.3 First sentence, ADD the following to the end of the sentence:

"unless such laws, statutes, ordinances, building codes and rules and regulations bear upon the proper performance of the Work."

ADD the following:

3.7.5 If any governmental body having jurisdiction over the Work requires licenses or registrations for the performance of the Work, or any part thereof, the Contractor shall obtain and hold such valid licenses or registrations as may be required by law to prosecute the Work to completion. If any part of the Work for which such a license or registration is required is to be performed by Subcontractors of any tier, the Contractor shall ensure that any such Subcontractor obtains and holds such valid licenses or registrations as may be required by law to prosecute said Work to completion.
3.8 ALLOWANCES

Add the following to the end of Subparagraph 3.8.2.2:

"... except when installation is specified as part of the allowance in the General Requirements, Division 1, of the Specifications."

3.9 SUPERINTENDENT

ADD the following Subparagraph:

3.9.2 The Contractor's site representatives shall be subject to approval by the Owner, based upon credentials to be submitted by Contractor, and such representatives shall be changed only with consent of Owner. The Contractor's site representative(s) shall be identified in Contractor's bid and specifically identified in the Contract Documents. If for any reason Contractor's site representatives are unsatisfactory, and upon request of Owner, other qualified representatives shall be substituted by the Contractor without any additional Charges in each case, subject to the prior approval of Owner.

ADD the following:

3.9.3 The Superintendent, who shall be subject to approval by the Owner, may not be replaced before completion of the Work without concurrence from the Owner.

3.9.4 As used in this entire Paragraph, "Superintendent" includes the project manager as well as the superintendent.

3.10 Contractor's Construction Schedules

MODIFY as follows:

3.10.1 First sentence, DELETE the words "promptly after being awarded the Contract," and SUBSTITUTE "within 15 days of the Contract Award or at the Preconstruction Meeting, whichever occurs first,"

3.10.2 Line one, after the word "Architect's" ADD "and Owner's." Line two, after the word "Architect" ADD the words "and Owner."

ADD the following:

3.10.4 The Contractor shall submit, within 15 days of the date hereof, and in all cases before any Application for Payment is made, the Contractor's
Construction Schedule. The Contractor's Construction Schedule shall be in a detailed precedence-style critical path management format satisfactory to the Owner and the Architect that shall also (i) provide a graphic representation of all activities and events that will occur during the performance of the Work; (ii) identify each phase of construction and occupancy; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as the "Milestone Dates"). Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the contract documents and attached to the Agreement as an Exhibit. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. The contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions (sometimes referred to in these Supplementary Conditions as "progress reports") as set forth in Subparagraph 3.10.1 or if requested by either the Owner or the Architect. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, or the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to a Change Order.

3.10.5 In the event the Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including additional manpower, equipment and facilities, and (iii) other similar measures (hereinafter referred to collectively as "Extraordinary Measures"). Such Extraordinary Measures shall continue until the Progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the Construction Schedule. The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner under or pursuant to this Subparagraph 3.10.5; and Owner may require Extraordinary Measures as frequently as Owner shall deem necessary to ensure Contractor's performance of the Work shall comply with any Milestone Date or completion date set forth in the Contract Documents. No exercise by Owner of its rights hereinabove shall be deemed to limit or otherwise reduce any other rights the Owner may have under this
Agreement, the Contract Documents or at law and equity, all of which shall be in addition to, and not in limitation of, the aforesaid rights.

3.11 Documents and Samples at the Site

ADD the following:

3.11.2 In addition, the Contractor shall indicate on the drawings all new pipe, ductwork and conduit runs which are concealed in the floor slabs, walls, ceilings, etc. In addition, the Contractor shall indicate on the as built drawings all existing pipes, ductwork and conduits that have been reused to the extent the locations can be reasonably determined in the field.

The Contractor shall indicate on the drawings the electrical distribution panel and circuit number supplying each item installed or reconnected, with diagrammatic lines showing sequence of connections.

3.12 Shop Drawings, Product Data and Samples

MODIFY as follows:

3.12.2 Line one, after the word “brochures” ADD “Materials Safety Data Sheets (MSDS).”

3.12.4 Line four, five, and seven, ADD “and Owner” after “Architect.”

3.12.5 Line two and five, after “Architect” ADD “and Owner.”

3.12.7 Line three, after “Architect” ADD “and Owner.”

3.12.8 Lines two and seven after “Architect's” ADD “or Owner's.” Lines three and four after “Architect” ADD “and Owner.”

3.12.9 Line three, after “Architect” ADD “and Owner.”

3.12.10 After the word “professional” in line 9, insert “and who shall comply with reasonable requirements of the Owner regarding qualifications and insurance.” Delete the balance of that sentence starting with the word “provided” and ending with the word “satisfy.”

ADD the following:

3.12.5.1 The Contractor shall certify, by stamping, signing and dating all submittals, that it has reviewed the submittals to assure conformance to the Contract Documents. Submittals made to the Architect without evidence of the Contractor’s review for conformance may be returned
for resubmission.

3.13 Use of Site

ADD the following:

3.13.2 Nothing contained in the Contract Documents shall be interpreted as giving the Contractor exclusive use of the site or premises where the Work is to be performed.

3.13.3 The Work in this Contract must not interfere with the Owner’s normal, continuous and safe operation of the buildings and site. If interference appears possible because of new connections to existing work or other reasons, the Work involved must be done at a time and in a manner directed by the Architect or Owner’s Representative as a part of the Contract.

This Project shall be executed in a series of phases. The Contractor shall incorporate the needs of the Owner into the phasing plans. The parties will endeavor to identify all interferences prior to completion of the phasing plans. If interference appears possible because of new connections to existing work or other reasons, the Work involved will be done at a time and in a manner directed by the Architect or Owner’s Representative.

The Contractor shall execute the work in such a manner as to minimize disruption to surrounding businesses. The Contractor shall work with the City and surrounding businesses to determine parking and work strategies so as to minimize disruption.

The Contractor is advised that Owner is obligated to provide 15 parking spaces to the City of Middletown upon the Project site throughout the Work. Contractor agrees to execute the Work in such a manner so as to comply with said obligation.

3.13.4 The Contractor shall comply with the following procedures when working in occupied areas including, exam, administrative, laboratory, mechanical, electrical, hallways and office spaces:

.1 Notification: The Contractor shall notify the Owner at least five (5) business days prior to commencing work in any area. This notification shall include a detailed description of proposed work and suggestions for minimizing or eliminating any impact on educational activities.

.2 Overhead Work: There shall be no overhead work (e.g.
demolition, HVAC ductwork, electrical) performed directly over occupied spaces without Owner's express consent.

3.13.5 The Contractor shall produce a site mobilization plan for the Owner’s review and approval before beginning operations on site. The contractor shall complete and submit interim life safety plans for every day of work on site.

3.13.6 Only materials and equipment that are to be used directly in the Work shall be brought to the Project and stored on the Project site by Contractor. After equipment and excess materials are no longer needed, the same shall be promptly removed from the Project site. Protection of the materials and equipment stored at the Project site form weather, theft, damage and all other adversity is solely the responsibility of the Contractor. The Contractor shall not post any signage except with the prior permission of the Owner.

3.14 Cutting and Patching

ADD the following:

3.14.3 Written permission shall be obtained from the Architect before cutting beams, arches, lintels or other structural members not already indicated to be modified in the Contract Documents.

3.15 Cleaning Up

MODIFY as follows:

3.15.1 Line one, after "shall" ADD "on a daily basis."

ADD the following:

3.15.3 Burning of rubbish at the Project site or in the surrounding area is prohibited. The Contractor shall provide for removal of rubbish at least once per week, at its own cost and expense. The Contractor shall maintain the premises in a debris-free condition at the end of each day.

3.17 ROYALTIES, PATENTS AND COPYRIGHTS

ADD the following to the end of Subparagraph 3.17.1:

"... In the event of legal action arising out of such infringement for which the Contractor is responsible and which action has the effect of stopping or delaying the Work, the Owner may require the Contractor to substitute other products of like kind
as will make it possible to pursue and complete the Work. Costs and expenses caused thereby shall be borne by the Contractor."

3.18 Indemnification

DELETE Subparagraph 3.18 and SUBSTITUTE the following:

3.18.1 To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless Owner and its consultants, agents, and employees from and against all claims, damages, losses, liabilities, obligations, settlements or costs, whether direct, indirect or consequential (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court and arbitration costs incurred by Owner) arising out of or resulting from any failure to perform the Work or any breach of the Agreement or Contract Documents or any breach of a duty imposed by law on Contractor, provided that any such claim, damage, loss or expense is caused in whole or in part by any act or omission of the Contractor, or any person or organization directly or indirectly employed by the Contractor to perform or furnish any of the Work, or by anyone for whose acts Contractor may be legally liable, regardless of whether or not it is caused in part by a party indemnified hereunder (with the exception only for any negligence of the Owner, or those for whom the Owner is liable, that is prohibited from the scope of this clause by Conn. Gen. Stat. § 52-572k as it may be amended from time-to-time.)

3.18.2 Contractor further agrees to indemnify, defend and hold harmless Owner and its consultants, agents and employees from all claims, damages, losses, liabilities, obligations, settlements or costs, whether direct, indirect or consequential (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court and arbitration costs incurred by Owner) arising out of or resulting from Contractor’s handling, generation or disposal of any hazardous or toxic substances or materials, or for any violations of any laws, regulations or standards pertaining to safety, health or the environment.

3.18.3 As to any and all claims against Owner or any of its consultants, agents or employees by any employee of Contractor, by any person or organization directly or indirectly employed by Contractor to perform or furnish any of the Work or to perform any part of the Agreement or Contract, or by anyone for whose acts Contractor may be liable, the indemnification obligations of Contractor under this clause shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor under worker's or workman's compensation acts, disability benefit acts or other employee benefit acts or insurance contracts. The Contractor further agrees to obtain, and maintain at its sole expense such general liability insurance coverage as will insure the provisions of this
Indemnification clause and any other contractual indemnity obligations assumed by the Contractor in this Contract. Any claims by Owner for indemnification shall survive the termination of this Contract.

ARTICLE 4 - ADMINISTRATION OF THE CONTRACT

4.1 Architect

DELETE Subparagraph 4.1.1 and SUBSTITUTE the following:

4.1.1 The "Architect" shall be the Design Professional designated by the Owner with such qualifications as the Owner deems proper. The term "Architect" shall also include the Design Professional's authorized representative.

MODIFY as follows:

4.1.2 Second line, DELETE the word "Contractor."

4.1.3 DELETE the words "against whom the Contractor makes no reasonable objection and."

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

Add the following Clause to Subparagraph 4.2.2:

4.2.2.1 Where it is provided in the Contract Documents or is otherwise required that the Contractor shall pay for services of the Architect, such payment shall be at a rate of two and one half (2.5) times the Architect's Direct Personnel Expense plus any expenses incurred in providing such services. Direct Personnel Expense is defined as the direct salaries of the Architect's personnel engaged on the Project and the portion of the cost of their mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, pensions and similar contributions and benefits.

ADD the following to Subparagraph 4.2.5:

In all events, the Owner shall make the final decision on whether to make payment to the Contractor in accordance with the Contractor's Applications for Payment.

DELETE Subparagraph 4.2.6 and SUBSTITUTE the following:

4.2.6 The Owner shall have authority to reject Work which does not
conform to the Contract Documents. Whenever the Owner considers it necessary or advisable for implementation of the intent of the Contract Documents, the Owner shall have authority to require additional inspection or testing of the Work in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such work is fabricated, installed or completed. The Architect shall advise and assist the Owner in performing any of the functions set forth in this Subparagraph. The Owner shall advise the Architect of any instruction or interpretations which Owner may give to the Contractor.

MODIFY as follows:

4.2.7 First and twelfth lines, after “Architect” ADD “and Owner.” third, fifth, ninth, tenth, eleventh, after “Architect’s” ADD “and Owner’s.”

4.2.8 ADD a period after the word “Directives” and DELETE the rest of the sentence.

4.2.9 Last line, DELETE the period and ADD “but in all events, the Owner shall make the final decision on whether to make payment to the Contractor in accordance with the Final Certificate of Payment.”

4.2.10 DELETE this Subparagraph.

4.2.13 DELETE the words “The Architect’s decisions” and SUBSTITUTE “The decisions of the Owner, with the advice and consultation of the Architect.”

4.3 CLAIMS AND DISPUTES

ADD the following at the end of the first sentence of Subparagraph 4.3.2:

“;provided, however, that the claimant shall use its best efforts to furnish the Architect and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall cooperate with the Architect and the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such claim.”

ADD the following at the end of Subparagraph 4.3.4:

“No adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or that reasonably should have been disclosed by the Contractor’s (i) prior inspections, tests, reviews
and preconstruction services for the Project, or (ii) inspections, tests, reviews, and preconstruction services that the Contractor had the opportunity to make or should have performed in connection with the Project."

**ADD** the following Clause to 4.3.7.2:

"... There shall be no extension of the Contract time for adverse weather conditions unless the number of days of severe weather is substantially greater or conditions substantially more severe than the average for the same calendar period over the preceding five years as recorded by a recognized weather observation agency."

**ADD** the following Clauses to Subparagraph 4.3.7:

4.3.7.3 No extension of the Contract Time shall be granted unless Contractor can demonstrate to Architect’s and Owner’s satisfaction, that work delayed is on the critical path of the Work.

4.3.7.4 The Architect and Owner shall have the right to defer his decision on any claim, made pursuant to the provisions of the Contract, until the actual effect which forms the basis of the claim may be fully assessed.

**4.5 RESOLUTION OF CLAIMS AND DISPUTES**

**ADD** the phrase "meetings of the principles" prior to the word "mediation" in the last sentence of this paragraph.

**DELETE** the portion of the first and second sentence beginning with "(1)" and ending with the second "and" and **ADD** the following Clause to 4.4.6:

"... (1) the decision is final but subject to a meeting of the principles of the parties involved then a meeting shall be held promptly between the parties attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute. If, within 15 days, the parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to mediation and arbitration and . . ."

**4.6 ARBITRATION**

**MODIFY** as follows:

**DELETE** Paragraph 4.6 in its entirety and **SUBSTITUTE** the following:

Add the following:

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4.6.1 In addition to mediation and arbitration and prior to mediation and arbitration a meeting shall be held promptly between the parties attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute. If, within 15 days, the parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to non-binding mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association. In addition and prior to any arbitration, the parties shall endeavor to settle disputes by mediation under the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Mediation shall commence, unless otherwise agreed, within the same time limits stipulated in Subparagraphs 4.4.6 and 4.5.1 for the filing of a notice of a claim in arbitration. Such time limits shall then be extended for arbitration by ten days and the duration of the mediation process."

4.6.2 All disputes and claims shall initially be referred to the Architect for decision in writing. After the Architect has rendered its decision, or, if the Architect fails to render a decision within two weeks after receipt of a submission of a dispute, the Owner, at its sole discretion and option, may choose to have all claims, disputes and other matters in question under the terms of this Contract be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then pertaining as administered by the American Arbitration Association or a similar alternative dispute resolution service selected by the Owner, unless the parties mutually agree otherwise. The Contractor hereby consents that arbitration arising out of or relating to this Contract shall include, by consolidation, joinder or in any other manner, additional persons not a party to this Contract, whose dispute or claim is in any manner related to the underlying dispute or claim between the parties to this Contract.

4.6.3 If the Owner consents to arbitration, notice of demand for arbitration shall be filed in writing with the other party to this Agreement and with the alternative dispute resolution service selected by the Owner. The demand shall be filed within sixty (60) days after the claim, dispute or other matter in question has been decided by the Architect, and the Owner has formally consented in writing to arbitration. In no event shall the demand for arbitration be made after the date required by this Contract, or when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations or by laches, whichever is earlier. In addition, if the Contractor fails to timely and properly file its demand in accordance with this paragraph, Contractor hereby waives any right to pursue in any manner any such claim, dispute or other matter in question.
4.6.4 The venue for arbitration shall be at a locale in the Greater Hartford area, or at such other location as the Owner may agree. If the Owner consents to arbitration, the award rendered by the arbitrators shall be final and binding, and not subject to appeal, and judgment may be entered upon it in accordance with the laws of the State of Connecticut.

4.6.5 If the Owner does not consent to arbitration, all disputes and claims, shall, after initial submission to and determination of the Architect in accordance with Paragraph 4.5.1, be subject to determination by a court of competent jurisdiction. The venue for such action shall be in Middletown, Connecticut or such other location within this State if required by law. If the Contractor fails to timely and properly commence such an action within sixty (60) days after the claim, dispute or other matter in question has been decided by the Architect, and if the Owner has not consented in writing to arbitration, then Contractor hereby waives any right to pursue in any manner any such claim, dispute or other matter in question.

ARTICLE 5 - SUBCONTRACTORS

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

ADD the following to Subparagraph 5.2.1:

5.2.1 Substitution of a Subcontractor for one named in the Bid Documents, or substitution of a Subcontractor for any designated subtrade work bid to be performed by the Contractor's own forces, shall not be permitted, unless approved in writing by Owner in advance.

Add the following Clause to Subparagraph 5.2.1:

5.2.1.1 Prior to commencement of the Work, but in no case later than 30 days following execution and delivery of this Agreement, the Contractor shall submit to the Owner a complete list of Subcontractors, and each such Subcontractor shall submit to the Owner (through the Contractor) evidence satisfactory to the Owner that such Subcontractor is bondable to the extent required by the scope of such Subcontractor's portion of the Work. To facilitate and expedite the investigations of proposed Subcontractors, Sub-Subcontractors, fabricators and suppliers of materials and equipment, the Contractor, at the request of the Owner, shall submit a statement in writing in sufficient detail to establish that each has the capability, experience, reliability, and uncommitted productive capacity to carry out the Work to be performed pursuant to each such proposed subcontract, sub-subcontract or procurement contract, in a manner consistent with the requirement of this Contract for Construction.
Each subcontractor shall, as part of its submission, include its Tax ID number and written permission to the Owner to perform a credit check on such subcontractor, in each case in form acceptable to Owner. All such submittals shall include a fully detailed analysis of principal personnel and organization, financial condition, construction plant, equipment and facilities. Submit a completed AIA Document A305, *Contractors Qualification Statement*.

**MODIFY** as follows:

5.2.2 First line, **ADD** the following after the word 'entity':

who is not listed in the Bid Proposal Form and

5.2.3 **DELETE** second and third sentences and **SUBSTITUTE** the following:

The Contractor shall not award any subcontract or any other contract for a portion of the Work to any entity which does not meet the Owner’s, the Architect’s, or the Contractor’s reasonable criteria including, but not limited to, such entities’ ability to provide acceptable bid and/or performance bonds and certificates of insurance, such entities’ prior experience on projects of similar size and scope, and the existence of any prior or current litigation between such entity and the Owner, the Contractor, or the Architect, or any prior projects.

5.3.2 **ADD** the following new Subparagraph 5.3.2:

"All subcontracts shall be in writing in form and substance substantially similar to the Contractor’s standard form subcontract, attached to the Agreement as an exhibit, and shall specifically provide that the Owner is an intended third-party beneficiary of such contract and that the Owner shall have the right and power, at its election to assume such subcontract upon notice to the subcontractor by Owner or to terminate the same without further obligation thereunder."

5.4.3 **ADD** the following new Subparagraph 5.4.3:

"Each subcontract shall specifically provide that the Owner shall only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the Owner’s exercise of any rights under this conditional assignment."

**ARTICLE 6 - CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**
ADD the following new subparagraph 6.1.5:

"The Contractor accepts assignment of, and liability for, all purchase orders and other agreements for procurement of materials and equipment that are identified as part of the Contract Documents. The Contractor shall be responsible for such prepurchased items, if any, as if the Contractor were the original purchaser. The Contract Sum includes, without limitation, all costs and expenses in connection with delivery, storage, insurance, installation, and testing of items covered in any assigned purchase orders or agreements. All warranty and correction of the Work obligations under the Contract Documents shall also apply to any prepurchased items, unless the Contract Documents specifically provide otherwise."

6.2 MUTUAL RESPONSIBILITY

Add the following Clause to Subparagraph 6.2.5:

6.2.5.1 If a separate Contractor sues or initiates an arbitration proceeding against the Owner on account of any damage alleged to have been caused by the Contractor, the Owner shall notify the Contractor who shall defend such proceedings at the Contractor's expense, and if any judgment or award against the Owner arises therefrom the Contractor shall pay or satisfy it and shall reimburse the Owner for all attorney's fees and court or arbitration costs which the Owner has incurred.

ARTICLE 7 - CHANGES IN THE WORK

7.1 CHANGES

Add the following to end of Subparagraph 7.1.1:

"... The Contractor's proposal for a change in the Work shall be itemized completely and shall include material costs and quantities; labor wages, time, insurance and pensions; equipment rental, other than small tools. There shall be no extension in the Contract time unless the Contractor can effectively demonstrate that the work delayed is on the critical path of the Project Schedule."

DELETE Subparagraph 7.1.2 and SUBSTITUTE the following:

7.1.2 A Change Order shall be based upon agreement by the Owner and Contractor; a Construction Change Directive may be issued without the agreement of the Contractor. All changes to the Work shall be approved by the Owner's Representative with the advice of the Architect. Except as permitted in Paragraph 7.3, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work,
and no claim that the Owner has been unjustly enriched by any alteration or additional to the Work, whether or not there is, in fact, any unjust enrichment to the work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents outside of the Change Order or Construction Change Directive process described in the Contract.

7.2 Change Orders

DELETE Subparagraph 7.2.1 and SUBSTITUTE the following:

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

.1 A change in the Work.

.2 The amount of the adjustment in the Contract Sum, if any; and

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

The signature of the Architect signifies that he has reviewed and recommends the change. However, the Architect’s signature is not necessary in order for the Change Order to constitute a modification to the Contract which binds the Owner and Contractor.

ADD the following phrase to Subparagraph 7.2.2:

"and 7.3.6 and must include those listed in 7.3.10."

ADD the following paragraph at the end of the Article:

7.2.3 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule. In the event a Change Order increases the Contract Sum, Contractor shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Contract Documents. The Contractor’s proposal for a change in the Work shall be completely itemized and shall include all material costs and quantities; labor wages, time, insurance and pensions; and equipment rental, other than small tools. Additional material, labor, equipment, overhead and profit or other items not originally included with the Contractor’s Proposal shall not be reviewed by the Architect nor accepted by the Owner after the Proposal has been accepted and a Change Order issued for the Work. There shall be no extension in the Contract time unless the Contractor can effectively

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demonstrate that the scope of work included in the Change has a quantifiable effect (either positively or negatively) on the critical path of the Project Schedule. The Change Order will include all of the costs associated with the change in the Work and will include the following language on the Change Order form:

THE CONTRACTOR AGREES THAT THIS CHANGE ORDER ADJUSTS THE CONTRACT PRICE AND TIME TO REFLECT FAIRLY ALL OVERHEAD, PROFIT, CHARGES, COSTS, EXPENSES, DELAYS, DAMAGES AND OTHER PAYMENTS THAT MAY BE CLAIMED DUE AND OWING TO THE CONTRACTOR AS OF THE ABOVE STATED DATE, AND AGREES THAT THE ACCEPTANCE OF THIS CHANGE ORDER BY THE OWNER SHALL CONSTITUTE A COMPLETE AND FINAL ACCORD AND SETTLEMENT OF CONTRACTOR'S CLAIM AGAINST THE OWNER ON ACCOUNT OF THIS OR ANY PRIOR CHANGE IN THE WORK.

7.3 CONSTRUCTION CHANGE DIRECTIVES

MODIFY as follows:

7.3.1 ADD the following to the end:

The signature of the Architect signifies that he has reviewed and recommends the change. However, the Architect's signature is not necessary in order for the Change Directive to be valid.

7.3.6 First sentence, DELETE the word "Architect" and SUBSTITUTE "Owner with the advice of the Architect." First sentence, DELETE the words "a reasonable allowance for overhead and profit" and SUBSTITUTE "an allowance for overhead and profit in accordance with Clauses 7.3.10.1 through 7.3.10.7 below." Second sentence, DELETE the words "as the Architect" and SUBSTITUTE "as the Owner with the advice of the Architect."

7.3.7 DELETE the first sentence.

ADD the following:

7.3.10 In Subparagraph 7.3.6, the allowance for the combined overhead and profit included in the total cost to the Owner shall be based on the total direct material, labor, and equipment cost. Utilizing the appropriate section below for the type of work and allowable percentage based upon the reasonable total direct cost of the change, calculate the appropriate overhead/profit allowance from the schedules below:
.1 For the Contractor, for Work performed by the Contractor’s own forces:

- $0 to 25,000: 10% overhead, 5% profit
- 25,001 to 50,000: 12% combined overhead and profit
- 50,001 and up: 5% combined overhead and profit

.2 For the Contractor, for Work performed by the Contractor’s Subcontractor:

- $0 to 15,000: 8% combined overhead and profit
- 15,001 to 25,000: 6% combined overhead and profit
- 25,001 and up: 4% combined overhead and profit

.3 For each Subcontractor involved, for Work performed by that Subcontractor’s own forces:

- $0 to 25,000: 10% overhead, 5% profit
- 25,001 to 50,000: 12% combined overhead and profit
- 50,001 and up: 7% combined overhead and profit

.4 For each Subcontractor involved, for Work performed by that Subcontractor’s Subcontractor:

- $0 to 15,000: 8% combined
- 15,001 to 25,000: 6% combined
- 25,001 and up: 4% combined

An example of the application of the above would be as follows. If the reasonable total direct cost of the change for work performed by the Contractor was $52,000, the overhead and profit factor of 5% would be applied to the entire $52,000.

.5 Cost to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.6.

.6 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of all costs including labor, materials, unit prices and Subcontracts. Subcontract proposals included in any work shall also be itemized. This will require submission to the Owner of all bid estimate documentation and backup to substantiate what was base contract costs versus costs for the additional work, and all
other documentation necessary for the Owner to assess the costs claimed.

.7 Overtime, when specifically authorized by the Owner and not as an Extraordinary Measure, shall be paid for by the Owner on the basis of premium payment only, plus the cost of insurance and taxes based on the premium payment period. Overhead and profit shall not be paid by the Owner for Overtime.

.8 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 Subcontracts. Labor and materials shall be itemized in the manner prescribed above. Include invoices and quotations from material suppliers. Where major cost items are Subcontracts, they shall be itemized also. In no case will a change involving over $500 be approved without such itemization.

7.4 Minor Changes in the Work

MODIFY as follows:

7.4.1 First line, DELETE the word "Architect" and SUBSTITUTE "Architect, subject to the approval of the Owner."

ARTICLE 8 - TIME

8.2 Progress and Completion

MODIFY as follows:

8.2.2 Sixth and Seventh line, DELETE the words "mortgages, mechanic's liens and other" and SUBSTITUTE “appropriate and lawful.”

ADD the following:

8.2.3.1 If, in the opinion of the Owner, the Contractor falls behind the approved schedule, the Contractor shall take all steps necessary to improve its progress, including those that may be required by the Architect or Owner, without additional cost to the Owner. In these circumstances, the Architect or Owner may require the Contractor to increase the number of shifts, overtime operations, days of work, and/or the amount of construction planned, and to submit for approval any supplementary schedule or schedules in such detail and form as
the Architect or Owner deems necessary to demonstrate how the approved rate of progress shall be regained.

Add the following Subparagraph to Paragraph 8.2:

8.2.4 Except in the event of emergency, no substantial field operations shall be performed outside of regular working hours without the prior approval of the Architect and the Owner. The Contractor shall not be entitled to additional compensation for work performed outside of regular working hours.

8.3 DELAYS AND EXTENSIONS OF TIME

MODIFY as follows:

8.3.1 DELETE the words "which the Architect determines" and "as the Architect" and SUBSTITUTE "which the Owner with the advice of the Architect determines" and "as the Owner with the advice of the Architect." In addition, add the following at the end of Subparagraph 8.3.1:

"In no case, however, shall Contractor avail itself of the above delay rights to the extent such delay will not prevent the Contractor from achieving Substantial Completion within the Contract Time or if the delay was caused by some other event for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further agrees that adjustments in the Contract time will be permitted for a delay only to the extent such delay (i) is not caused, or could not have been anticipated, by the Contractor, (ii) could not be limited or avoided by the Contractor’s timely notice to the Owner of the delay or of the reasonable likelihood that a delay will occur, and (iii) is of a duration of less than one day.”

Add the following Clauses to Subparagraph 8.3.2:

8.3.2.1 Claims of delay and requests for extension of time shall set forth in detail the circumstances of such claim, the dates upon which claimed delay began and ended, and the number of days' extension of time requested. The Contractor shall provide supporting documentation as the Architect and Owner may require, including a revised CPM Construction Schedule indicating the affect of the circumstances which form the basis for the claim.

8.3.2.2 The Contractor shall not be entitled to an extension of time for each and every one of a number of causes which have a concurrent and interrelated effect on the progress of the Work.
8.3.2.3 Claims for extension of time arising out of authorized changes in the Work shall be made in writing prior to or concurrent with the submission of the Contractor's proposal for such change. No extension of time arising out of changes in the Work will be granted after the date upon which the Contractor is authorized to proceed with such change unless specific provision for an extension of time has been incorporated in the authorization.

8.3.2.4 Any additional cost to the Contractor arising from such change shall be included in the amended Contract Sum set forth in such Change Order. No claim for damages for delay, arising from such change in the Work, shall be recognized or be deemed valid.

DELETE Subparagraph 8.3.3 and SUBSTITUTE the following:

8.3.3 Contractor shall be reimbursed for all direct and actual costs incurred due to delays to the Project Schedule directly caused by the Owner or any other entities controlled by the Owner, but not otherwise. In no event, however, shall the Owner be responsible for any Eichleay-type delay damages, or any allocated portions of indirect or general overhead expenses, incurred by Contractor or anyone claiming through the Contractor.

8.3.3.1 Extension of the Contract Time shall be the Contractor's sole and exclusive remedy for delay of any kind. The Contractor expressly waives any and all right to claim damages for any delay.

8.4 LIQUIDATED DAMAGES

NONE

ARTICLE 9 - PAYMENTS AND COMPLETION

9.2 Schedule of Values

MODIFY as follows:

9.2.1 DELETE the following

"Before the first Application for Payment,"

ADD the following:

9.2.1.1 Submission of the Schedule of Values shall be made within fifteen (15) days of acceptance by the Owner of the GMP.

9.2.1.2 The Schedule of Values shall be submitted (typewritten) on a AIA Document G702 form and should be broken down into a minimum of
16 divisions based on the Construction Specifications Institute (CSI) guidelines.

9.2.1.3 The Contractor shall distribute the lump sum cost of the work over the 16 divisions based on the CSI guidelines. The contractor shall develop a schedule of values that allows the Owner, Architect, and Contractor to judge the true and accurate cost of the work in place. As part of the schedule of values developed by the Contractor, the Contractor must indicate the following activities on its schedule of values and must assign reasonable costs to these activities which must be approved by the owner prior to approval of the first payment application: mobilization, de-mobilization (in no event shall mobilization exceed de-mobilization), as-built document preparation and updating, schedule updating, operation and maintenance manual acceptance, division 14 training, division 15 training, division 16 training, food service equipment training, attic stock, spare parts, division 15 start up, division 16 start up, food service equipment start up, final cleaning.

9.2.1.4 In no event shall the contractor request payment for or shall the Owner make payment for submittal preparation, submission, or approval

9.3 APPLICATIONS FOR PAYMENT

ADD the following sentence to 9.3.1: The form of Application for Payment shall be a notarized AIA Document G702, Application and Certification for Payment, supported by AIA Document G703, Continuation Sheet. Such form shall be accompanied by (a) such other information as the Owner shall reasonably request (particularly, but without limitation, evidence of payment to subcontractors and materials suppliers and updates on the financial capacity of subcontractors in those cases where Owner may be concerned about their financial wherewithal to complete their portion of the Work), and (b) such documentation and undertakings as Owner’s title insurance company and Lender may require. Full lien waivers shall be provided by each subcontractor upon completion of its phase of the Work, and by all parties to the extent not previously delivered, upon request for final payment.

9.3.1.1 DELETE this Clause.

ADD the following Clauses:

9.3.1.3 Whenever the Owner has designated a separate section for a class of work, the Contractor shall, when applicable, state as part of its application for partial payment that it considers the work required to be done under any such separate section to be fully completed in
accordance with the terms of the Contract. The Owner, through the Owner's Representative, shall thereupon conduct an inspection of the work in such class, and if it finds that such work has been fully completed in accordance with the terms of the Contract, it shall issue a statement certifying that such work is accepted as fully completed, and shall pay the Contractor in full for such work subject to whatever credits, backcharges or rights of retainage the Owner may have.

DELETE Subparagraph 9.3.2 and substitute the following:

"Unless otherwise specifically approved, the Owner will consider payment only for material and equipment delivered and incorporated in the Work. If approved in advance by the Owner, payment may be similarly made for material and equipment suitably stored on site at a location agreed upon in writing. Payment for materials stored will apply only to materials delivered and properly stored on site and not to materials stored off site of any kind. Payment will be made in the amount of 80% of the submitted and substantiated invoice value. Transfer of title and insurance for the full replacement of the material, including all submittal, fabrication, procurement, delivery, and escalation costs, must accompany any request for payment. In no event does the Owner or Architect assume any risk or responsibility for the size, quantity, quality, storage condition, safety, protection, security, or any other aspect of the materials delivered and stored at the site for future use. For the purposes of this paragraph and for payment, materials considered for payment will not include those common to multiple projects, but rather, payment will only be considered for materials that can be specifically used on this project. Examples of materials that may be considered for payment include:

a. structural steel fabricated and delivered to the site specifically for this project as indicated on approved shop drawings and bearing piece marks that can be correlated with the shop drawings.

b. food service equipment delivered to the site fabricated specifically for this project as indicated on approved shop drawings and bearing piece marks that can be correlated with the shop drawings.

c. special lighting fixtures specifically intended for use on this project as indicated on approved shop drawings and bearing piece marks that can be correlated with the shop drawings.

d. pumps, motors, air handling equipment, and VFD's as indicated on approved shop drawings and bearing piece marks that can be correlated with the shop drawings.

Examples of materials that will NOT be considered for payment include:

a. site materials such as manholes, catch basins, equipment pads, piping for utilities, stone, sand, fill of any kind, landscaping and plant materials and
conduits of any nature.
b. common building components such as concrete masonry units, brick,
waterproofing membranes, miscellaneous steel not piece marked and shown
on approved shop drawings, gypsum wall board, acoustical ceiling tile, stone
flooring, rubber base, steel studs, insulation, paint, carpeting, etc.
c. reinforcing bar such as rebar or welded wire mesh."

ADD the following Clauses to Subparagraph 9.3.2:

9.3.2.1 In addition, for consideration of payment for stored products:

(a) Storage shall be agreed upon in advance, prior to shipment.
(b) Location of storage shall be agreed upon in advance.
(c) Contractor shall be responsible for, and pay costs of, the
verification and inspection of storage.
(d) Insurance certificate required for stored items.
(e) Bill of sale from supplier to verify transfer of title to goods to the
Owner.

9.3.2.2 Schedule of Values and Construction Schedule will be considered by the
Owner making in its sole discretion the decision on any specific request for
payment for storage.

9.3.2.3 Payment for material and equipment delivered and stored shall not relieve
Contractor of responsibility for furnishing equipment and material required
for the Work in the same manner as if such payment were not made.

ADD the following Clause to 9.3.3:

9.3.3.1 The Contractor shall submit with each Application for Payment, to the
extent permitted by law, partial lien waivers or, as applicable and subject
to approval by Owner, lien subordinations, from the Contractor,
Subcontractors, material suppliers and other persons or entities who were
due payment based on the previous Application for Payment.

9.3.3.2 At the completion of the Work and prior to submission of the final
Application for Payment, the Contractor shall certify that the Work is
complete and in accordance with the Contract Documents and approved
Shop Drawings. The Certificate for Payment may be adjusted by the
Owner if the aggregate amount of lien waiver amounts do not agree with
previous Application for Payment amounts.

ADD the following Subparagraph and Clauses to 9.3:

9.3.4 If payment for stored products is approved by the Owner, Contractor shall
furnish with Application for Payment an invoice establishing the value of
material and equipment stored along with a statement of amount to be

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paid vendor. The Owner will pay a maximum of 80% of this invoice value.

9.3.4.1 Such stored items are subject to prior approval for storage and to inspection by Architect and Owner before payment is recommended.

9.3.4.2 Contractor shall give Owner Certificates of Insurance in accordance with Contract Documents for the full value of the items stored. Insurance to be maintained until items are incorporated in the Work.

9.3.4 Contractor shall hold harmless, defend and indemnify Owner from and against any and all actions, lawsuits, or proceedings arising in connection with any liens filed in connection with the Work and shall cause any such liens to be immediately released of record. Notwithstanding the preceding, Owner reserves the right to settle any claim by payments to the lien claimant or by such other means as the Owner, in its discretion, determines is the most economical or advantageous method of settling the same. Contractor shall reimburse Owner upon demand for any costs associated therewith.

9.5 Decision to Withhold Certification

MODIFY as follows:

9.5.1 First and eighth lines, DELETE the word “Architect” and SUBSTITUTE “Owner, with the advice of the Architect”

DELETE Clause 9.5.1.5 and SUBSTITUTE the following:

9.5.1.5 injury to persons or damage to the Work or property of the Owner, including any economic damages or losses incurred by the Owner and other contractors, or others covered by the breach of contract or neglect of the Contractor or any of his Subcontractors.

ADD the following:

9.5.1.8 failure to submit Construction Schedules, recovery schedules, or updates in the time prescribed or failure to prosecute the Work in accordance with the Construction Schedule and Milestones approved by Owner.

ADD the following:

9.5.3 The Owner shall have the right to apply any such amounts so withheld in such manner as the Owner may deem proper to satisfy such claims or to secure such protection. Such application of such money shall be deemed payments for the accounts of the Contractor.
9.6 PROGRESS PAYMENTS

DELETE Subparagraph 9.6.1 and SUBSTITUTE the following:

9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall review the Certificate of Payment and decide within the time provided in the Contract Documents whether to make payment in accordance with the Certificate of Payment, and shall notify the Architect. In the event payment is approved by the Owner, Owner shall make payment as soon as practicable after making its decision.

ADD the following Clause to Subparagraph 9.6.2:

9.6.2.1 Contractor shall furnish with Application for Payment satisfactory evidence of payment to vendors of products placed in approved storage. This shall be done within 30 days after date of progress payment which includes payment for such stored items. Satisfactory evidence of payment, as determined by the Owner, shall be one or more of the following:

(a) Contractor's canceled check in correct amount with identification of invoices paid.
(b) Fully executed Lien Waiver.
(c) Bill of Sale conveying unencumbered title to the Owner.

9.6.2.2 Notwithstanding anything in this Agreement to the contrary, the Owner may elect, in the Owner's sole discretion, to make any payment requested by the Contractor on behalf of a subcontractor of any tier jointly payable to the Contractor and such subcontractor. The Contractor and such subcontractor shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint payment be construed to create any (i) contract between the Owner and a subcontractor of any tier, (ii) obligations from the Owner to such subcontractor, or (iii) rights in such subcontractor against the Owner. Owner may, in its discretion, apply a similar approach to payment of materials suppliers. In addition, if the Owner is entitled to reimbursement or payment from the Contractor, such payment shall be made promptly upon demand by the Owner. If Contractor fails to promptly make any such payment, then notwithstanding any provision in this Agreement to the contrary, Owner may offset such sum against any payment due and owing Contractor.

9.7 FAILURE OF PAYMENT

DELETE Article 9.7 in its entirety and ADD the following:
9.7 The Contractor is obligated to continue Work while all payments and claims are pending and shall not be entitled to stop Work.

9.8 Substantial Completion

MODIFY as follows:

9.8.1 By adding at the end thereof: "; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy thereof."

9.8.2 Second line, after the word "Architect" ADD "and Owner."

9.8.5 ADD the following sentence to the end of this paragraph "Unless specifically agreed otherwise and approved by the Owner, the Contractor shall complete all responsibilities associated with the substantial completion of the Work within 45 days of the issuance of the Substantial Completion Certificate. During the substantial completion period the Contractor shall provide all cleaning services required in support of its work, including points of ingress and egress, which are impacted as a result of the Contractor's activities on site. If the Contractor has failed to complete all of the activities required by the Substantial Completion Certificate within 45 days of issuance and the Owner judges that the Contractor is not working diligently toward completion, the Owner reserves the right to supplement the Contractor's forces at the Contractor's expense."

9.9 Partial Occupancy or Use

MODIFY as follows:

9.9.1 Eleventh line, after the word "Architect" ADD "and Owner."

9.10 Final Completion and Final Payment

MODIFY as follows:

9.10.1 At the end of the last sentence, ADD the following:

"In all events, Owner shall make the final decision on whether to make payment to the Contractor in accordance with the final Certificate of Payment. In no event shall final payment be made to the Contractor until all as-builds are submitted and approved by the Owner and the Architect, all warranties are delivered, Operation and Maintenance Manuals and all required copies are submitted and approved, all training is complete and accepted, all testing and balancing is
complete and accepted, final cleaning is accepted, and turnover from the Contractor to the Owner is accepted by the Owner’s Operations Staff including the Owner’s Cleaning Staff. Unless otherwise agreed, the Contractor must complete all work required by the Substantial Completion Certificate prior to Final Completion within 45 days. If the Contractor has failed to complete all of the activities required by the Substantial Completion Certificate within 45 days of issuance and the Owner judges that the Contractor is not working diligently toward completion, the Owner reserves the right to supplement the Contractor’s forces at the Contractor’s expense.”

9.10.3 Third line, DELETE the words “and certification by the Architect” and SUBSTITUTE “and the written approval of the Owner’s Representative.” DELETE the last sentence.

9.10.5 DELETE the balance of the sentence after the word “payee”.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 Safety Precautions and Programs

10.1.1 ADD the following:

Prior to, and as a condition of mobilization on site, the Contractor shall submit a satisfactory Safety Plan to the Architect and Owner for their review. This safety plan shall include written safety programs as are required by local, state, or federal OSHA requirements or by Wesleyan University Safety Manual. Wesleyan University Safety Manual or other Safety Programs, as have been developed and amended from time to time, are available upon written request.

10.1.2 ADD the following:

Thirty days prior to, and as a condition of the commencement of any work activity on site, the Contractor shall prepare and submit for the Owner’s review an activity specific work hazard analysis document. This document shall identify all potential hazards relating each portion of a specific Work activity and shall describe the methods that the Contractor will employ to verify full compliance with all applicable local, state, and federal safety requirements. Further, the Contractor shall refer to Wesleyan University Safety Manual, as applicable, to verify that all Work is completed in accordance with Wesleyan University Safety Requirements but only to the extent that they are not inconsistent with the Contractor’s Safety Programs, or local, state, or federal requirements. In any event, the more strict requirement shall apply.
10.2 SAFETY OF PERSONS AND PROPERTY

MODIFY as follows:

10.2.3 ADD the following:

Additionally, the Contractor shall maintain all passageways, guard fences, lights and other facilities for protection, and shall also be responsible, at Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

Add the following Clauses to Subparagraph 10.2.4:

10.2.4.1 When there are indications that the use of explosives or other hazardous materials, equipment or unusual methods is necessary, the Contractor shall give the Owner reasonable advance notice of the conditions.

10.2.4.2 The Contractor shall be solely responsible for the handling, storage, and use of explosive or other hazardous materials when their use is permitted.

10.2.4.3 The Contractor shall not bring explosives onto the site or use in the Work without the prior written permission of the Architect and Owner. For such use, the Contractor shall obtain necessary permits with copies to the Architect. Contractor shall furnish Owner and Architect with certificates indicating proper and adequate insurance.

ADD the following:

10.2.5.1 The Contractor shall repair or replace any such damage at no additional cost to the Owner. Such repair or replacement shall be completed within one week of the damage or as directed by the Owner's Representative. If the Contractor fails or refuses to repair the damage promptly, the Owner may have the necessary Work performed and charge the cost to the Contractor.

ADD the following:

10.2.8 All materials furnished and all work installed shall comply with the rules and recommendations of the National Board of Fire Underwriters; with all applicable State and local codes, laws, ordinances, rules and regulations; with all requirements of local utility companies and with the recommendations of the Insurance Rating Organization having jurisdiction.
10.2.9 All apparatus, equipment and construction such as ladders, scaffolds, chutes, etc., shall comply with the recommendations of the manual of Accident Prevention in Construction published by the Associated General Contractors of America.

10.2.10 The Contractor shall protect all work and material from damage by water and weather and shall be responsible for the adequate strength and safety of all scaffolding, staging and hoisting equipment and for temporary shoring, bracing and tying.

10.2.11 The Contractor shall furnish approved hard hats, other personal protective equipment as required, approved first aid supplies, name of first aid attendant and a posted list of emergency facilities as necessary to provide a safe work environment.

10.2.12 The Contractor shall take immediate action to correct any hazardous conditions reported.

10.2.13 No unauthorized visitors shall be allowed on the work site without permission from the Owner's Representative.

10.2.14 The Contractor shall comply with the requirements of the Occupational Safety and Health Act and the Construction Safety Act of 1970, as amended and supplemented, including all standards and regulations which have been promulgated by the governmental authorities which administer such acts; and said requirements, standards and regulations are incorporated herein by reference. The Contractor shall also comply with Wesleyan University Safety Manual.

The Contractor shall be directly responsible for compliance therewith on the part of its agents, employees, materialmen and Subcontractors and shall directly receive and be responsible for all citations, assessments, fines or penalties which may be incurred by reason of its agent, employees, materialmen and Subcontractors, to so comply.

The Contractor shall defend, indemnify and hold harmless the Owner and the Architect and their officers, agents, servants and employees from and against any and all suits, claims, damages, losses, litigation costs and expenses, including fines and reasonable attorney’s fees incurred by the Owner and the Architect by reason of the real or alleged violation of such laws, ordinances, regulations and directives, Federal, State and Local, which are currently in effect or which become effective in the future, by the Contractor, its Subcontractors or materialmen.
10.3 Hazardous Materials

MODIFY as follows:

10.3.1 DELETE the words, "Asbestos or polychlorinated biphenyl (PCB)" throughout Paragraph 10.1 and SUBSTITUTE "hazardous materials, including but not limited to Asbestos and/or polychlorinated biphenyl (PCB)."

10.3.2 ADD the following:

The term "rendered harmless" shall be interpreted to mean that levels of hazardous materials including, but not limited to asbestos and polychlorinated biphenyl, are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any materialman or supplier or any entity for whom any of them is responsible. The Contractor agrees not to use, unless specifically mandated by the Contract Documents, any fills or other materials to be incorporated into the Work which are hazardous, toxic or comprised of any items that are hazardous or toxic.

10.3.3 DELETE 10.3.3 in its entirety and ADD the following in lieu thereof:

The Contractor shall be responsible for the abatement or removal of any asbestos, PCB’s, paint containing lead, or other hazardous materials which are encountered during the execution of the Work and identified in the Contract Documents, including, without limitation, the specific remediation activities set forth in the Contract Documents with respect to certain known conditions identified therein. Said remediation shall be in accordance with applicable law and the Contract Documents. Removal or abatement of materials not specifically identified in the Contract Documents, or otherwise assumed as the responsibility of the Contractor, shall be treated as a Change in the Work pursuant to Article 7.

10.6 EMERGENCIES

Add the following Clause to Subparagraph 10.6.1:

10.6.1.1 The Contractor shall promptly notify its insurers and those of its Subcontractors and suppliers, as applicable, the Architect and the Owner of the nature of the emergency. Immediately thereafter, the Contractor shall submit to the Architect and Owner a written report including a full and detailed description of the causes, effects, and
circumstances of the emergency and details of all actions taken.

ADD the following Paragraph:

10.7 Asbestos

10.7.1 Some buildings of the Wesleyan University may have some Asbestos Containing Materials (ACM) used as building products. Any known ACM has been identified on the Plans and Specifications of this Contract.

10.7.2 Every effort has been made to identify ACM, however, there may be additional ACM present in the area of work. This suspected ACM may become apparent especially during the demolition phases of contracts.

10.7.3 The Contractor shall accomplish work in such a manner as to not disturb ACM or suspected ACM unless specifically incorporated as part of this Contract.

10.7.4 The Contractor shall bring to the immediate attention of the Owner's Representative the location of suspected ACM that shall be disturbed by work required under this Contract. No work shall be attempted that could result in a release of ACM to the environment.

ADD the following Paragraph:

10.8 Lead Paint

10.8.1 Exposure levels for lead in the construction industry are regulated by 29 CFR 1926.62, as amended and supplemented. Construction activities disturbing surfaces containing paint or other materials containing lead which are likely to be employed, such as sanding, grinding, welding, cutting and burning, have been known to expose workers to levels of lead in excess of the Permissible Exposure Limit (PEL). The Contractor shall conduct all work specified in the Contract Documents in conformance with these regulations. In addition, construction debris/waste may be classified as hazardous waste. Disposal of hazardous waste material shall be in accordance with 40 CFR Parts 260 through 271 and Connecticut Hazardous Waste Management Regulations Section 22a-2091; 22a-2098(c)-11; and 22a-449(c)100 through 110, as amended and supplemented, and Wesleyan University. Safety Manual.

10.8.2 Where a child under the age of six resides, the work shall also be in
accordance with Connecticut Regulations Section 19a-111-1 through 11, as amended and supplemented.

ADD the following:

10.9 Lockout/Tagout Procedures Required by OSHA

10.9.1 OSHA regulation 29 CFR 1910.147, as amended and supplemented, (The Control of Hazardous Energy) requires employers to develop procedures for the lockout or tagout of machines or equipment. The purpose is to prevent injuries by ensuring that hazardous forms of energy are isolated (locked or tagged out) before employees perform any servicing or maintenance activities which could result in the unexpected energization, start-up or release of stored energy. This includes electrical, mechanical, hydraulic, pneumatic, chemical, thermal or other energy sources.

10.9.2 Prior to commencing any work under this Contract that shall or may involve exposure to potentially hazardous energy, the Contractor shall notify the Owner’s Representative of the lockout/tagout procedures to be used and shall verify compliance with Wesleyan University procedures. Lockout/tagout procedures shall be exchanged between the Contractor and the Owner’s Representative at the Pre-Construction Conference.

10.9.3 All work carried out under this Contract that shall or may involve exposure to potentially hazardous energy shall be carried out in accordance with all applicable Federal, State and local rules and regulations, including OSHA regulations 29 CFR 1910.147 (The Control of Hazardous Energy) and 1926.417 (Locking and Tagging of Circuits), as amended and supplemented, and Wesleyan University Safety Manual.

ADD the following Paragraph:

10.10 Use of Solvent-Based Products

10.10.1 The use of solvent-based products, including paints and adhesives within occupied areas of buildings shall not be allowed as part of this project, unless specifically directed in other provisions of the Contract Documents. If solvent-based products are to be used, then work shall only be accomplished on nights or weekends. The Contractor’s Representative shall notify the Owner’s Representative two (2) days prior to the intended date of such work.

ADD the following Paragraph:
10.11 Confined Space Entry

10.11 Any work carried out under this Contract that shall require entry into a confined space shall be carried out in accordance with all applicable Federal, State and local rules and regulations, including OSHA regulations 29 CFR 1910.146 (Permit-Required Confined Spaces), 1926.21 (b) (6) (Safety Training & Education-Employer Responsibility (Confined Spaces)), 1926.352(g) (Fire Prevention in Enclosed Spaces) & 1926.353(b) (Welding, Cutting and Heating in Confined Spaces), as amended and supplemented, and Wesleyan University Safety Manual.

ADD the following Paragraph:

10.12 Excavation and Trenching

10.12.1 Any work carried out under this Contract that shall require excavation or trenching shall be carried out in accordance with all applicable Federal, State and local rules and regulations, including OSHA regulation 29 CFR 1926, Subpart P (Excavations), as amended and supplemented, and Wesleyan University Safety Manual.

ARTICLE 11 - INSURANCE AND BONDS

DELETE Paragraph 11.1 and SUBSTITUTE the following:

11.1 Contractor's Liability Insurance
11.1.1 The Contractor shall purchase and maintain insurance for protection from claims under workers' or workmen's compensation acts; claims for damages because of bodily injury, including personal injury, sickness, disease or death of any of the Contractor's employees or of any person; from claims for damages because of injury to or destruction of tangible property including loss of use resulting therefrom; and from claims arising out of the performance of this Agreement and caused by negligent acts for which the Contractor is legally liable. The Owner shall be a named additional insured on all the Contractor's policies. All insurance required under this Article shall contain a waiver of subrogation against the Owner, Architect and the Contractor and its and their representatives. Certificates of Insurance, as well as copies of the policies, shall be delivered to the Owner prior to the commencement of construction. The Certificates as well as the policies shall contain a provision that coverage shall not be canceled, altered or allowed to expire until at least thirty (30) days prior written notice has been given to the Owner. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage limits. If Contractor shall fail at any time to maintain in full force and effect, and provide Owner with reasonable evidence thereof, the insurance and coverages required hereby, Owner may do so and Contractor shall reimburse to Owner the cost thereof upon demand. In addition, Contractor shall cause each subcontractor to procure insurance reasonably satisfactory to Owner prior to such subcontractor commencing any portion of the Work or accessing the Project site.

11.1.1.1 The Contractor, shall provide the following described insurance on policies and with insurers acceptable to the Owner.

These insurance requirements shall not relieve or limit the liability of the Contractor. The Owner does not in any way represent that these types of amounts of insurance are sufficient or adequate to protect the Contractor's interest or liabilities, but are required solely for the Owner's protection.

The Contractor's insurance policies shall be endorsed, as appropriate, to name the Owner as an insured to the extent of the Owner's interests arising from this contract or agreement; to waive subrogation against the Owner; to expand coverage as required herein and to provide that any failure of the other party to comply with any of the policy provisions shall not void coverage for the Owner.

The Contractor's policies, when the Owner is an additional named insured, shall include or be endorsed to include a severability of interests provision in order that the Owner shall be treated as if a separate policy were in existence without increasing the policy limits of liability.
The Contractor's deductibles/self-insured retentions, must be approved by the Owner and may be reduced or eliminated at the option of the Owner.

Contractors coverages shall be written on an occurrence basis and shall be primary to any valid and collectible insurance maintained by Owner and Architect.

11.1.1.2 Liability Coverages: General

The Contractor shall purchase and maintain coverage on forms no more restrictive than the latest editions of the Comprehensive General Liability or Commercial General Liability and Business Auto policies filed by the Insurance Services Office.

The Commercial General Liability coverage shall be in "occurrence form," and shall provide:

The minimum limits of liability shall be $1,000,000 Each Occurrence and $5,000,000 as an Annual Aggregate. The Aggregate shall be "per location," to apply separately to each job site. This insurance shall be primary and non-contributory as regards to the Owner and its agents and employees.

Coverage A shall include premises, operations, products and completed operations for a minimum of three years beyond organization acceptance of renovation or construction projects, independent Contractors, contractual liability covering this agreement or contract, fire legal liability and broad form property damage coverages.

Coverage B shall include personal injury and advertising injury.

Business Automobile Liability coverage is to include bodily injury and property damage arising out of operation, maintenance or use of any auto, including owned, non-owned, hired, leased and borrowed automobiles with employees as additional insureds.

The minimum limit of liability shall be $1,000,000 per accident. The insurance shall be primary and non-contributory as regards the Owner and its agents and employees.

11.1.2 Workers Compensation Coverage
The Contractor shall purchase and maintain Workers Compensation insurance for all Workers Compensation obligations imposed by state law and Employers Liability limits of at least $500,000 each accident and $500,000 each employee/$500,000 policy limit for disease.

11.1.3 Excess or Umbrella Liability

Contractor shall also maintain Umbrella Liability Insurance. Said insurance shall not be more restrictive than the underlying insurance policy coverages, including but not limited to the coverage trigger, defense, notice of occurrence/accident/ circumstances, notice of claim and extended reporting period. The minimum limit of liability shall be $20,000,000.00.

11.1.4 Owners Protective Liability

The Contractor shall provide for the Owner an Owners Protective Liability Insurance policy (preferably through the Contractor's insurer) in the name of the Owner. The minimum limits of liability shall be $1,000,000 per occurrence, and $5,000,000 aggregate.

DELETE Paragraph 11.2, Owner's Liability Insurance, in its entirety, and SUBSTITUTE the following:

11.2 Builder's Risk Insurance

11.2 The Contractor shall purchase and maintain Builders Risk Coverage. This coverage shall apply only to property stored on the site of the Work and shall not apply to any property in transit or stored off of the site of the Work. The deductible amount for Builders Risk Coverage shall not exceed $5,000.00. All losses defined which are not recoverable by virtue of the $5,000.00 deductible clause shall be absorbed by the Contractor. Equipment and tools of the trade are at the risk of the Contractor. Other losses not covered by this policy shall be absorbed by the Contractor.

11.3 PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE

Delete Subparagraph 11.3.3 in its entirety. The provisions of the balance of Subparagraphs 11.3.1 and 11.3.2 shall not be deemed to limit any of Contractors indemnities herein provided.

11.5 PERFORMANCE BOND AND PAYMENT BOND

Delete Subparagraph 11.5.1 and substitute the following:
11.5.1 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of all obligations arising thereunder. Bonds may be obtained through the Contractor's usual source and the cost thereof shall be included in the Contract Sum. The amount of each bond shall be equal to 100 percent of the Contract Sum and all subsequent increases thereto. The terms and conditions of such bonds shall be subject to Owner's prior approval. The Bonds shall contain a rider substantially as follows: "The Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the Contract Documents. Any addition, alteration, change, extension of time, or other modification of the Contract Documents, or a forebearance on the part of either the Owner or the Contractor to the other, shall not release the Surety of its obligations herunder, and notice to the Surety of such matters is hereby waived. The Surety agrees that it is obligated under the bonds to any successor, grantee, or assignee of the Owner."

11.5.1.1 The Contractor shall deliver the required bonds, bid (if any), performance, and payment, to the Owner not later than three days following the date the Agreement is entered into, or if the Work is to be commenced prior thereto in response to a letter of intent, the Contractor shall, prior to the commencement of the Work, submit evidence satisfactory to the Owner that such bonds will be furnished.

11.5.1.2 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

11.5.1.3 Contractor shall keep the Surety informed of the progress of the Work, and, where necessary, obtain the Surety's consent to, or waiver of, (i) notice of changes in the Work; (ii) request for reduction or release of retention; (iii) request for final payment; and (iv) any other item required by the Surety. The Owner shall be notified by the Contractor, in writing, of all communications with the Surety. The Owner may, in the Owner's sole discretion, inform the Surety of the progress of the Work and obtain consents as may be necessary to protect the Owner's rights, interest, privileges and benefits under and pursuant to any bond issued in connection with the Work, in all cases, in the discretion of the Owner.
ADD the following Subparagraph:

11.4.3 The above Bonds shall be provided by a Surety Company or Companies which are acceptable to the Owner and authorized to transact business within the State of Connecticut, and are named in the current list of "Surety Companies Acceptable on Federal Bonds" as published in the "Treasury Department Circular 570, and the attorney-in-fact who executes the Bonds on behalf of the Surety Company shall affix to the Bonds a certified and current copy of his power of attorney.

ARTICLE 12 - UNCOVERING AND CORRECTION OF WORK

12.1 Uncovering of Work

MODIFY as follows:

12.1.1 First line after "Architect's" ADD "or Owner's" second line, after "Architect" ADD "or Owner", and third line, after "Architect's" ADD "and Owner's."

12.1.2 First line after "Architect" ADD "or Owner" Second line, DELETE the words "the Architect" and SUBSTITUTE "the Owner's Representative, with the advice of the Architect."

12.2 Correction of Work

MODIFY as follows:

12.2.1 First line, DELETE the words "by the Architect" and SUBSTITUTE "by the Owner's Representative with the advice of the Architect." ADD the following to the end:

If prior to the date of Substantial Completion, the Contractor, a Subcontractor or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical devices, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner.

12.2.2.3 DELETE subparagraph 12.2.2.3 and replace it with the following:

Upon completion of any Work under or pursuant to this Paragraph 12.2, the one (1) year correction period in connection with the Work requiring correction shall be renewed and recommence. The obligations under Paragraph 12.2 shall cover any repairs and
replacement to any part of the Work or other property that is damaged by the defective Work.”

ARTICLE 13 - MISCELLANEOUS PROVISIONS

13.2 Successors and Assigns/Severability

ADD the following to the end of 13.2.2: “The Owner may, without consent of the Contractor, assign the Contract to a lender or other entity providing construction financing or credit for the Project, and Contractor agrees to execute such documentation in connection therewith as such lender may require, including, without limitation, a Contractor's consent to assignment in the lender's customary form. It is understood and agreed by the parties that if any part, term or provision of this Agreement is held by any court to be invalid, illegal or in conflict with any applicable law, the validity of the remaining portions or provisions of this Agreement shall not be affected and the rights and obligations of the parties shall be construed and enforced as if this Agreement did not contain the particular part, term or provision held to be invalid, illegal, or in conflict with the applicable law.”

13.5 TESTS AND INSPECTIONS

MODIFY as follows:

13.5.1 Fifth and sixth lines, after “Architect” ADD “and Owner.”

13.5.2 Fourth and fifth lines, after “Architect” ADD “and Owner.”

13.5.3 ADD, at the end thereof, “The Contractor agrees that the cost of testing services required for the convenience of the Contractor in his scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work, shall be borne by the Contractor.”

13.5.4 Second line, after “Architect” ADD “and Owner.”

Add the following Clause to Subparagraph 13.5.4:

13.5.4.1 If Architect's or Owner's observation or if inspection or testing undertaken pursuant to this Paragraph reveals that in any one of a number of identical or similar elements, incorporated in the Work, fails to comply with the requirements of the Contract Documents or the regulations or orders of any public authority having jurisdiction, the Architect and Owner will have the authority to order inspection and testing of any or all such representative elements as he may consider necessary. The Contractor shall bear costs of testing, correction of the Work and the Architect's
additional services made necessary thereby."

13.6 Interest

MODIFY as follows:

13.6.1 DELETE this Subparagraph.

13.7 Commencement of Statutory Limitation Period

MODIFY as follows:

13.7.1 DELETE this Subparagraph.

Add the following new Paragraph 13.8 to Article 13:

13.8 EQUAL OPPORTUNITY

13.8.1 The Contractor shall maintain policies of employment as follows:

The following equal opportunity clause shall be included in each contract and subcontract. During the performance of this contract, the contractor agrees as follows:

13.8.1.1 The contractor will not discriminate against any employee or applicant for employment because of race, creed, color or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

13.8.1.2 The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

13.8.1.3 The contractor will send to each labor union or representative of workers with whom a collective bargaining agreement or other contract or understanding has been entered into, a notice, to be
provided, advising said labor union or workers' representative of
the contractor's commitments under any applicable
nondiscrimination laws, and shall post copies of the notice in
conspicuous places available to employees and applicants for
employment.

13.8.1.4 The contractor will comply with all provisions of any applicable
nondiscrimination laws and the regulations and relevant orders
of the United States Secretary of Labor and the State
Commission on Human Rights and Opportunities (the
"Commission").

13.8.1.5 In the event of the contractor's non-compliance with the
nondiscrimination clauses of this contract or with any of such
rules, regulations, or orders, this contract may be canceled,
terminated or suspended in whole or in part and the contractor
may be declared ineligible for further Authority assisted
construction contracts and such other sanctions may be
imposed and remedies invoked as provided by regulations, or as
otherwise provided by laws.

13.8.1.6 The contractor will include the provisions of Paragraphs (1)
through (5) in every subcontract or purchase order unless
exempted; so that such provisions will be binding upon each
subcontractor or vendor.

13.8.1.7 The following contracts shall be exempt from the
requirements of paragraph 13.8.1.6:

(1) Loans, mortgages, contracts and subcontracts
    not exceeding $2,000;

(2) Contracts and subcontracts not exceeding
    $2,000 for standard commercial supplies or raw
    materials;

(3) Contracts and subcontracts under which work is
to be or has been performed outside of the State
of Connecticut and where no recruitment of
workers within the State of Connecticut is
involved. To the extent that work pursuant to
such contracts is done within the State of
Connecticut, the EEO Clause shall be
applicable;

(4) Contracts for the sale or acquisition of property
where no appreciable amount of work is involved; and

(5) Contracts and subcontracts for an indefinite quantity which are not to extend for more than one year if the purchaser determines that the amounts to be ordered under any such contract or subcontract are not reasonably expected to exceed $2,000 in the case of contracts or subcontracts for standard commercial supplies and raw materials, or $2,000 in the case of all other contracts or subcontracts.

13.9 ADD the following Paragraphs:

13.9.1 If any provision of this Contract is found to be invalid or illegal by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect, and the parties agree to substitute for the invalid provision another which most closely effectuates the legal and economic intent of the invalid provision within the bounds of the law.

13.9.2 This Contract represents the entire and integrated agreement between the Owner and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Contract may be amended only by written instrument signed by both the Owner and the Contractor. No oral modifications or course of dealing between the parties shall serve to bind the Owner or Architect. No person is authorized on behalf of the Owner to change, amend, waive or otherwise modify the terms of the Contract Documents or any of the Contractor's duties or obligations under or arising out of the Contract Documents.

13.9.3 Nothing contained herein shall be deemed to create any contractual relationship between the Contractor and the Architect or any of the Subcontractors or material suppliers on the Project; nor shall anything contained in this Agreement be deemed to give any third party any claim or right of action against the Owner which does not otherwise exist without regard to this Contract.

13.10 Examining and Copying Contractor's Records

13.10.1 The Contractor shall permit the Owner or its duly authorized representative to examine and copy all files, computerized records, bid files, and any other books and records of the Contractor and its Subcontractors and suppliers relative to charges for extra work, extra payments, alleged breaches of contract, settlement of claims, or any
other matter involving the Contractor's request for additional time or for added compensation from the Owner. The Contractor shall also permit such examination and copying of all such records of the Contractor (and its Subcontractors and suppliers) as the Owner may deem necessary in order to determine that the Contractor has complied with all laws, regulations and requirements pertaining to the Contract.

13.10.2 The Contractor further agrees that it and its Subcontractors and suppliers shall keep all records relating to this Contract until the expiration of three (3) years after final payment under this Contract is made, or six (6) months after settlement of any disputes, whichever may be later.

13.10.3 The Contractor further agrees that it and its Subcontractors and suppliers shall permit the Owner, at its own expense, by its duly authorized representatives, to inspect and audit all their data, records and files pertaining to this Contract. Contractor agrees to expressly incorporate all the obligations in this Article into its subcontracts and purchase orders on this project for the benefit of the Owner.

13.11 Wesleyan University Local Participation Program

13.11.1 The contractor and the contractor's subcontractors and so forth for all tiers are required to meet or exceed the following Goals.

A. Workforce - A combined total of 25% of the work hours performed shall be by:

1. Local workers residing within a 25-mile radius of Wesleyan University, Middletown, proof of residence required.
3. Women.

B. Contracts (Sub-Contractors) – A combined total of 25% of contractors on a project shall be:

1. Local Businesses (residing within a 25-mile radius of Wesleyan University., Middletown)
2. Minority Owned Businesses ("Minority Business Enterprise" (MBE) shall mean a business that is owned, operated and controlled by one or more Minority persons. For the purpose of this definition the term "owned" shall mean that one or more Minority persons own 51% or more of each class of stock and are entitled to receive 51% or more of
3. Women Owned Businesses ("Women-owned Business Enterprise (WBE) shall mean a business that is owned, operated and controlled by one or more women. For the purpose of this definition the term "owned" shall mean that one or more women own 51% or more of each class of stock and are entitled to receive 51% or more of the net profits (or losses) of the business. For the purposes of this definition, the term "operated and controlled" shall mean that one or more women have the day-to-day responsibility for running and making all-important decisions affecting the business enterprise.

The contractor and each subcontractor will be required to fill out a weekly utilization report, and also track and monitor individual subcontractor dollar amounts. These reports will be tracked by the General Contractor and shall be submitted monthly to Owner's Project Manager and monitored for conformance. Any variance from these goals shall result in disciplinary actions as described in 13.8.1.5.

13.11 Conflicts of Interest.
Contractor represents, warrants and covenants to and with Owner that: (a) neither Contractor nor any of its affiliates, direct or indirect owners and principals, officers, directors, partners, shareholders, members or employees (collectively the "Contractor Parties") have any direct or indirect financial or familial relationship with the Owner and any of its officers, directors, employees, Owner's site representatives including without limitation, Alan Rubacha and his firm, or the Architect (collectively the "Owner Parties" and each an "Owner Party"); (b) no Owner Party has received or will receive any consideration from any of the Contractor Parties in connection with the Work or the Contract Documents; and (c) all subcontractor contracts shall contain similar representations and covenants. At the request of Owner, Contractor Parties and any subcontractor shall execute and deliver to Owner an affidavit affirming the above.

ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT

14.1 Termination by the Contractor

MODIFY as follows:
14.1.1 DELETE the words "30 days" and SUBSTITUTE "60 days."

14.1.1.3 DELETE this Clause.

14.1.1.4 DELETE this Clause.

14.1.3 Third line, DELETE the remainder of this Subparagraph after the word "executed" and SUBSTITUTE: "The Contractor hereby waives all other claims for payment and damages, including, without limitation, anticipated profits."

14.2 Termination by the Owner for Cause

MODIFY as follows:

14.2.1 ADD the following:

.5 fails to furnish the Owner with assurances satisfactory to the Owner evidencing the Contractor's ability to complete the Work in compliance with all requirements of the Contract Documents.

.6 refuses or fails to prosecute the work or any separable part, with the diligence that shall ensure its completion within the time specified in this Contract including any, duly authorized extension, or fails to complete the Work within said period.

14.2.2 First line, DELETE the words "upon certification by the Architect" and SUBSTITUTE "with the advice of the Architect, may determine".

ADD the following:

14.2.2.4 Terminate the Contractor's right to proceed with a separate part of the Work, if the Owner so elects.

14.2.4 Fourth line, after the words "pay the difference to the Owner" ADD the following: "but in no case shall the Contractor be paid more than that amount due and owing for the Work properly executed by the Contractor prior to termination."

14.3 Suspension by the Owner for Convenience

DELETE Subparagraph 14.3.2 and SUBSTITUTE the following:

14.3.2 Upon receipt of a notice of suspension for convenience, the
Contractor shall immediately, in accordance with instructions from the Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under the Subparagraph:

.1 Suspend operations as specified in the notice;

.2 Place no further orders and enter into no further Subcontracts for materials, labor, services or facilities except as necessary to complete continued portions of the Contract;

.3 Suspend all Subcontracts and orders to the extent they relate to the Work suspended;

.4 Proceed to complete the performance of Work not suspended; and

.5 Take all actions that may be necessary, or that the Owner may direct, for the protection and preservation of the suspended Work.

ADD the following Subparagraph:

14.3.3 An adjustment may be made for any increases or decreases in the cost of the Contract that are directly caused by the Owner’s suspension, delay, or interruption under this Article. 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 this Contract.

ADD the following Subparagraph:

14.3.4 Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee for the benefit of the Contractor.
DELETE paragraph 14.4 in its entirety and replace it with the following:

14.4 Termination by the Owner for Convenience

14.4.1 The Owner may, at any time, terminate the Contract, in whole or in part, for the Owner's convenience and without cause. Termination by the Owner under this Subparagraph shall be by a notice of termination delivered to the Contractor specifying the extent of termination and the effective date.

14.4.2 Upon receipt of a notice of termination for convenience, the Contractor shall immediately, in accordance with instructions from the Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under the Paragraph:

.1 Cease operations as specified in the notice;

.2 Place no further orders and enter into no further Subcontracts for materials, labor, services or facilities except as necessary to complete continued portions of the Contract;

.3 Terminate all Subcontracts and orders to the extent they relate to the Work terminated;

.4 Proceed to complete the performance of Work not terminated; and,

.5 Take all actions that may be necessary, or that the Owner may direct, for the protection and preservation of the terminated Work.

14.4.3 Upon such termination, the Contractor shall recover as its sole remedy, payment for Work executed prior to the effective date of termination and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions. The Contractor hereby waives all other claims for payment and damages, including, without limitation, anticipated profits.

14.4.4 The Owner shall be credited for (1) payment previously made to the Contractor for the terminated portion of the Work, (2) claims which the Owner has against the Contractor under the Contract and (3) the value of the materials, supplies, equipment or other items that are to be disposed of by the Contractor that are part of the Contract Sum.

14.4.5 The payment to the Contractor pursuant to this Subparagraph may not exceed the total Contract Sum as reduced by:
.1 the amount of payments previously made and
.2 the Contract Price of work not terminated.

END OF
SUPPLEMENTARY CONDITIONS