



AIA[®]

Document A121[™]CMc – 2003 and AGC Document 565

Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is Also the Constructor

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

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

Ann Arbor Downtown Development Authority
150 S Fifth Ave Ste 301
Ann Arbor MI 48104

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

The Christman Company
208 N. Capitol Avenue
Lansing MI 48933

The Project is:
(Name, address and brief description)

Fifth Avenue Underground Parking Structure and Street Improvements

Ann Arbor, Michigan

Project includes – an approximately 750 space, 4-level below grade parking structure at the existing Ann Arbor surface parking lot adjacent to the Ann Arbor District Library. The project includes, but is not limited to:

- New roadway between Fifth Avenue and Division Street (Library Lane)
- Fifth Avenue improvements south to William Street and north to Washington Street
- New surface parking lot/Civic plaza
- Structure for future multi-story building(s)

The project is to be in general accordance with the September 23, 2009 preliminary construction documents as specified in the drawing log of the GMP proposal (Exhibit A), the October 19, 2009 GMP proposal prepared by The Christman Company (Exhibit B), and the January 14, 2010 contractor's insurance (Exhibit C).

The Architect is:
(Name, legal status and address)

Carl Walker, Inc
5136 Lovers Lane, Ste 200
Kalamazoo MI 49002

The Owner and Construction Manager agree as set forth below:

ADDITIONS AND DELETIONS:

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

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

The 1997 Edition of AIA Document A201, General Conditions of the Contract for Construction, is referred to herein. This Agreement requires modification if other general conditions are utilized.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 RELATIONSHIP OF PARTIES

The Construction Manager accepts the relationship of trust and confidence established with the Owner by this Agreement, and covenants with the Owner to furnish the Construction Manager's reasonable skill and judgment and to cooperate with the Architect in furthering the interests of the Owner. The Construction Manager shall furnish construction administration and management services and use the Construction Manager's best efforts to perform the Project in an expeditious and economical manner consistent with the interests of the Owner. The Owner shall endeavor to promote harmony and cooperation among the Owner, Architect, Construction Manager and other persons or entities employed by the Owner for the Project.

§ 1.2 GENERAL CONDITIONS

For the Construction Phase, the General Conditions of the contract shall be the AIA® Document A201™-1997, General Conditions of the Contract for Construction, which is incorporated herein by reference. For the Preconstruction Phase, or in the event that the Preconstruction and Construction Phases proceed concurrently, A201™-1997 shall apply to the Preconstruction Phase only as specifically provided in this Agreement. The term "Contractor" as used in A201™-1997 shall mean the Construction Manager.

ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager shall perform the services described in this Article. The services to be provided under Sections 2.1 and 2.2 constitute the Preconstruction Phase services. If the Owner and Construction Manager agree, after consultation with the Architect, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

§ 2.1 PRECONSTRUCTION PHASE

§ 2.1.1 PRELIMINARY EVALUATION

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

§ 2.1.2 CONSULTATION

The Construction Manager with the Architect shall jointly schedule and attend regular meetings with the Owner. The Construction Manager shall consult with the Owner and Architect regarding site use and improvements and the selection of materials, building systems and equipment. The Construction Manager shall provide recommendations on construction feasibility; actions designed to minimize adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and factors related to construction cost, including estimates of alternative designs or materials, preliminary budgets and possible economies.

§ 2.1.3 PRELIMINARY PROJECT SCHEDULE

When Project requirements described in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare, and periodically update, a preliminary Project schedule for the Architect's review and the Owner's approval. The Construction Manager shall obtain the Architect's approval of the portion of the preliminary Project schedule relating to the performance of the Architect's services. The Construction Manager shall coordinate and integrate the preliminary Project schedule with the services and activities of the Owner, Architect and Construction Manager. As design proceeds, the preliminary Project schedule shall be updated to indicate proposed activity sequences and durations, milestone dates for receipt and approval of pertinent information, submittal of a Guaranteed Maximum Price proposal, preparation and processing of shop drawings and samples, delivery of materials or equipment requiring long-lead-time procurement, Owner's occupancy requirements showing portions of the Project having occupancy priority, and proposed date of Substantial Completion. If preliminary Project schedule updates indicate that previously approved schedules may not be met, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

§ 2.1.4 PHASED CONSTRUCTION

The Construction Manager shall make recommendations to the Owner and Architect regarding the phased issuance of Drawings and Specifications to facilitate phased construction of the Work, if such phased construction is appropriate for the Project, taking into consideration such factors as economies, time of performance, availability of labor and materials, and provisions for temporary facilities.

§ 2.1.5 PRELIMINARY COST ESTIMATES

§ 2.1.5.1 When the Owner has sufficiently identified the Project requirements and the Architect has prepared other basic design criteria, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a preliminary cost estimate utilizing area, volume or similar conceptual estimating techniques.

§ 2.1.5.2 When Schematic Design Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare, for the review of the Architect and approval of the Owner, a more detailed estimate with supporting data. During the preparation of the Design Development Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

§ 2.1.5.3 When Design Development Documents have been prepared by the Architect and approved by the Owner, the Construction Manager shall prepare a detailed estimate with supporting data for review by the Architect and approval by the Owner. During the preparation of the Construction Documents, the Construction Manager shall update and refine this estimate at appropriate intervals agreed to by the Owner, Architect and Construction Manager.

§ 2.1.5.4 If any estimate submitted to the Owner exceeds previously approved estimates or the Owner's budget, the Construction Manager shall make appropriate recommendations to the Owner and Architect.

§ 2.1.6 SUBCONTRACTORS AND SUPPLIERS

The Construction Manager shall seek to develop subcontractor interest in the Project and shall furnish to the Owner and Architect for their information a list of possible subcontractors, including suppliers who are to furnish materials or equipment fabricated to a special design, from whom proposals will be requested for each principal portion of the Work. The Architect will promptly reply in writing to the Construction Manager if the Architect or Owner know of any objection to such subcontractor or supplier. The receipt of such list shall not require the Owner or Architect to investigate the qualifications of proposed subcontractors or suppliers, nor shall it waive the right of the Owner or Architect later to object to or reject any proposed subcontractor or supplier.

§ 2.1.7 LONG-LEAD-TIME ITEMS

The Construction Manager shall recommend to the Owner and Architect a schedule for procurement of long-lead-time items which will constitute part of the Work as required to meet the Project schedule. If such long-lead-time items are procured by the Owner, they shall be procured on terms and conditions acceptable to the Construction Manager. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, all contracts for such items shall be assigned by the Owner to the Construction Manager, who shall accept responsibility for such items as if procured by the Construction Manager. The Construction Manager shall expedite the delivery of long-lead-time items.

§ 2.1.8 EXTENT OF RESPONSIBILITY

The Construction Manager does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The recommendations and advice of the Construction Manager concerning design alternatives shall be subject to the review and approval of the Owner and the Owner's professional consultants. It is not the Construction Manager's responsibility to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, building codes, rules and regulations. However, if the Construction Manager recognizes that portions of the Drawings and Specifications are at variance therewith, the Construction Manager shall promptly notify the Architect and Owner in writing.

§ 2.1.9 EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION

The Construction Manager shall comply with applicable laws, regulations and special requirements of the Contract Documents regarding equal employment opportunity and affirmative action programs.

§ 2.2 GUARANTEED MAXIMUM PRICE PROPOSAL AND CONTRACT TIME

§ 2.2.1 When the Drawings and Specifications are sufficiently complete, the Construction Manager shall propose a Guaranteed Maximum Price, which shall be the sum of the estimated Cost of the Work and the Construction Manager's Fee.

§ 2.2.2 As the Drawings and Specifications may not be finished at the time the Guaranteed Maximum Price proposal is prepared, the Construction Manager shall provide in the Guaranteed Maximum Price for further development of the Drawings and Specifications by the Architect that is consistent with the Contract Documents and reasonably inferable

therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 2.2.3 The estimated Cost of the Work shall include the Construction Manager's contingency, a sum established by the Construction Manager for the Construction Manager's exclusive use to cover costs arising under Section 2.2.2 and other costs which are properly reimbursable as Cost of the Work but not the basis for a Change Order.

§ 2.2.4 BASIS OF GUARANTEED MAXIMUM PRICE

The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include:

- .1 A list of the Drawings and Specifications, including all addenda thereto and the Conditions of the Contract, which were used in preparation of the Guaranteed Maximum Price proposal.
- .2 A list of allowances and a statement of their basis.
- .3 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal to supplement the information contained in the Drawings and Specifications.
- .4 The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingency, and other items and the Fee that comprise the Guaranteed Maximum Price.
- .5 The Date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based, and a schedule of the Construction Documents issuance dates upon which the date of Substantial Completion is based.

§ 2.2.5 The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal and the written statement of its basis. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

§ 2.2.6 Unless the Owner accepts the Guaranteed Maximum Price proposal in writing on or before the date specified in the proposal for such acceptance and so notifies the Construction Manager, the Guaranteed Maximum Price proposal shall not be effective without written acceptance by the Construction Manager.

§ 2.2.7 Prior to the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, the Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work, except as the Owner may specifically authorize in writing.

§ 2.2.8 Upon acceptance by the Owner of the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price and its basis shall be set forth in The Christman Company GMP document dated October 19, 2009 (Exhibit B). The Guaranteed Maximum Price shall be subject to additions and deductions by a change in the Work as provided in the Contract Documents, and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

§ 2.2.9 The Owner shall authorize and cause the Architect to revise the Drawings and Specifications to the extent necessary to reflect the agreed-upon assumptions and clarifications contained in The Christman Company GMP document dated October 19, 2009 (Exhibit B). Such revised Drawings and Specifications shall be furnished to the Construction Manager in accordance with schedules agreed to by the Owner, Architect and Construction Manager. The Construction Manager shall promptly notify the Architect and Owner if such revised Drawings and Specifications are inconsistent with the agreed-upon assumptions and clarifications.

§ 2.2.10 The Guaranteed Maximum Price shall include in the Cost of the Work only those taxes which are enacted at the time the Guaranteed Maximum Price is established.

§ 2.3 CONSTRUCTION PHASE

§ 2.3.1 GENERAL

§ 2.3.1.1 The Construction Phase shall commence on the earlier of:

- (1) the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal and issuance of a Notice to Proceed, or

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- (2) the Owner's first authorization to the Construction Manager to:
 - (a) award a subcontract, or
 - (b) undertake construction Work with the Construction Manager's own forces, or
 - (c) issue a purchase order for materials or equipment required for the Work.

§ 2.3.2 ADMINISTRATION

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated to a special design for the Work from the list previously reviewed and, after analyzing such bids, shall deliver such bids to the Owner and Architect. The Owner will then determine, with the advice of the Construction Manager and subject to the reasonable objection of the Architect, which bids will be accepted. The Owner may designate specific persons or entities from whom the Construction Manager shall obtain bids; however, if the Guaranteed Maximum Price has been established, the Owner may not prohibit the Construction Manager from obtaining bids from other qualified bidders. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and a specific bidder among those whose bids are delivered by the Construction Manager to the Owner and Architect (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a change in the Work be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts and agreements with suppliers furnishing materials or equipment fabricated to a special design shall conform to the payment provisions of Sections 7.1.8 and 7.1.9 and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

§ 2.3.2.4 The Construction Manager shall schedule and conduct meetings at which the Owner, Architect, Construction Manager and appropriate Subcontractors can discuss the status of the Work. The Construction Manager shall prepare and promptly distribute meeting minutes.

§ 2.3.2.5 Promptly after the Owner's acceptance of the Guaranteed Maximum Price proposal, the Construction Manager shall prepare a schedule in accordance with Section 3.10 of A201™-1997, including the Owner's occupancy requirements.

§ 2.3.2.6 The Construction Manager shall provide monthly written reports to the Owner and Architect on the progress of the entire Work. The Construction Manager shall maintain a daily log containing a record of weather, Subcontractors working on the site, number of workers, Work accomplished, problems encountered and other similar relevant data as the Owner may reasonably require. The log shall be available to the Owner and Architect.

§ 2.3.2.7 The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals.

§ 2.4 PROFESSIONAL SERVICES

Section 3.12.10 of A201™-1997 shall apply to both the Preconstruction and Construction Phases.

§ 2.5 HAZARDOUS MATERIALS

Section 10.3 of A201™-1997 shall apply to both the Preconstruction and Construction Phases.

ARTICLE 3 OWNER'S RESPONSIBILITIES

§ 3.1 INFORMATION AND SERVICES

§ 3.1.1 The Owner shall provide full information in a timely manner regarding the requirements of the Project, including a program which sets forth the Owner's objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability requirements, special equipment and systems, and site requirements.

§ 3.1.2 The Owner shall, at the written request of the Construction Manager prior to commencement of the Construction Phase and thereafter, furnish to the Construction Manager 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 Construction Manager.

§ 3.1.3 The Owner shall establish and update an overall budget for the Project, based on consultation with the Construction Manager and Architect, which shall include contingencies for changes in the Work and other costs which are the responsibility of the Owner.

§ 3.1.4 STRUCTURAL AND ENVIRONMENTAL TESTS, SURVEYS AND REPORTS

In the Preconstruction Phase, the Owner shall furnish the following with reasonable promptness and at the Owner's expense. Except to the extent that the Construction Manager knows of any inaccuracy, the Construction Manager shall be entitled to rely upon the accuracy of any such information, reports, surveys, drawings and tests described in Sections 3.1.4.1 through 3.1.4.4 but shall exercise customary precautions relating to the performance of the Work.

§ 3.1.4.1 Reports, surveys, drawings and tests concerning the conditions of the site which are required by law.

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

§ 3.1.4.3 The services of a geotechnical engineer when such services are requested by the Construction Manager. Such services may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, including necessary operations for anticipating subsoil conditions, with reports and appropriate professional recommendations.

§ 3.1.4.4 Structural, mechanical, chemical, air and water pollution tests, tests for hazardous materials, and other laboratory and environmental tests, inspections and reports which are required by law.

§ 3.1.4.5 The services of other consultants when such services are reasonably required by the scope of the Project and are requested by the Construction Manager.

§ 3.2 OWNER'S DESIGNATED REPRESENTATIVE

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. This representative shall have the authority to make decisions on behalf of the Owner concerning estimates and schedules, construction budgets, and changes in the Work, and shall render such decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201™-1997, the Architect does not have such authority.

§ 3.3 ARCHITECT

The Owner shall retain an Architect to provide Basic Services, including normal structural, mechanical and electrical engineering services, other than cost estimating services, described in the edition of AIA® Document B151™-1997, *Abbreviated Standard Form of Agreement Between Owner and Architect* current as of the date of this Agreement. The Owner shall authorize and cause the Architect to provide those Additional Services described in B151™-1997, requested by the Construction Manager which must necessarily be provided by the Architect for the Preconstruction

and Construction Phases of the Work. Such services shall be provided in accordance with time schedules agreed to by the Owner, Architect and Construction Manager. Upon request of the Construction Manager, the Owner shall furnish to the Construction Manager a copy of the Owner's Agreement with the Architect, from which compensation provisions may be deleted.

§ 3.4 LEGAL REQUIREMENTS

The Owner shall determine and advise the Architect and Construction Manager of any special legal requirements relating specifically to the Project which differ from those generally applicable to construction in the jurisdiction of the Project. The Owner shall furnish such legal services as are necessary to provide the information and services required under Section 3.1.

ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

The Owner shall compensate and make payments to the Construction Manager for Preconstruction Phase services as follows:

§ 4.1 COMPENSATION

§ 4.1.1 For the services described in Sections 2.1 and 2.2, the Construction Manager's compensation shall be calculated as follows:

(State basis of compensation, whether a stipulated sum, multiple of Direct Personnel Expense, actual cost, etc. Include a statement of reimbursable cost items as applicable.)

| | |
|---------------------|----------|
| Fixed Fee: | \$36,000 |
| Expenses: | \$ 4,000 |
| Not-to-Exceed Cost: | \$40,000 |

§ 4.1.2 Compensation for Preconstruction Phase Services shall be equitably adjusted if the originally contemplated scope of services is significantly modified.

§ 4.1.3 If compensation is based on a multiple of Direct Personnel Expense, Direct Personnel Expense is defined as the direct salaries of the Construction Manager's personnel engaged in 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.

§ 4.2 PAYMENTS

§ 4.2.1 Payments shall be made monthly following presentation of the Construction Manager's invoice and, where applicable, shall be in proportion to services performed.

§ 4.2.2 Payments are due and payable thirty (30) days from the date the Construction Manager's invoice is received by the Owner.

(Insert rate of interest agreed upon.)

NA

(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.)

ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

The Owner shall compensate the Construction Manager for Construction Phase services as follows:

§ 5.1 COMPENSATION

§ 5.1.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager in current funds the Contract Sum consisting of the Cost of the Work as defined in Article 6 and the Construction Manager's Fee determined as follows:

(State a lump sum, percentage of actual Cost of the Work or other provision for determining the Construction Manager's Fee, and explain how the Construction Manager's Fee is to be adjusted for changes in the Work.)

- .1 Compensation for Construction Phase Services shall be the stipulated sum of one million eight hundred thirteen thousand four hundred dollars (\$1,813,480). This compensation is included in the GMP (Section 5.2.1).
- .2 Compensation provided in Paragraph 5.1.1.1 is inclusive of all Construction Manager fees, office and field staffing, and expenses.
- .3 Construction Manager fees will be increased for changes in the Scope of Work only if the changes in Work results in an impact to critical path, extending the project schedule.
- .4 Construction Manager will have 0% markup on Subcontractor Work or Subcontractor Changes in Work.

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The sum of the Cost of the Work and the Construction Manager's Fee are guaranteed by the Construction Manager not to exceed the amount provided in The Christman Company GMP dated October 19, 2009 (Exhibit B), subject to additions and deductions by changes in the Work as provided in the Contract Documents. Such maximum sum as adjusted by approved changes in the Work is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

The Guaranteed Maximum Price (GMP) is \$44,381,573.00.

(Insert specific provisions if the Construction Manager is to participate in any savings.)

§ 5.3 CHANGES IN THE WORK

§ 5.3.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of this agreement may be determined by any of the methods listed in Section 7.3.3 of A201™-1997.

§ 5.3.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of A201™-1997 and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Section 7.3.6 of A201™-1997 shall have the meanings assigned to them in that document and shall not be modified by this Article 5. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.3 In calculating adjustments to the Contract, the terms "cost" and "costs" as used in the above-referenced provisions of A201™-1997 shall mean the Cost of the Work as defined in Article 6 of this Agreement, and the term "and a reasonable allowance for overhead and profit" shall mean the Construction Manager's Fee as defined in Section 5.1.1 of this Agreement. Refer to Section 5.1.1.3 and .4.

§ 5.3.4 If no specific provision is made in Section 5.1.1 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.1 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the basis of the Fee established for the original Work. Refer to Section 5.1.1.3 and .4.

ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

§ 6.1 COSTS TO BE REIMBURSED

§ 6.1.1 The term "Cost of the Work" shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 6.

§ 6.1.2 LABOR COSTS

- .1 Wages of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner's agreement, at off-site workshops.
- .2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's agreement.

(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal office or offices other than the site office shall be included in the Cost of the Work, such personnel shall be identified below.)

| Classification | Name | |
|-------------------------------|------------------|----------|
| Project Executive | Patrick Podges | \$100/hr |
| Senior Project Manager | James Blum | \$94/hr |
| Project Manager | Amy Sullivan, PE | \$71/hr |
| Senior Project Superintendent | Gary Shannon | \$80/hr |
| Project Engineer | Jeffrey Adcock | \$65/hr |
| Safety Director | Don Staley | \$62/hr |
| Project Accountant | Jason Lovett | \$35/hr |
| Clerical Assistance | TBD | \$22/hr |

- .3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.
- .4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements, and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided that such costs are based on wages and salaries included in the Cost of the Work under Sections 6.1.2.1 through 6.1.2.3.

§ 6.1.3 SUBCONTRACT COSTS

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

Subcontractor markup for changes in Scope of Work will be as follows:

For trade contractor markup for changes to project scope, a sliding scale that applies to each change order proposal request will be utilized:

- 8% on the first \$25,000 of approved change order performed by all trade contractors combined for any change proposal.
- 4% on any amount greater than \$25,000 of approved change order performed by all trade contractors combined for any change proposal.

For self-performed subcontractor work, a sliding scale that applies to each change order proposal request will be utilized:

- 15% on the first \$25,000 of change order direct cost of self-performed work.
- 10% on portion of change order direct cost between \$25,000 and \$50,000.
- 7.5% on portion of change order direct cost between \$50,000 and \$200,000.
- 5% on portion of change order direct cost greater than \$200,000.

§ 6.1.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

- .1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.
- .2 Costs of materials described in the preceding Section 6.1.4.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be handed over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.1.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

- .1 Costs, including transportation, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site and fully consumed in the performance of the Work; and cost less salvage value on such items if not fully consumed,

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whether sold to others or retained by the Construction Manager. Cost for items previously used by the Construction Manager shall mean fair market value.

- .2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by the construction workers, which are provided by the Construction Manager at the site, whether rented from the Construction Manager or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.
- .3 Costs of removal of debris from the site.
- .4 Reproduction costs, costs of telegrams, facsimile transmissions and long-distance telephone calls, postage and express delivery charges, telephone at the site and reasonable petty cash expenses of the site office.
- .5 That portion of the reasonable travel and subsistence expenses of the Construction Manager's personnel incurred while traveling in discharge of duties connected with the Work.

§ 6.1.6 MISCELLANEOUS COSTS

- .1 That portion directly attributable to this Contract of premiums for insurance and bonds.
(If charges for self-insurance are to be included, specify the basis of reimbursement.)
- .2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Construction Manager is liable.
- .3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Construction Manager is required by the Contract Documents to pay.
- .4 Fees of testing laboratories for tests required by the Contract Documents, except those related to nonconforming Work other than that for which payment is permitted by Section 6.1.8.2.
- .5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent or other intellectual property rights arising from such requirement by the Contract Documents; payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses, judgment and settlements shall not be included in the calculation of the Construction Manager's Fee or the Guaranteed Maximum Price and provided that such royalties, fees and costs are not excluded by the last sentence of Section 3.17.1 of A201™-1997 or other provisions of the Contract Documents.
- .6 Data processing costs related to the Work.
- .7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility to the Owner set forth in this Agreement.
- .8 Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager in the performance of the Work and with the Owner's written permission, which permission shall not be unreasonably withheld.
- .9 Expenses incurred in accordance with Construction Manager's standard personnel policy for relocation and temporary living allowances of personnel required for the Work, in case it is necessary to relocate such personnel from distant locations.

§ 6.1.7 OTHER COSTS

- .1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

§ 6.1.8 EMERGENCIES AND REPAIRS TO DAMAGED OR NONCONFORMING WORK

The Cost of the Work shall also include costs described in Section 6.1.1 which are incurred by the Construction Manager:

- .1 In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.6 of A201™-1997.
- .2 In repairing or correcting damaged or nonconforming Work executed by the Construction Manager or the Construction Manager's Subcontractors or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence or failure to fulfill a specific responsibility to the Owner set forth in this agreement of the Construction Manager or the Construction Manager's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of

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the Construction Manager, or the failure of the Construction Manager's personnel to supervise adequately the Work of the Subcontractors or suppliers, and only to the extent that the cost of repair or correction is not recoverable by the Construction Manager from insurance, Subcontractors or suppliers.

§ 6.1.9 The costs described in Sections 6.1.1 through 6.1.8 shall be included in the Cost of the Work notwithstanding any provision of A201™-1997 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.2.

§ 6.2 COSTS NOT TO BE REIMBURSED

§ 6.2.1 The Cost of the Work shall not include:

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Sections 6.1.2.2 and 6.1.2.3.
- .2 Expenses of the Construction Manager's principal office and offices other than the site office, except as specifically provided in Section 6.1.
- .3 Overhead and general expenses, except as may be expressly included in Section 6.1.
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work.
- .5 Rental costs of machinery and equipment, except as specifically provided in Section 6.1.5.2.
- .6 Except as provided in Section 6.1.8.2, costs due to the negligence of the Construction Manager or to the failure of the Construction Manager to fulfill a specific responsibility to the Owner set forth in this Agreement.
- .7 Costs incurred in the performance of Preconstruction Phase Services.
- .8 Except as provided in Section 6.1.7.1, any cost not specifically and expressly described in Section 6.1.
- .9 Costs which would cause the Guaranteed Maximum Price to be exceeded.

§ 6.3 DISCOUNTS, REBATES AND REFUNDS

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

§ 6.3.2 Amounts which accrue to the Owner in accordance with the provisions of Section 6.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ 6.4 ACCOUNTING RECORDS

§ 6.4.1 The Construction Manager shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access to the Construction Manager's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Construction Manager shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

ARTICLE 7 CONSTRUCTION PHASE PAYMENTS

§ 7.1 PROGRESS PAYMENTS

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

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

§ 7.1.3 Provided a "pencil" draft of the Application for Payment is received by the Architect not later than the 25th of the month (invoice month); and the final application for payment is received by the Architect not later than the 10th day of a month, the Owner shall make payment to the Construction Manager not later than the last day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than forty-five (45) days after the Architect receives the Application for Payment.

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed (1) progress payments already received by the Construction Manager; less (2) that portion of those payments attributable to the Construction Manager's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based upon the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

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

§ 7.1.7 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 Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Section 7.3.8 of A201™-1997, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing.
- .3 Add the Construction Manager's Fee, less retainage of zero percent (0 %). The Construction Manager's Fee shall be computed upon the Cost of the Work described in the two preceding Sections at the rate stated in Section 5.1.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Sections bears to a reasonable estimate of the probable Cost of the Work upon its completion.
- .4 Subtract the aggregate of previous payments made by the Owner.
- .5 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation.
- .6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of A201™-1997.

§ 7.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retention of not less than ten percent (10 %). The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments and retention for subcontracts. If the work has proceeded in a manner acceptable to the Owner and Construction Manager, additional retention may be reduced to 0% after Subcontractor's work is at

least 50% complete. Owner and Construction Manager may choose to further reduce Subcontractor retention after substantial work is complete, but before project is complete.

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

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

§ 7.2 FINAL PAYMENT

§ 7.2.1 Final payment shall be made by the Owner to the Construction Manager when (1) the Contract has been fully performed by the Construction Manager except for the Construction Manager's responsibility to correct nonconforming Work, as provided in Section 12.2.2 of A201™-1997, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner's accountants; and (3) a final Certificate for Payment has then been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 7.2.2 The amount of the final payment shall be calculated as follows:

- .1 Take the sum of the Cost of the Work substantiated by the Construction Manager's final accounting and the Construction Manager's Fee, but not more than the Guaranteed Maximum Price.
- .2 Subtract amounts, if any, for which the Architect withholds, in whole or in part, a final Certificate for Payment as provided in Section 9.5.1 of A201™-1997 or other provisions of the Contract Documents.
- .3 Subtract the aggregate of previous payments made by the Owner.

If the aggregate of previous payments made by the Owner exceeds the amount due the Construction Manager, the Construction Manager shall reimburse the difference to the Owner.

§ 7.2.3 The Owner's accountants will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of A201™-1997. The time periods stated in this Section 7.2 supersede those stated in Section 9.4.1 of A201™-1997.

§ 7.2.4 If the Owner's accountants report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to proceed in accordance with Article 9 without a further decision of the Architect. Unless agreed to otherwise, a demand for mediation or arbitration of the disputed amount shall be made by the Construction Manager within 60 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to make such demand within this 60-day period shall result in the substantiated amount reported by the Owner's accountants becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

§ 7.2.5 If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1 and not excluded by Section 6.2 (1) to correct nonconforming Work or (2) arising from the resolution of disputes, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee, if any,

related thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

ARTICLE 8 INSURANCE AND BONDS

§ 8.1 INSURANCE REQUIRED OF THE CONSTRUCTION MANAGER

During both phases of the Project, the Construction Manager shall purchase and maintain insurance as set forth in Section 11.1 of A201™-1997 and as identified in Exhibit C (with limits increased as identified below). Such insurance shall be written for not less than the following limits, or greater if required by law:

§ 8.1.1 Workers' Compensation and Employers Liability meeting statutory limits mandated by state and federal laws. If (1) limits in excess of those required by statute are to be provided, or (2) the employer is not statutorily bound to obtain such insurance coverage or (3) additional coverages are required, additional coverages and limits for such insurance shall be as follows:

Limits as identified in Exhibit C.

§ 8.1.2 Commercial General Liability including coverage for Premises-Operations, Independent Contractors' Protective, Products-Completed Operations, Contractual Liability, Personal Injury and Broad Form Property Damage (including coverage for Explosion, Collapse and Underground hazards):

- \$ 5,000,000 Each Occurrence
- \$ 15,000,000 General Aggregate
- \$ 5,000,000 Personal and Advertising Injury
- \$ 15,000,000 Products-Completed Operations Aggregate

- .1 The policy shall be endorsed to have the General Aggregate apply to this Project only.
- .2 Products and Completed Operations insurance shall be maintained for a minimum period of at least one (1) year(s) after either 90 days following Substantial Completion or final payment, whichever is earlier.
- .3 The Contractual Liability insurance shall include coverage sufficient to meet the obligations in Section 3.18 of A201™-1997.

§ 8.1.3 Automobile Liability (owned, non-owned and hired vehicles) for bodily injury and property damage:

- \$ 1,000,000 Each Accident

Limits as identified in Exhibit C.

§ 8.1.4 Other coverage:

Umbrella/Excess Liability Insurance limit: \$15,000,000. Refer to Exhibit C. DDA's consultants to be named as additional insured.

(If Umbrella Excess Liability coverage is required over the primary insurance or retention, insert the coverage limits. Commercial General Liability and Automobile Liability limits may be attained by individual policies or by a combination of primary policies and Umbrella and/or Excess Liability policies. If Project Management Protective Liability Insurance is to be provided, state the limits here.)

§ 8.2 INSURANCE REQUIRED OF THE OWNER

During both phases of the Project, the Owner shall purchase and maintain liability and property insurance, including waivers of subrogation, as set forth in Sections 11.2 and 11.4 of A201™-1997. Such insurance shall be written for not less than the following limits, or greater if required by law:

§ 8.2.1 Property insurance:

- \$ 2,500 Deductible Per Occurrence
- \$ 2,500 Aggregate Deductible

§ 8.2.2 Boiler and Machinery insurance with a limit of: \$ NA .
(If not a blanket policy, list the objects to be insured.)

§ 8.3 PERFORMANCE BOND AND PAYMENT BOND

§ 8.3.1 The Construction Manager shall furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder. Bonds may be obtained through the Construction Manager's usual source, and the cost thereof shall be included in the Cost of the Work. The amount of each bond shall be equal to one hundred percent (100 %) of the Contract Sum.

§ 8.3.2 The Construction Manager shall deliver the required bonds to the Owner at least three days before the commencement of any Work at the Project site.

ARTICLE 9 MISCELLANEOUS PROVISIONS

§ 9.1 DISPUTE RESOLUTION

§ 9.1.1 During both the Preconstruction and Construction Phases, Claims, disputes or other matters in question between the parties to this Agreement shall be resolved as provided in Sections 4.3 through 4.6 of A201™-1997 except that, during the Preconstruction Phase, no decision by the Architect shall be a condition precedent to mediation or arbitration.

§ 9.2 OTHER PROVISIONS

§ 9.2.1 Unless otherwise noted, the terms used in this Agreement shall have the same meaning as those in A201™-1997, *General Conditions of the Contract for Construction*.

§ 9.2.2 EXTENT OF CONTRACT

This Contract, which includes this Agreement and the other documents incorporated herein by reference, represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Construction Manager. If anything in any document incorporated into this Agreement is inconsistent with this Agreement, this Agreement shall govern.

§ 9.2.3 OWNERSHIP AND USE OF DOCUMENTS

Article 1.6 of A201™-1997 shall apply to both the Preconstruction and Construction Phases.

§ 9.2.4 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located.

§ 9.2.5 ASSIGNMENT

The Owner and Construction Manager 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 of A201™-1997, 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.

ARTICLE 10 TERMINATION OR SUSPENSION

§ 10.1 TERMINATION PRIOR TO ESTABLISHING GUARANTEED MAXIMUM PRICE

§ 10.1.1 Prior to execution by both parties of Amendment No. 1 establishing the Guaranteed Maximum Price, the Owner may terminate this Contract at any time without cause, and the Construction Manager may terminate this Contract for any of the reasons described in Section 14.1.1 of A201™-1997.

§ 10.1.2 If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 prior to commencement of the Construction Phase, the Construction Manager shall be equitably compensated for Preconstruction Phase Services performed prior to receipt of notice of termination; provided, however, that the compensation for such services shall not exceed the compensation set forth in Section 4.1.1.

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§ 10.1.3 If the Owner or Construction Manager terminates this Contract pursuant to this Section 10.1 after commencement of the Construction Phase, the Construction Manager shall, in addition to the compensation provided in Section 10.1.2, be paid an amount calculated as follows:

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

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

Subcontracts, purchase orders and rental agreements entered into by the Construction Manager with the Owner's written approval prior to the execution of Amendment No. 1 shall contain provisions permitting assignment to the Owner as described above. If the Owner accepts such assignment, the Owner shall reimburse or indemnify the Construction Manager with respect to all costs arising under the subcontract, purchase order or rental agreement except those which would not have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner elects not to accept the assignment of any subcontract, purchase order or rental agreement which would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager shall terminate such subcontract, purchase order or rental agreement and the Owner shall pay the Construction Manager the costs necessarily incurred by the Construction Manager by reason of such termination.

§ 10.2 TERMINATION SUBSEQUENT TO ESTABLISHING GUARANTEED MAXIMUM PRICE

Subsequent to execution by both parties of Amendment No. 1, the Contract may be terminated as provided in Article 14 of A201™-1997.

§ 10.2.1 In the event of such termination by the Owner, the amount payable to the Construction Manager pursuant to Section 14.1.3 of A201™-1997 shall not exceed the amount the Construction Manager would have been entitled to receive pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

§ 10.2.2 In the event of such termination by the Construction Manager, the amount to be paid to the Construction Manager under Section 14.1.3 of A201™-1997 shall not exceed the amount the Construction Manager would have been entitled to receive under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, including a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 10.3 SUSPENSION

The Work may be suspended by the Owner as provided in Article 14 of A201™-1997; in such case, the Guaranteed Maximum Price, if established, shall be increased as provided in Section 14.3.2 of A201™-1997 except that the term "cost of performance of the Contract" in that Section shall be understood to mean the Cost of the Work and the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1.1 and 5.3.4 of this Agreement.

ARTICLE 11 OTHER CONDITIONS AND SERVICES

Language proposed by Christman (11.1 & 11.2)

11.1 DISPUTE RESOLUTION

11.1.1 In the event of any dispute or difference of any kind whatsoever, arising out of or in relation to or in connection with the validity or invalidity, construction, execution, meaning, operation or effect, change or, or breach of this Agreement, which cannot be settle amicably by the parties, such dispute or difference shall be referred to the Parties

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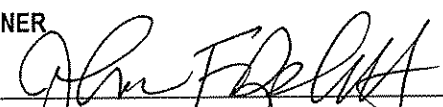
respective CEOs (or equivalents) who shall meet together with a view to resolving the same within a period of not more than 30 days from the date of the submission. In the event the Parties respective CEOs are unable to amicably resolve such dispute or difference within a reasonable time, it shall be referred to non-binding mediation with a mutually agreed upon third party. If such mediation is unsuccessful in resolving the dispute, the Parties shall be free to pursue any and all available remedies at equity or at law.

Pending resolution of such dispute or difference and without prejudice to their rights, the Parties shall continue to respect all their obligations and to perform all their duties under this Agreement.

11.2 HAZARDOUS SUBSTANCE

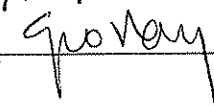
11.2.1 If a Hazardous Substance is encountered on or below the surface of the Project, Construction Manager shall promptly notify Owner of such discovery and to the extent permissible, in accordance with applicable law, shall continue to perform its obligations under the Agreement. Construction Manager agrees to re-sequence its performance to the extent necessary to accommodate any testing and possible remediation of any Hazardous Substance and minimize any disruption of the Work or the Construction Schedule, provided however, that Owner shall bear responsibility for all costs associated therewith and hold all contracts related to the remediation. At Owner's request, Construction Manager shall assist Owner in bidding and awarding one or more contracts for any engineering, construction or other remediation work required because of the presence of any Hazardous Substance. For purposes of this Section, "Hazardous Substance" means any pollutant, hazardous or toxic substance, waste or material including oil and oil products, asbestos-containing materials, urea, formaldehyde, foam insulation, transformers or other equipment which contains dielectric fluid, polychlorinated biphenyl, flammable explosives, radioactive materials or any other material or substance designated or regulated as hazardous or as a toxic substance, or waste, pollutant or contaminated material under any present or future laws.

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


OWNER


 (Signature)
JOHN SPITT CHAIR

 (Printed name and title)
 1/18/10

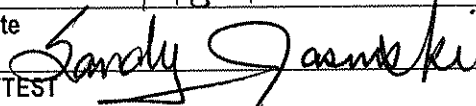
 Date


 ATTEST

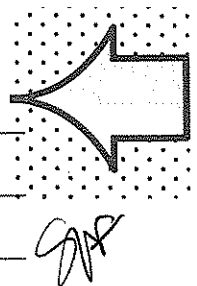
CONSTRUCTION MANAGER


 (Signature)
Steven F. Roznowski
Chief Executive Officer

 (Printed name and title)
 1-18-10

 Date


 ATTEST



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**ADDENDUM TO STANDARD FORM OF AGREEMENT BETWEEN OWNER AND
CONSTRUCTION MANAGER (A121 CMc - 2003) REGARDING CONSTRUCTION OF FIFTH
AVENUE UNDERGROUND PARKING STRUCTURE AND STREET IMPROVEMENTS IN
ANN ARBOR, MICHIGAN**

This Addendum ("Addendum") to the Standard Form of Agreement Between Owner and Construction Manager, A121 CMc - 2003 ("Agreement"), is made this 15th day of January, 2010, by the Ann Arbor Downtown Development Authority, a Michigan downtown development authority ("Owner" or "DDA"), and The Christman Company, a Michigan corporation ("Construction Manager"), and this Addendum incorporating various modifications and additions to the Agreement is incorporated by reference into the Agreement as if fully rewritten therein. All references to this Agreement hereafter shall include this Addendum, provided, however, that any page or other references below shall be to the Agreement. References herein to the General Conditions shall be to AIA A201-1997 (for use with A121CMc-2003) as amended by the Supplementary Conditions executed by the parties. References to the "GMP Proposal" shall be to the October 19, 2009 GMP proposal prepared by the Christman Company and which is attached as Exhibit B to the Agreement.

| <u>Page No. of Agm't</u> | <u>Description of Changes</u> |
|--------------------------|--|
| Page 1 | At end of description of project after the words "The Christman Company (Exhibit B)" add: * * * subject to the provisions of the Agreement. |
| Article 1 | General Provisions |
| Page 3 - § 1.1 | Add the following at the end of Section 1.1: The parties acknowledge that the City of Ann Arbor is the owner of the property which is the site of the Project and that unless otherwise specified in the Contract Documents, all references to the Owner in the Contract Documents shall be to the Ann Arbor Downtown Development Authority as the authorized agent of the City of Ann Arbor. |
| Page 3 - § 1.2 | General Conditions |
| Page 3 - § 1.2 | Add the following at the end of Paragraph 1.2: AIA A201-1997, General Conditions of the Contract for Construction, is amended to include the Supplementary Conditions which are together incorporated by reference herein. |
| Article 2 | Construction Manager's Responsibilities |
| Page 3 - Article 2 | Replace the introductory paragraph of Article 2 beginning with the words "The Construction Manager shall" with the following: The Construction Manager shall perform the services described in this Article with competence and the highest standard of care, using skill and diligence consistent with honesty, integrity, candor, and in the interests |

diligence consistent with honesty, integrity, candor, and in the interests of the Owner. The Construction Manager shall assign staff to the Project in accordance with their qualifications, competency, and commensurate with the services to be provided. The services to be provided under Sections 2.1 and 2.2 constitute the Preconstruction Phase services. If the Owner and Construction Manager agree in writing, after consultation with the Architect, the Construction Phase may commence before the Preconstruction Phase is completed, in which case both phases will proceed concurrently.

Page 3 – Article 2

Add the following at the end of this Section:

The Construction Manager has thoroughly reviewed and inspected the Drawings, Specifications, all Contract Documents and all other information and documents provided by the Owner to the Contractor relating to the Project prior to establishment of the Guaranteed Maximum Price and performance of the Work.

Article 2.1

Preconstruction Phase

Add the following:

Notwithstanding any other provisions of the Contract Documents to the contrary, the parties acknowledge that the Construction Manager has performed its pre-construction services including establishment of the Guaranteed Maximum Price and that the Construction Manager has no further obligations to provide preconstruction services under the Contract Documents.

Page 4 - § 2.2

Guaranteed Maximum Price Proposal and Contract Time

Page 5 - § 2.2.6

Section 2.2.6 is replaced in its entirety by the following:

§ 2.2.6 The Owner has timely accepted the Construction Manager's GMP Proposal subject to the terms of the Agreement and any documents referenced therein.

Page 5 - § 2.2.10

At the end of Section 2.2.10 add the following words: "or which were publicized at the time of the proposal to become effective within one year after the date of the proposal."

Page 5 - § 2.2.11

Add the following Section 2.2.11:

§ 2.2.11 Notwithstanding any other provisions of the GMP Proposal to the contrary, the parties agree that the GMP includes the sum of One Million Three Hundred Fourteen Thousand, Four Hundred and Fifty-Four and 00/100 dollars (\$1,314,454.00) as a Construction Manager's Risk Contingency Fund. This Construction Manager's Risk Contingency is to cover the Construction Manager for unanticipated construction risks

and is not intended to be used for changes in the scope of the Project not consistent or reasonably inferable from the drawings and specifications. Typical construction risks that are difficult to anticipate or that usually cannot be anticipated are defined as: (i) Extended General Conditions Costs due to delays caused by factors outside the Construction Manager's control; (ii) errors and omissions, corrections of defects in the Work, and/or acceleration costs which are the result of the Construction Manager's simple negligence; (iii) Trade Contractor failures; (iv) omissions of detailed or specified items; and (v) any Cost of the Work not compensable as a Change Order provided that the addition of such amount does not cause the Cost of the Work to exceed the GMP. The unused portion of the Risk Contingency will be released for the Owner's use as the construction risks are dissipated as determined by the Construction Manager with the input of the Owner and Architect. The balance, if any, of the Construction Manager's Risk Contingency Fund shall be released to the Owner upon Substantial Completion of the Project. The parties specifically agree that the foregoing language supersedes and replaces the language contained in Section 14 of Section 4 of the GMP Proposal labeled Basis of Guaranteed Maximum Price. Each requested use by the Construction Manager of the Construction Manager's Risk Contingency Fund shall require the Construction Manager's specification and documentation of the proposed use of the Fund and the Owner's prior written approval which shall not be unreasonably withheld by the Owner.

Page 5 - § 2.2.12

Add the following Section 2.2.12:

§ 2.2.12 As provided in the GMP Proposal, the GMP includes a GMP Estimate Contingency of \$750,000 which addresses the possibility that bids will be obtained in excess of the amounts estimated by Construction Manager in the GMP Proposal and allows for inconsistencies in the bidding market not anticipated at the time of the GMP Proposal. Many factors can impact the competitiveness of the bids, for example, workloads, quality of the bid documents, the difficulty factor of the project, financial condition of the bidders, attractiveness of the project, other projects bidding in the same period, and other similar factors. There are also factors that influence the cost of materials, such as oil prices, economy, demand, weather, natural disasters, world politics, and other similar factors. The amount of the GMP including the GMP Estimate Contingency is based on Construction Manager's best estimate of existing and future bids and takes into account the factors known or anticipated at the time of the GMP Proposal including the GMP Estimate Contingency. However, major fluctuations can and do occur in a relatively short period. This GMP Estimate Contingency provides some protection against those events. Immediately after bid package no. 3 is awarded and a contract signed, the unused portion of this contingency shall be reduced by 80% with said 80% to be returned to the Owner to be used by Owner for any purpose as determined by Owner in its sole discretion. The remaining unused 20% of the GMP Estimate

Contingency shall be retained in the GMP for application to any remaining bids, to the extent required. Upon Substantial Completion of the Project, any unused portion of the GMP Estimate Contingency shall be returned to Owner for use by Owner as determined by Owner in its sole discretion. Upon the release or return of any portion of the GMP Estimate Contingency to the Owner, the GMP shall be reduced by the amount returned or otherwise released to Owner from said fund.

Page 5 - § 2.3

Construction Phase

Page 6 - § 2.3.2

Administration

Page 6 - § 2.3.2.1

In the second to the last line of Section 2.3.2.1, after the word “bidders”, include the following words: “, however, subject to Section 2.3.2.2, the Construction Manager shall not engage any Subcontractor or Supplier to whom the Owner reasonably objects.”

Page 6 - § 2.3.2.3

In the last line of Section 2.3.2.3, after the word “prior”, add the word “written.”

Page 6 - § 2.3.2.4

In the first line of Section 2.3.2.4, after the word “shall”, add the word “regularly”. Also, at the end of the Section, add the following: “The foregoing meetings shall occur at least once every two weeks.”

Page 6 - § 2.3.2.6

At the end of Section 2.3.2.6, add the following:

In addition to the above information, the monthly reports and daily logs shall include information relating to any claims or disputes that arise, have been threatened, or that are reasonably foreseeable.

Page 6 - § 2.3.2.7

At the end of Section 2.3.2.7, after the word “intervals”, add the following: “that occur once every month with the information being provided by Construction Manager by the last Wednesday of each such month or as otherwise agreed upon by the parties.”

Page 6 - § 2.3.2.8

Add the following new Section:

§ 2.3.2.8 The Construction Manager shall be responsible to the Owner for the completion of the Work in accordance with the Contract Documents as defined in the General Conditions of the Contract for Construction (A201-1997) regardless whether performed or provided by the Construction Manager or its employees, Subcontractors, Suppliers or laborers.

Page 6 - § 2.3.2.9

Add the following new Section:

§ 2.3.2.9 Prior to commencement of construction or as soon as possible after commencement, the Construction Manager shall designate in

writing a representative with authority to act on behalf of the Construction Manager as to progress of the Work, changes, issues that arise, payment, and other aspects of the Project and provide written notice to the Owner of the designation. The Construction Manager's representative for this Project is Patrick Podges, The Christman Company, 208 N. Capitol Avenue, Lansing, MI 48933; telephone: 734-245-0131; e-mail: pat.podges@christmanco.com.

Article 3

Owner's Responsibilities

Page 7 - § 3.1

Information and Services

Page 7 - § 3.1.4.3

In the first line of Section 3.1.4.3, add the word "reasonably" before the word "requested".

Page 7 - § 3.1.4.5

In the second line of Section 3.1.4.5, add the word "reasonably" before the word "requested".

Page 7 - § 3.2

Owner's Designated Representative

Page 7 - § 3.2

At the end of Section 3.2, add the following:

The Owner's Designated Representative is: Adrian Iraola, President of Park Avenue Consultants, Inc., 116 E. Washington, Suite 200, Ann Arbor, MI 48104, Telephone: 734-216-9830; e-mail: adrian@parkavenueconsultant.com.

Article 4

Compensation and Payments for Preconstruction Phase Services

Page 8 - § 4.2

Payments

Page 8 - § 4.2.2

Section 4.2.2 is replaced in its entirety by the following:

In accordance with the requirements of Public Act 524 of 1980, MCL 125 1562, each progress payment requested, including reasonable interest if requested under subsection (4), shall be paid within 1 of the following time periods, whichever is later:

(a) Thirty days after the architect or professional engineer has certified to the public agency that work is in place in the portion of the facility covered by the applicable request for payment in accordance with the contract documents.

(b) Fifteen days after the public agency has received the funds with which to make the progress payment from a department or agency of the federal or state government, if any funds are to come from either of those sources.

Upon failure of Owner to make a timely progress payment pursuant to this section, the person designated to submit requests for progress payments may include reasonable interest on amounts past due in the next request for payment.

Article 5

Compensation for Construction Phase Services

Page 8 - § 5.1

Compensation

Page 8 - § 5.1.1.2

Add the following at the end of this Subsection:

In addition, said compensation includes Construction Manager's overhead and profit relating to the Project.

Page 8 - § 5.1.1

At the end of Section 5.1.1 add the following:

The Construction Manager's Fee shall not be increased as a result of any increase in the Cost of the Work or delay caused by the fault of the Construction Manager. Further, the Construction Manager's Fee includes all principal office overhead of the Construction Manager as well as the other items specified above.

Page 9 - § 5.3

Changes in the Work

Page 9 - § 5.3.1

Add the following at the end of Section 5.3.1:

Notwithstanding the foregoing, changes in the Work may only be accomplished by Change Order, or Construction Change Directive, subject to the limitations stated in the Contract Documents. No action, conduct, omission, prior failure, or course of dealing by the Owner shall act to waive, modify, change or alter the requirement that Change Orders must be in writing and signed by the Owner and Construction Manager. Construction Directives must be signed by Owner or its designee. Such written Change Orders or Directives are the exclusive methods for effecting any change to the Guaranteed Maximum Price or Contract Time. The Construction Manager understands and agrees that the Guaranteed Maximum Price and Contract Time cannot be changed by implication, oral agreement, action, inaction, course of conduct, bulletin, or constructive change order. The Construction Manager shall cause this provision to be inserted in all contracts with its Subcontractors or Suppliers. This provision applies to any and all changes in the Project, including, but not limited to:

- .1 Any changes in labor or material and their respective cost;

- .2 Changes in design or scope of the Project;
- .3 Any decrease or increase in quantities based on final measurements that are different from those shown in the bidding schedule;
- .4 Any increase or decrease in the time to complete the Project.

Page 10 - § 5.3.5

Add the following new Section:

§ 5.3.5 All changes shall be recorded on chronologically numbered contract change orders as they occur. Change orders will not be included in payment estimates until approved by all parties.

Article 6

Cost of the Work for Construction Phase

Page 9 - § 6.1

Costs To Be Reimbursed

Page 9 - § 6.1.1

Replace Section 6.1.1 with the following:

§ 6.1.1 The term “Cost of the Work” shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than those customarily paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include, but not be limited to, the items set forth in this Article, all work called for in the Contract Documents and applicable law, and all items necessary, incidental, required by, or fairly implied from the Contract Documents.

Page 9 - § 6.1.2.

Labor Costs

Page 9 - § 6.1.2.3

Delete the words “or administrative personnel” from this Subsection and replace with “or support personnel”.

Page 9 - § 6.1.2.5

Add the following new section:

Compensation for Construction Manager’s workers during construction phase services shall be based on the Construction Manager’s staffing cost rate as stated in Subsection 6.1.2.2 for Construction Manager’s personnel directly engaged on the Project. The maximum compensation for construction phase services, including all reimbursable expenses shall not exceed the GMP contained in the GMP Proposal.

Page 11 - § 6.1.6

Miscellaneous Costs

Page 11 - § 6.1.6.1

Add the following at the end of the Subsection:

* * * including, but not limited to, the cost of any builder’s risk insurance. No self-insurance premium for insurance and bonds is

allowed except for Construction Manager's workers' compensation insurance. Actual cost for workers' compensation insurance premium may be included in the Construction Manager's labor cost per Section 6.1.2.

Page 11 - § 6.1.8

Emergencies and Repairs to Damaged or Nonconforming Work

Page 11 - § 6.1.8.2

Add the following to the end of existing Section 6.1.8.2:

Notwithstanding the provisions of Section 6.1.8.2 above, Cost of Work shall include the amounts permitted by Section 2.2.11 up to the amount of the Construction Manager's Risk Contingency Fund. However, Cost of Work shall not include costs that arise from violation of any applicable law, willful misconduct or gross negligence by Construction Manager or its Subcontractors unless covered by Contractor's insurance and sufficient proceeds are available to compensate Owner for any loss or damage.

Page 12 - § 6.1.9

Replace Section 6.1.9 with the following:

§ 6.1.9 The costs described in Sections 6.1.1 through 6.1.8 shall be included in the Cost of the Work to be reimbursed by Owner subject to the Guaranteed Maximum Price notwithstanding any provision of the Contract Documents, provided, however, that Construction Manager shall be responsible for payment of any items identified as Construction Manager's obligation and not part of the Cost of the Work in the Agreement as amended by this Addendum or in the General Conditions as amended by the Supplementary Conditions. The items in Section 6.2 below are not included in the Cost of the Work and shall not be reimbursed by Owner to Construction Manager.

Page 12 - § 6.4

Accounting Records

Page 12 - § 6.4.1

Add the following to the end of Section 6.4.1"

The Construction Manager shall require its Subcontractors to provide the same access to their books, documents, papers and records as is required of the Construction Manager and the same record maintenance period.

Article 7

Construction Phase

Page 12 - § 7.1

Progress Payments

Page 12 - § 7.1.1

Replace Section 7.1.1 with the following:

§ 7.1.1 Based upon Applications for Payment and supporting documentation submitted to the Owner or its designee by the

Construction Manager, if all conditions precedent to payment have been fulfilled, the Owner shall make progress payments on account of the Contract Sum to the Construction Manager as provided below and elsewhere in the Contract Documents

Page 13 - § 7.1.8

Add the following at end of Section 7.1.8:

As provided in Act 524 of 1980, and notwithstanding any other provision to the contrary, after the work is 50% in place, additional retainage shall not be withheld unless the Owner determines that the Contractor is not making satisfactory progress, or for other specific cause relating to the Contractor's performance under the Agreement. If the Owner so determines, the Owner may retain not more than 10% of the dollar value of the Work after more than 50% of the Work is in place. Determination of the amount by which the retainage shall be reduced shall be made by the Owner.

As provided in Act 524 of 1980, notwithstanding any other provisions to the contrary, payment of retainage and interest shall be released to Construction Manager when final payment is due to Construction Manager.

Page 14 - § 7.2

Final Payment

Page 14 - § 7.2.1

Replace Section 7.2.1 with the following:

§ 7.2.1 Final payment shall be made by the Owner to the Construction Manager when the following conditions precedent have been fulfilled as well as the conditions precedent contained in Section 9.10.2 of the Supplementary Conditions: (1) the Contract has been fully performed by the Construction Manager, except for the Construction Manager's responsibility to correct nonconforming Work, as provided in Section 12.2.2 of AIA Document A201, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work have been submitted by the Construction Manager and reviewed by the Owner's accountants; (3) the Architect has approved final payment to the Construction Manager; and (4)(a) all equipment warranties and equipment operator's manuals, (b) all final and conditional waivers of lien, (c) all shop drawings and, if required by the Contract Documents, any as-built drawings, (d) a complete list (company, address, telephone/fax numbers, contact person) of all Subcontractors duly authorized to perform work on the Project, have been received by the Owner from the Construction Manager; and (e) all surety approvals have been obtained. Such Final Payment shall be made by the Owner not more than thirty (30) days after the foregoing conditions have been fulfilled. Upon Construction Manager's fulfillment of said conditions, Owner shall notify Construction Manager in writing that it has fulfilled

the requirements for final payment except as otherwise provided in the notice.

Article 8

Insurance and Bonds

Page 14 - § 8.1

Insurance Required of the Construction Manager

Replace Section 8.1 with the following:

§ 8.1 Insurance Required of the Construction Manager

During both phases of the Project, the Construction Manager shall purchase and maintain insurance in amounts not less than as shown and prescribed in attached Exhibit C and the General Conditions as modified by the Supplementary Conditions all of which are incorporated by reference into this Agreement. The coverage shall include all items of coverage specified in Exhibit C and the General and Supplementary Conditions and shall not be less than the limits shown therein or below. The Construction Manager shall name the Owner, the City of Ann Arbor, Park Avenue Consultants, Inc., Carl Walker, Inc. and their respective subconsultants, and the respective successors and assigns of the foregoing entities, including directors, officers, representatives including those named or otherwise referenced in the Contract Documents, and employees of any of them as additional insureds on its commercial general liability insurance policies for work arising from this Project and such other persons specified in either Exhibit C or the General Conditions as modified by the Supplementary Conditions.

Page 15 - § 8.1.2.2

Replace Section 8.1.2.2 with the following:

.2 Notwithstanding Exhibit C, Products and Completed Operations insurance shall be maintained for three (3) years following Substantial Completion.

Page 15 - § 8.1.4

At the end of Section 8.1.4 add the following:

The Construction Manager shall also add the the Owner, the City of Ann Arbor, Park Avenue Consultants, Inc., Carl Walker, Inc. and their respective subconsultants, and the respective successors and assigns of the foregoing entities, including directors, officers, representatives including those named or otherwise referenced in the Contract Documents, and employees of any of them as additional insureds on said policy.

Page 16 - § 8.3.3

Add the following:

The Construction Manager shall subcontract with Subcontractors that have a track record in successfully completing trade works of similar size and complexity. In addition, if requested by Owner, the Construction Manager shall provide bonds which designate any trustee or other party designated by Owner as an obligee under said bonds in addition to Owner.

Article 9

Miscellaneous Provisions

Page 16 – § 9.1.1

Replace with the following:

§ 9.1.1 All disputes shall be resolved in accordance with Section 11.1.1 and as further provided in the General Conditions as amended by the Supplementary Conditions.

Article 10

Termination or Suspension

Page 17 - §10.2

Termination Subsequent to Establishing Guaranteed Maximum Price

Page 17 - §10.2.3

Add the following new Section:

§10.2.3 Notwithstanding any of the foregoing provisions relating to termination, in the event termination of the Project is required because of lack of funding or due to the pending lawsuit relating to this Project, then the Construction Manager's Fee shall be determined in accordance with Section 10.1.2 as if the termination occurred prior to establishing the Guaranteed Maximum Price but after commencement of the construction phase.

Page 17 – § 10.3

Suspension

Page 17 - §10.3

Add the following at the end of the Section:

The Guaranteed Maximum Price shall not be increased if the reason for the suspension arises from the Contractor's violation of the Contract Documents or other fault.

Article 11

Miscellaneous

Page 17- § 11.1.1

Add the following at the end of the paragraph:

Each party shall be responsible for payment of 50% of the cost of the mediator or any ancillary meeting arrangement expenses. Nothing herein shall prevent either party from taking any action in a court or other tribunal which either party deems necessary prior to the above resolution procedures. In the event of litigation, the decision-maker shall award legal fees and expenses to the prevailing party and may apportion such

legal fees and expenses equitably based on the relative fault of the parties.

Page 18 § 11.3

§ 11.3 Supplementary Conditions. The General Conditions of the Contract for Construction (A201-1997) are revised as set forth in the Supplementary Conditions of the Contract for Construction executed by the parties ("Supplementary Conditions"). All references to the General Conditions shall be deemed to include the Supplementary Conditions unless otherwise specifically indicated.

Page 18 § 11.4

§ 11.4 Contingencies. The parties recognize that the scope of the Project including the number, nature and timing of construction of the building(s), may be modified or terminated, in whole or in part, due to circumstances beyond Owner's control, including funding and action by third parties. The Owner may modify and adapt the scope of the Project to reflect these circumstances in its sole discretion, and the other provisions of the Agreement shall be equitably adjusted by mutual agreement with compensation to be based on actual work performed. In the event of termination of the Project, the Construction Manager shall deliver to Owner the product of any services performed by it including any information or documents. In the event of termination of the Project, the Construction Manager shall not be liable for any property damage or bodily injury caused by the work of any subsequent contractor that performs or completes work on the Project or for correction or completion of the subsequent contractor's work unless said work is performed under Construction Manager's supervision or control and Construction Manager is paid for such services.

Page 18 § 11.5

§ 11.5 Disclosure of Conflicts. If Construction Manager or any of its officers have any financial interest in any consultants, Subcontractors or Suppliers that arise from their ownership, management or investment in same or which in any way provide Construction Manager with direct profit not disclosed to Owner which Construction Manager recommends for involvement in a project, Construction Manager will include a disclosure of that interest as part of its recommendation. The disclosure of any such financial interest shall be reasonable grounds for Owner to object to such party's involvement in the Project.

Page 18 § 11.6

§ 11.6 No Waiver of Strict Performance. No failure by Owner to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right, term or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach or of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

§ 11.7 Infringement. Construction Manager will secure for all times and at no cost to Owner the free and undisputed nonexclusive right to use any and all patented or copyrighted products, designs and processes used or embodied in the Project by Construction Manager or under Construction Manager's control. Construction Manager will defend at its own expense all suits, claims or actions for the negligent infringement of any patent or copyright and Construction Manager will indemnify and hold harmless the Owner and the City of Ann Arbor from any resulting judgment, expense, cost and loss, including legal fees and expenses. This section does not apply (a) if Owner or the Contract Documents expressly and specifically require Construction Manager to use a patented product, design or process, unless the Construction Manager had reason to know of the likelihood that the use is an infringement of a patent or copyright; or (b) to any infringement claimed to be involved in any standard commercial products (e.g., catalogue items) which may be incorporated into a building unless Construction Manager had reason to know that there would be an infringement if such product was used. Construction Manager shall not be required to use items required by the Owner or the Contract Documents which are likely to be the subject of an infringement claim covered by this provision unless the Owner agrees to indemnify Construction Manager against such claim upon notice from Construction Manager. Nothing herein shall require Construction Manager to take special efforts to investigate whether an item covered by this provision is likely to constitute an unlawful infringement.

§ 11.8 Avoiding Liens and Indemnification. Assuming timely payment by Owner to Construction Manager pursuant to the Agreement, Construction Manager will pay its employees, agents and vendors promptly and will use only goods free of security interests, liens and other encumbrances except those properly arising from the Michigan Construction Lien Act. In addition, notwithstanding the fact that this is a public project, Construction Manager will indemnify and hold harmless the Owner and the City of Ann Arbor from any loss or expense (including attorney's fees and other costs of litigation) on account of any lien, claim of lien or other claim asserted against any property owned, leased, or used by Owner related to work performed or to be performed under this Agreement including improvements, where the imposition of said liens results from the negligent acts, errors or omissions of Construction Manager. This section does not apply to liens arising from Owner's wrongful failure to pay Construction Manager in accordance with the Contract Documents including an improper withholding of funds.

§ 11.9 Liens; Withholding Payment. Notwithstanding that the Project is being constructed on public property, in the event any liens or encumbrances are placed on the Owner's property as a result of any Work performed by Construction Manager or its Subcontractors or Suppliers, in addition to any other remedies available to Owner, Owner

may withhold from any payment due to Construction Manager sufficient funds to ensure that said liens or encumbrances will be removed without contribution or expense by Owner. To avoid the Owner's withholding of payment, the Construction Manager may elect to bond over any such liens in accordance with Michigan law unless reasonable objection is made by Owner's lender or title company. This provision shall not apply to liens that arise as a result of Owner's improper withholding of payment to Construction Manager in violation of the terms of the Contract Documents.

Page 18 § 11.10

§ 11.10 Correction of Defects. In addition to any obligations in the General Conditions of the Contract for Construction, Contractor shall promptly and diligently correct any defective Work or Work not provided in accordance with the Contract Documents and as directed by Architect. If Contractor fails to act promptly and diligently with respect to correction of said Work, Owner may withhold payment to Contractor of a sum equal to the estimated cost of correction of the Work as determined by the Architect and any other expenses incurred by Owner as a result of such action by Contractor

Page 18 § 11.11

§ 11.11 Warranties; Defects. Construction Manager warrants to Owner that all work performed by Construction Manager or its contractors, Subcontractors, Suppliers, or laborers relating to this Project including labor and material will be free from defects including, but not limited to, those relating to workmanship, for a period of one year (1) year from the date of occupancy of the Project by Owner or the date of substantial completion of the Work, whichever occurs first. All repairs, replacements or compensation in lieu of repairs or replacement to Owner arising from said warranty shall be the Construction Manager's sole cost.

Page 18 - § 11.12

§ 11.12 Notice to Owner and Architect of Impacts. Notwithstanding any other provisions of the General Conditions, as amended, which contain notice provisions, if events occur which have or may have a material or significant impact upon the Project, the Construction Manager shall notify Owner and its Architect in writing as soon as any of the following conditions are known, but in no event more than seven (7) business days after any such condition is known or believed to exist:

§ 11.12.1 Problems, delays, disputes, claims, or adverse conditions that may or will materially affect the ability to complete the work in accordance with the established schedule or budget of the Project. This disclosure shall be accompanied by a statement of the action taken, or proposed by the Construction Manager to resolve the situation.

Timely notice of said events is a condition precedent to recovery of any amounts that might otherwise be due under applicable law or the Agreement to Construction Manager or its Subcontractors, Suppliers, or laborers.

Page 18 - § 11.13

§ 11.13 Controlling Effect of Addendum. In the event of any conflict or inconsistency between the provisions contained in the Agreement and this Addendum, this Addendum shall have controlling effect and precedence. In the event of any conflict between the General and Supplementary Conditions, the Supplementary Conditions shall have controlling effect and precedence. In the event of any conflict between the General and Supplementary Conditions and the Agreement and Addendum, the Agreement as modified by this Addendum shall have controlling effect and precedence. Additional provisions re controlling effect are found in the Supplementary Conditions.

Page 18 - § 11.14

§ 11.14 Assignment. In the event that the Agreement is terminated by Owner for cause as provided in the Contract Documents, the Owner or any party financing this Project shall have the option of requiring Construction Manager to assign to Owner or the party financing this Project any contracts that the Construction Manager has relating to design or construction of the Project and the Construction Manager shall include in all of its contracts relating to the project a provision requiring Construction Manager's Subcontractors and Suppliers to accept such assignment, provided, however, that such assignment shall not result in an assignment of any obligations or liabilities of Construction Manager to said Subcontractors or Suppliers except as to work provided by said Subcontractors and Suppliers at the direction of Owner or the party financing this Project after termination of the Agreement. In the event of the above termination or assignment of the Agreement, the Owner and the party financing this Project shall retain the right to continue in effect any subcontracts entered into by the Construction Manager relating to the Project, at their sole option. Except as otherwise provided in the Contract Documents, nothing herein shall diminish the Construction Manager's right to obtain payment for properly performed services occurring prior to Owner's termination for cause.

Page 18 § 11.16

The Construction Manager shall provide daily full-time on-site field supervision during the entire construction phase.

Page 18 § 11.17

The Construction Manager shall, upon completion of the Project, deliver to the Owner the documents required as a condition of final payment including any records and files relating to the Project reasonably requested by Owner. This obligation shall not extend to internal memoranda or reports, privileged communications and documents with incidental references to the Work, or documents which discuss multiple projects.

Page 18 § 11.18

The Construction Manager shall inspect the work of the trade contractors on the Project as it is being performed until final completion and acceptance of the Project by the Owner to assure that the work performed and the materials furnished are in accordance with the Contract Documents and that work on the Project is progressing on schedule. In the event that the quality control testing should indicate that the work, as

installed, does not meet the requirements of the Project, the Architect shall determine the extent of the work that does not meet the requirements and the Construction Manager shall direct the trade contractor(s) to take appropriate corrective action, and advise the Owner of the corrective action.

Page 18 § 11.22

Miscellaneous Provisions.

§ 11.22.1 Severability. In the event any or a portion of the provisions of this Agreement shall be held invalid, illegal or otherwise unenforceable by a Court, the remaining provisions of this Agreement shall remain in full force and effect as if the invalid provision were not in existence.

§ 11.22.2 Captions. The captions and headings of the Sections of this Agreement have been inserted for convenience of reference only and do not constitute a part of this Agreement.

§ 11.22.3 Counterparts. This Agreement may be executed in any number of counterparts and by facsimile, each of which shall be an original, but all of which together shall constitute one instrument.

§ 11.22.4 Ambiguities. Both the Owner and the Construction Manager shall be deemed to have participated in the drafting of the Agreement as amended, and the General Conditions, as amended, and, accordingly, no ambiguity contained within these documents shall be construed against any party hereto.

§ 11.22.5 The following items contained in Section 4 of the GMP Proposal entitled - Basis of the Guaranteed Maximum Price - Section G - General - "General Exclusions" are revised as follows:

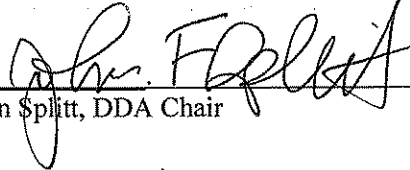
Item G7 is revised to read: "Architectural, engineering, or consultants design fees except as required in the Contract Documents for components requiring performance design."

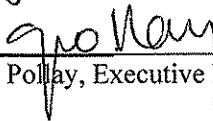
Item G11 is revised to read: "Civil and/or structural testing or monitoring of adjacent properties."

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

OWNER:

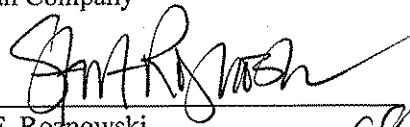

Ann Arbor Downtown Development Authority.

By: 
John Splitt, DDA Chair

By: 
Susan Pollay, Executive Director

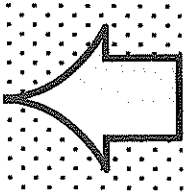
CONSTRUCTION MANAGER:

The Christman Company

By: 
Steven F. Roznowski 

Its: CEO

Steven F. Roznowski
Chief Executive Officer





AIA[®] Document A201[™] – 1997

General Conditions of the Contract for Construction

For use with A121[™] CMc–2003 and A131[™] CMc–2003 only.

NOTE: AIA Document A201–1997 is replaced by A201[™]–2007 and is retired on May 31, 2009. Because AIA Documents A121[™] CMc–2003 and A131[™] CMc–2003 contain references to A201–1997, this version of A201–1997 in Portable Document Format (PDF) is made available for use with A121 CMc–2003 and A131 CMc–2003.

for the following PROJECT:

(Name and location or address)

FIFTH AVENUE UNDERGROUND PARKING STRUCTURE
AND STREET IMPROVEMENTS
ANN ARBOR, MICHIGAN

THE OWNER:

(Name, legal status and address)

ANN ARBOR DOWNTOWN DEVELOPMENT AUTHORITY
150 S. FIFTH AVENUE, STE 301
ANN ARBOR, MI 48104

THE ARCHITECT:

(Name, legal status and address)

CARL WALKER, INC.
5136 LOVERS LANE, STE 200
KALAMAZOO, MI 49002

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This document has important legal consequences.

Consultation with an attorney is encouraged with respect to its completion or modification.

This document has been approved and endorsed by The Associated General Contractors of America

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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.

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§ 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 common law, 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. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' 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 legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 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.

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§ 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 within 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 not sufficient 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

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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

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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 customarily 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

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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 expeditious 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

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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

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particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law 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.

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§ 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

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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.

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§ 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

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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

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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 responsively 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.

§ 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

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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 these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in 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.

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§ 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.

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§ 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.

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§ 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 retainage 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

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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;
- .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.

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§ 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.

§ 9.8 SUBSTANTIAL COMPLETION

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

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

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

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion 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

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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.

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

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.4.1.5 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, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (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

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Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

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

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

§ 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 stop 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, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) 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;

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- .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 from 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 pay the cost 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 failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.4.1.3 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

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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 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,

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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 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.

§ 12.2.3 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 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.

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§ 13.4 RIGHTS AND REMEDIES

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

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

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work 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 or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has 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

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- .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.

SUPPLEMENTARY CONDITIONS

The following provisions modify the "General Conditions of the Contract for Construction, AIA Document A 201-1997" for use with A121CMc-2003 (the "General Conditions"). Where a portion of the forgoing document is modified or deleted by these Supplementary Conditions ("Supplementary Conditions"), the unaltered portions of the General Conditions shall remain in effect. Unless otherwise expressly set forth herein, all section references herein are to the General Conditions. References to the "Contract" or the "Agreement" shall have the same meaning and shall refer to the AIA A121-2003 CMc Agreement as modified by the Addendum.

ARTICLE 1; GENERAL PROVISIONS

1.1 Basic Definitions

1.1.1 Add the following to Section 1.1.1:

The "Contractor" and "Construction Manager" are the same entity and have the same meaning in the Contract Documents. Therefore, all references to "Contractor" or "Construction Manager" in the Contract Documents shall refer to the same entity or party. References to the "Owner" shall be deemed to include the Owner and its authorized representative.

1.1.3 Replace Section 1.1.3 with the following:

§ 1.1.3 The term "Work" consists of all materials and services, including, but not limited to, labor, transportation, materials, tools, and equipment (i) to be incorporated into the Project (or the Contractor's portion of the Project if the Contractor is not responsible for the entire Project). (ii) required of the Contractor under the Contract Documents, or (iii) as shown or reasonably inferable from the Construction Documents, necessary to fully construct, fixture, operate and maintain the Project (or the Contractor's portion of the Project if the Contractor is not responsible for the entire Project). The Work shall be performed in accordance with the Contract Documents. The Work may constitute the whole or a part of the Project. The term "Work" shall also include labor, materials, equipment and services provided or to be provided by Subcontractors, Sub-subcontractors, material suppliers, or any other entity for whom the Contractor is responsible under or pursuant to the Contract Documents.

1.1.8 Add the following as Sections:

§ 1.1.8 Applicable law. "Applicable law" means all applicable codes, statutes, ordinances, laws including the Americans with Disabilities Act ("ADA"), rules and regulations, and lawful orders of all public authorities having jurisdiction over the Owner, any member of the construction team, the Project, the Work Site, the Work or the prosecution of the Work. References to "applicable law" or similar language in the Supplementary Conditions or the GMP Proposal are not intended to change the Architect's or Contractor's respective obligations relating to design or construction as provided in the A201 General Conditions.

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§ 1.1.9 Construction Schedule. The Construction Schedule is the Critical Path Method (“CPM”) schedule for construction of the Work submitted as part of the GMP Proposal, prepared by the Contractor and approved by Owner in accordance with Section 3.10. The Construction Schedule can be modified only by Change Order. Following any such modification, the term “Construction Schedule” shall mean the most recent Owner-approved version.

§ 1.1.10 Milestone Dates. The milestone dates are those dates included in the GMP Proposal that are critical to ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents.

§ 1.1.11 Construction Team. The construction team includes the Contractor, Subcontractors and Suppliers and (i) all other persons in privity of contract with any of them in connection with the Work (except the Owner), (ii) anyone else providing labor, materials, supplies, equipment or services as part of or in connection with the Work (except those, if any, hired directly or indirectly by the Owner), and (iii) all of their officers, employees, agents, and independent contractors.

§ 1.1.12 Contract Time. The Contract Time is the number of calendar days described in the Construction Schedule in which (or, alternatively, the date set forth in the Construction Schedule by which) Substantial Completion shall be achieved, subject to any extensions granted in executed Change Orders or otherwise specifically permitted by the Contract Documents.

§ 1.1.13 Extraordinary Measures. Extraordinary measures are corrective measures necessary to expedite the progress of construction, including (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities, (iii) expediting the delivery of materials, and (iv) other similar measures. Subject to the Contractor’s rights under Section 7.5, the Owner shall have the right to order Contractor to take extraordinary measures when it reasonably determines that the performance of the Work, as of a milestone date has not progressed to or reached the level of completion required by the Contract Documents. No extraordinary measures may be ordered if the failure to meet an interim milestone will not affect the Substantial Completion date.

§ 1.1.14 Owner Delay. Deleted.

§ 1.1.15 Punchlist. Punchlist means a list of uncompleted or unacceptable items of Work which do not interfere with the use or occupancy of any part of the Work for its intended purpose and which, unless delayed by a need to order materials that could not reasonably have been anticipated by the Contractor, collectively are capable of being completed within sixty (60) days.

§ 1.1.16 Value Engineering. Deleted.

§ 1.1.17 The words “consent,” “approved,” “satisfactory,” “proper,” “as directed,” any derivatives of them, or similar terms, mean written approval by the Owner, and may include approval of the Architect if the Owner so directs. Except where otherwise specifically provided in the Contract Documents, any approval right by Owner or Contractor shall be exercised reasonably.

§ 1.1.18 The word “provide” and any derivatives thereof, and similar terms, means to properly fabricate, complete, transport, deliver, install, erect, construct, test and furnish all labor, materials, equipment, apparatus, appurtenances, and all other items and expenses necessary to properly complete in place, ready for operation or use under the terms of the Contract Documents.

§ 1.1.19 The word “including” shall not be a word of limitation, but instead shall be construed as introducing one or more nonexclusive examples.

1.2 Correlation and Intent of the Contract Documents

1.2.1 Replace Section 1.2.1 with the following:

§ 1.2.1 The intent of the Contract Documents is to include everything necessary for the proper execution and completion of the Work. The Contract Documents are complimentary, and what is required by one shall be binding as if required by all. Work called for on the Drawings or plans and not mentioned in the Specifications, or *vice versa*, shall be performed as though fully detailed in both. Nothing in this Section 1.2, however, shall relieve the Contractor of any of the obligations under the Contract Documents. Other conflicts between or among the Contract Documents shall be resolved under the following rules of construction:

- .1 The specific shall govern over the general;
- .2 Specified dimensions shown on the Drawings shall govern, even though they may differ from dimensions scaled on the Drawings, if any;
- .3 Drawings of larger scale shall govern over those of smaller scale; any special Drawing details shall govern over standard detail;
- .4 Specifications shall govern over Drawings in matters of material or equipment specified; Drawings shall govern over Specifications in matters of construction or installation detail;
- .5 Documents of later date shall always govern; except that the Agreement including Addendum shall govern over all other documents, regardless of their dates unless otherwise clearly and specifically provided to the contrary in a later document signed by authorized representatives of the parties;
- .6 Addendums to the Agreement shall govern over the original Agreement and the Supplementary Conditions shall govern over the original General Conditions.
- .7 In the event of a conflict with the GMP Proposal, the Contract as amended by the Supplementary Conditions and the General Conditions as amended by the Supplementary Conditions shall supersede and have governing effect over the GMP Proposal.

Add the following Sections:

§ 1.2.4 Work not particularly detailed, marked or specified shall be the same as similar parts that are detailed, marked or specified. On certain Contract Documents, only a portion of the detail may be fully shown and the remainder indicated in outline, in which

case the general detail shall be understood as applying also to other like portions of the Work. For example, if case carving, ornament, facing veneer or similar treatment is indicated by starting of the detail, such detail must be continued throughout the course of parts in which it occurs, and to all similar parts in the Work wherever such general detail shall apply unless otherwise specifically provided in the Contract Documents.

§ 1.2.5 All references in the Contract Documents to standards (such as commercial standards, federal specifications, trade association standards, or similar standards), whether for materials, processes, assemblies, workmanship, performance or any other purpose, shall mean, unless otherwise noted, the most recent available published version of such standard as of the date of that part of the Contract Documents bearing the reference. All standards referred to, except as modified in the Contract Documents, shall have the same force and effect as though printed therein. These standards will not be furnished to the Contractor, as the Contractor and all members of the construction team are required to be familiar with their requirements.

§ 1.2.6 Whenever a provision of the Contract Documents conflicts with agreements or regulations in force among members of trade associations, unions or councils, which regulate or distinguish the portions of the Work which shall or shall not be performed by a particular trade, the Contractor shall make necessary arrangements to reconcile the conflict without delay, damage, cost or recourse to the Owner. Delays in the Work resulting from the failure of the Contractor to use its best efforts to reconcile any such conflicts shall not result in an extension of the Contract Time and without any increase in the Contract Sum or Guaranteed Maximum Price.

§ 1.2.7 Deleted.

1.5 Execution of Contract Documents

1.5.2 Replace Section 1.5.2 with the following:

§ 1.5.2 By signing the Contract, the Contractor represents that it has visited the Work Site, familiarized itself with the local conditions under which the Work is to be performed, and, to the extent reasonably possible, correlated its observations with the requirements of the Contract Documents including any applicable law relating to performance of the Work, without limitation, including any that may affect the performance of the Work. It is understood and agreed that the Contractor, by careful examination, has satisfied itself as to the nature and location of the Work; the character, quality and quantity of the materials that will be required; the character of the equipment and facilities needed preliminary to, and during the prosecution of, the Work; the general and local conditions; and all other matters that in any way can affect the Work under the Contract Documents. The Contractor hereby acknowledges that construction of the Project is to be in strict compliance with the Contract Documents. No oral agreement or conversation with the Owner or any of its consultants including its Architect or Engineer either before or after the execution of the Contract, shall affect or modify any of the terms or obligations contained in, or created by, the provisions of the Contract Documents.

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

1.6.1 Replace Section 1.6.1 with the following:

§ 1.6.1 Ownership and Use of Workproduct. Any documents or information, in print or electronic format, provided by Owner to Contractor, including, but not limited to, plans, drawings, specifications and other project documentation whether prepared by or on behalf of Owner by any architect, engineer or other professional relating to this Project (together “Project Materials”) are the sole property of Owner. Contractor agrees that Owner retains all rights in the Project Materials and further acknowledges that it does not acquire any rights in the Project Materials except for the limited license set forth herein. The Project Materials and copies thereof furnished to the Contractor, are for use solely with respect to the Work under the Contract Documents for this Project. The Contractor, subcontractors, material and equipment suppliers are granted a limited license to reproduce applicable portions of the Project Materials appropriate to and for use in the execution of their Work under the Contract Documents, including submission and/or distribution of the Project Materials for the purpose of regulatory compliance. Project Materials are not to be used by the Contractor or any 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.

1.7 Add the following new Sections:

§ 1.7 Confidentiality.

§ 1.7.1 The Contractor shall not knowingly or negligently communicate or disclose to any person not connected with the Project any information concerning the Work or the Project and marked or indicated by Owner or its representative as being “confidential”, except: (i) with prior written consent of the Owner, (ii) information which has become part of the public domain prior to the date of the Agreement, (iii) information which becomes part of the public domain by means other than an unauthorized act or omission of the contractor, (iv) as may be required to perform the Work or by any applicable law, or (v) to its professional advisors or lender (all of whom shall be required to maintain such information in confidence).

§ 1.7.2 The Contractor shall not, without the express written consent of the Owner, discuss the Work or any part thereof with persons not connected with the Project under circumstances in which such communications can reasonably be expected to be published in newspapers, magazines, or trade journals, or broadcast on radio or television or on the internet. This restriction shall not apply to statements consistent with a crisis management plan development and agreed to by both Contractor and Owner with respect to the Work. This restriction also shall not apply to any fair response by the Contractor to publicity released by the Owner that is detrimental to the reputation of the Contractor. Any such contact shall be referred to the Owner for response.

ARTICLE 2; OWNER

2.2 Information and Services Required of the Owner

2.2.1 Add the following at the end of Section 2.2.1:

Provision by Owner to Contractor of a signed letter from the Owner's Executive Director or Chairman of the Board confirming the issuance of sufficient bonds to pay for the Cost of the Work up to the Guaranteed Maximum Price as provided in the GMP Proposal shall constitute reasonable evidence, although other evidence may be provided instead upon mutual agreement of the Owner and Construction Manager. The parties acknowledge that the funding for this project arises from bonds issued by the City of Ann Arbor and that the Owner does not have funds available to pay for the Cost of the Work that exceed the Guaranteed Maximum Price. Therefore, it is critical that construction costs not exceed the Guaranteed Maximum Price unless increased by Change Order pursuant to the Contract Documents.

2.2.3 Add the following to the end of Section 2.2.3:

Notwithstanding the above, information furnished by the Owner regarding surveys, subsurface investigation reports, soil borings, and other material of a similar nature is for general information only, and is not a guarantee of the completeness or accuracy of such information, unless specifically noted otherwise herein. Contractor shall verify all existing grades, conditions, and dimensions of existing physical conditions and structures and shall report any inconsistencies in writing to the Architect. Contractor shall establish all lines and levels required to execute the Work. Said items shall be included in the Cost of the Work subject to the Guaranteed Maximum Price. However, the Contract Documents do not contemplate that Contractor shall be required to engage the services of various professionals to verify the geotechnical information relating to site condition provided by the Owner and no such costs are included in the GMP. If conditions are discovered which materially differ from those conditions reflected in or reasonably inferable from the material relating to site conditions provided to Contractor by Owner or the Contract Documents, the costs associated with those differences shall be administered by the differing site conditions clauses, the changes clauses, and the other provisions of the Contract Documents.

2.3 Owner's Right to Stop the Work

2.3.1 Replace Section 2.3.1 with the following:

§ 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 fails to carry out the 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. This right shall be in addition to and not in restriction or derogation of the Owner's rights under Article 14 thereof. The Owner's right to stop the Work shall not relieve the Contractor of any of the Contractor's responsibilities and obligations under or pursuant to

the Contract Documents unless the stop work order was not in accordance with the Contract Documents.

§ 2.5 Limitation on Owner's Responsibility (New Section)

Add the following new sections:

§ 2.5.2 The Contractor shall only be entitled to rely upon instructions and directions provided by the Owner's authorized representative(s).

§ 2.5.3 Owner may, in addition to delivering them to the Architect, from time to time 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 the Owner's objectives and goals. Review of such submittals will not be conducted for the purpose of determining their accuracy and completeness or 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. The Owner's review and approval of or taking any other appropriate action on the Contractor's submittals shall not relieve the Contractor or the Architect of any of these obligations. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component. The Owner's receipt of any informational submittals relating to alternatives proposed by any member of the construction team shall not constitute approval of or action by the Owner on such submittals. All such submittals will be received by the Owner for record purposes only.

§ 2.5.4 The Owner may from time to time review or observe or take other appropriate action concerning the Work and any documents and the selection of Subcontractors and Suppliers. The Owner's doing so shall be solely for the limited purpose of providing the Contractor with information as to how such items relate to the Owner's objectives and goals with respect to the Work and not for the purpose of determining their accuracy and completeness and shall in no way create any responsibility on the part of the Owner for or complicity by the Owner in errors, inconsistencies, or omissions, nor shall any such review, approval, other action or payment of the Contractor alter or in any way reduce the Contractor's obligations under the Agreement.

ARTICLE 3; CONTRACTOR

3.9 Superintendent

3.9.1 Add the following sentence to Section 3.9.1:

The Owner shall have the right, which shall be exercised in a reasonable fashion, to approve and, if necessary, require the replacement of, the superintendent employed by the Contractor.

3.10 Contractor's Construction Schedules

3.10.1 Replace the word "current" with the word "established" in the third line of Section 3.10.1.

3.10.2 Replace Section 3.10.2 with the following:

§ 3.10.2 The Construction Schedule shall be in a detailed critical path method format satisfactory to the Owner which shall also (i) provide a graphic representation coordinating and sequencing all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; and (iii) provide milestone dates and manpower loading. The Contractor shall be responsible for the completeness of the Construction Schedule. The Owner's or the Architect's review of the Construction Schedule shall not constitute or imply the acceptance of or relieve the Contractor of the responsibility for the means, methods, sequences, techniques or procedures used in the performance of the Work. All float time in the Construction Schedule shall be shared by the Owner and Contractor or otherwise used for the benefit of the Project.

3.10.3 Replace Section 3.10.3 in its entirety with the following:

§ 3.10.3 The Contractor shall perform the Work diligently in strict compliance with the most recent schedules submitted to the Owner subject to the time limits in the Contract Documents.

3.12 Shop Drawings, Product Data and Samples

3.12.5 Add the following sentence at the end of Section 3.12.5:

If Shop Drawings, Product Data, Samples and similar submittals presented to the Owner by the Contractor contain deviations from requirements of the Contract Documents, the Contractor shall, in writing, designate such deviations and designate them as such at the time of submittal. Further, the Contractor shall check thoroughly all such Submittals, including those it prepares itself, as to measurements, sizes of members, materials and all other details, to assure that they conform to the intent of the Contract Documents.

3.13 Use of Work Site

3.13.2 Add the following as Section 3.13.2:

§ 3.13.2 The Contractor shall perform the Work in a manner that affords the Owner, the Architect, and the Owner's separate contractors reasonable access, both vehicular and pedestrian, to the Work Site and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the Work Site shall be free from all debris, building materials and equipment. Without limiting any other provision of the Contract Documents, the Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of (i) any areas and buildings adjacent to the Work Site, and (2) portions of the Project in which Work is not being carried out in the event of partial occupancy. Owner and Contractor acknowledge that the Owner has entered into certain agreements with adjoining property owners, i.e. 330 East Liberty, LLC, 320 South Division, LLC and/or First Martin Corporation, a copy of which has been provided to the Contractor, and the Owner may enter agreements with other adjoining property owners in the future. To maximize the likelihood that Owner will be able to comply with these agreements, within 30 days of the execution of the Agreement, the Owner and Contractor shall meet to review the agreements and develop a mutually agreed upon a written plan for avoiding construction activities that may cause a violation of the agreements by Owner or which will otherwise

lead to issues with the adjoining property owners. These meetings may include the adjoining property owners if appropriate. The plan shall designate specific items of concern under the agreements and various strategies and preventive actions to enhance compliance with the agreements as relates to construction activities. The Owner and Contractor acknowledge that the Contractor has no contractual obligation under the agreements between Owner and adjoining owners, however, the Contractor will use its best efforts to comply with said plan and to assist Owner to comply with its obligations under said agreements as relates to minimizing the effects of construction on the adjoining property owners.

3.13.3 Add the following as Section 3.13.3:

§ **3.13.3** The Contractor shall consult with the Owner concerning any necessary operations at the Work Site or any adjoining property (to the extent permitted), including staging area limits and locations, office or storage trailer locations, dumpster operations, equipment and material deliveries, housing areas, and any other construction impacts on the Owner's grounds or that of adjoining property owners.

3.16 Access to Work

3.16.1 Add the following sentence at the end of the section:

The Contractor shall also provide Owner's designees and appropriate government officials with access to the site of the Project.

3.17 Royalties, Patents and Copyrights

3.17.1 Add the following at the end of the last sentence: "and the Owner."

3.18 Indemnification

3.18.1 Replace Section 3.18.1 with the following:

§ **3.18.1** Regardless of any other provisions of the Contract Documents to the contrary, to the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the Owner, the City of Ann Arbor, Park Avenue Consultants, Inc., Carl Walker, Inc. and their respective subconsultants, and the respective successors and assigns of the foregoing entities, including directors, officers, representatives including those named or otherwise referenced in the Contract Documents, and employees of any of them (collectively "Indemnitees") from, for and against claims, damages, fines, penalties, losses, costs and expenses of whatever kind or nature, including attorneys' fees (collectively "Losses"), arising out of or resulting from the violation of applicable laws that are Contractor's obligation under the Contract Documents, reckless, intentional or negligent acts or omissions or the breach of any requirement of the Contract Documents of or by the Contractor, a Subcontractor, Sub-subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, including without limitation losses (hereafter referred to as "Contractor's Wrongful Acts"), without limitation, except to the extent such loss is caused by the Indemnitee seeking indemnification or defense hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity and defense which would otherwise exist as to a party or person described in this Section 3.18.

3.18.3 Add the following new Section:

§ 3.18.3 Notwithstanding that the project is occurring on public property, to the fullest extent permitted by law, the Contractor shall not permit any construction or other lien to be recorded or filed in connection with this Project. If any such lien is recorded, and if the Contractor does not cause such lien to be released or discharged (by payment, bonding, or otherwise, and as promptly as possible), the Owner shall have the right (but not the obligation) to pay all sums necessary to obtain such release or discharge and credit all amounts so paid to the Guaranteed Maximum Price. The Owner, at the Owner's discretion, may defend its title against such construction lien claims, and the Contractor shall indemnify, hold harmless and defend the Owner from all costs and expenses, including attorneys' fees arising out of such liens. This provision shall not apply to liens that arise as a result of Owner's improper withholding of payment to Construction Manager in violation of the terms of the Contract Documents.

3.19 Record Documents

§ 3.19.1 The Contractor shall maintain at the Work Site on a current basis for review by the Owner, the Architect, and all members of the construction team, the record documents, which include a record copy of all logs, reports, Contract Documents, and record drawings, in good order and marked to record all changes made during construction; all approved shop drawings, product data, samples and other submittals; applicable handbooks; maintenance and operating manuals and instructions; and other related documents and revisions which arise out of the Contract Documents or the Work. As part of the record documents, the Contractor shall maintain records of principal building layout lines, elevations of the bottoms of footings, project floor levels and site elevations certified by a qualified surveyor. The Contractor shall at all times make all records (excluding internal memoranda or reports, privileged communications and documents with incidental references to the Work, or documents which discuss multiple projects) available to the Owner and the Architect, and, at completion of the Work, shall deliver all such record documents to the Owner neatly organized, bound and indexed. The Contractor shall monitor preparation of as-built drawings by Subcontractors on a monthly basis and shall take corrective action as appropriate when as-builts are not being properly updated. The Contractor shall be permitted to retain a copy of the record documents for its own use after the Work is completed and, in any event, the Owner shall continue to provide access to the record documents for the Contractor to inspect and copy.

ARTICLE 4; ADMINISTRATION OF THE CONTRACT

4.2 Architect's Administration of the Contract

4.2 Add the following at the beginning of this Article:

Notwithstanding any other provision of the Contract Documents, as relates to progress of the Work, issues, disputes, payment or changes in the Project, without limitation, including change orders or directives, whenever the Contract Documents (a) require the Contractor to provide information to the Architect, or (b) require the Architect's approval

relating to payment or changes in the Project, then the Contractor shall also provide said information to the Owner's Representative at the same time as to the Architect, and in addition to the Architect's approval, the Owner's Representative shall be required to approve any such actions involving the foregoing subjects including, but not limited to, payment or changes.

4.3 Claims and Disputes

4.3.2 Add the following at the end of this Section:

The provision to Owner of timely written notice of said claim, any threatened claim, or the first indication of a potential or real claim is a condition precedent to recovery of any damages or other amounts arising from said claim. Notwithstanding the foregoing, timely notice of said claim shall not diminish the other requirements or conditions for recovery on any such claim to the extent permitted by the Contract Documents. Contractor shall include similar language in its contracts with all Subcontractors.

4.3.4 Replace Section 4.3.4 with the following:

§ 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 seven (7) business 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. Notwithstanding the foregoing, the Contract Sum shall not be increased unless the foregoing conditions were not apparent or reasonably ascertainable from the Contract Documents or the conditions were not reasonably foreseeable based upon a thorough inspection of the site prior to construction; provided, however, that upon submission of a request for a Change Order, the Construction Manager's Risk Contingency Fund shall be used to pay any such items provided the aggregate of such items do not exceed \$75,000.00, and provided further that doing so does not cause the Cost of the Work to exceed the Guaranteed Maximum Price. In the event the Construction Manager's Risk Contingency Fund has been depleted or is likely to be depleted by the foregoing

additional costs (up to \$75,000), the Construction Manager may present a claim for an increase in the Guaranteed Maximum Price if the concealed or unknown conditions detailed in this provision occurs and such a claim would otherwise be permitted by this provision. Notwithstanding any of the foregoing, written notice is a condition precedent of recovery on any claim. Except in the event of an emergency, Owner's written approval is required prior to Construction Manager's execution of any remedial work and is a condition precedent to recovery on any claim.

4.3.5 Section 4.3.5 is replaced by the following:

§ 4.3.5 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum or the Guaranteed Maximum Price, written notice as provided herein shall be given to Owner and its Architect before proceeding to execute the Work and is a condition precedent to Construction Manager's recovery of amounts relating to any such Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.6.

4.3.6 Replace Section 4.3.6 with the following:

§ 4.3.6 If the Contractor believes additional cost is involved that would increase the Contract Sum or the Guaranteed Maximum Price for reasons that include, but are not limited to: (1) an order by the Owner to improperly stop the Work, (2) failure of payment by the Owner for reasons other than those permitted by the Contract Documents, (3) improper termination of the Contract by the Owner, (4) Owner's improper suspension of the Work, or (5) other reasonable grounds, the Contractor shall file its Claim in accordance with Section 4.3; provided, however, that the Contractor shall not be permitted to recover any additional amounts unless specifically permitted by the Contract Documents and all conditions precedent for recovery have been fulfilled, including, but not limited to, any notice provisions.

4.3.7 **Claims for Additional Time**

Replace Sections 4.3.7.1 and 4.3.7.2 with the following:

§ 4.3.7.1 If the Contractor believes it is entitled to additional time, the Contractor shall file its Claim in accordance with Section 4.3; provided, however, that the Contractor shall not be permitted to receive any additional time unless specifically permitted by the Contract Documents and all conditions precedent for obtaining such additional time have been fulfilled, including, but not limited to, those contained in any notice provisions.

§ 4.3.7.2 Claims by the Contractor for Additional Time shall be limited to Claims arising from (a) severe adverse weather conditions that were abnormal for the period of time involved, could not have been reasonably anticipated and had a substantial adverse effect on the scheduled construction, (b) Acts of God including earthquakes or similar causes arising from the natural elements, (c) from the existence of hazardous environmental conditions that could not have reasonably been anticipated and which did not arise from Contractor's fault, or (d) unforeseen increases in the Project scope.

4.3.8 Injury or Damage to Person or Property

Change the time period from twenty-one (21) days to ten (10) days.

4.4 Resolution of Claims and Disputes

4.4.1 Add the following at the end of Section 4.4.1:

§ 4.4.1 All Claims by Contractor shall be in writing and shall include a detailed specification of the nature and basis of the Claim(s) including relevant documentation and cost estimates, to the extent reasonably obtainable. Timely provision by Contractor of said information and documents to Owner is a condition precedent of recovery on any Claims by Contractor.

In Section 4.4.1, replace the word “arbitration” with the word “court litigation”.

4.4.5 Replace the last sentence of Section 4.4.5 with the following:

The approval or rejection of a Claim by the Architect shall be final and binding on the parties but subject to final resolution by a CEO meeting, mediation, or court litigation. With the exception of a CEO meeting, all of the foregoing processes are optional.

4.4.6 Replace Section 4.4.6 with the following:

§ 4.4.6 When a written decision of the Architect states that (1) the decision is final but subject to a CEO meeting, mediation or court litigation and (2) that a lawsuit covered by such decision must be filed within thirty (30) days after the date on which the party making the Claim receives the final written decision, then failure to request a meeting of the CEO’s of Owner and Construction Manager within said thirty (30) day period shall result in the Architect’s decision becoming final and binding upon the Owner and Contractor. Any decision rendered by the Architect may be entered as evidence in any court proceedings, but shall not supersede any decision made by a court in any proceedings unless the decision is acceptable to all parties concerned.

4.4.8 Delete Section 4.4.8 relating to liens.

4.5 CEO Meeting and Mediation (Revised Section Heading)

4.5.1 Replace Section 4.5.1 with the following:

§ 4.5.1 In the event of any dispute or difference of any kind whatsoever, arising out of or in relation to or in connection with the validity or invalidity, construction, execution, meaning, operation or effect, change, or breach of the Contract, which cannot be settled amicably by the parties, such dispute or difference shall be referred to the Parties’ respective CEOs (or their equivalents) who using their best efforts and good faith shall meet together with a view toward resolving the same within a period of not more than thirty (30) days from the date of the submission to the CEO’s. In the event the Parties’ respective CEOs are unable to amicably resolve such dispute or difference within a reasonable time, the parties by agreement may refer the dispute to non-binding mediation in accordance with the Contract Documents with a mutually agreed upon third party. If such mediation is unsuccessful in resolving the dispute or if either party believes it to be

in its best interest, the Parties shall be free to pursue any and all available remedies in equity or at law by means of court litigation. While the parties agree that it is likely to be in their best interests to pursue either a CEO meeting or mediation, said procedures are not a condition precedent to court litigation if either party deems court litigation to be in its best interest.

4.5.2 Replace the Section 4.5.2 with the following:

The parties may seek 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. Mediation shall only be required if ordered by a court or if the parties agree to do so in writing.

4.6 Court Litigation (formerly "Arbitration")

The title of this Section is modified to "Court Litigation" as the Contract Documents do not provide for arbitration as a means of dispute resolution unless otherwise agreed to in writing by the parties after the dispute arises.

4.6.1 Replace Section 4.6.1 with the following:

§ 4.6.1 Any Claim arising out of or related to the Contract, except one waived as provided for in Sections 9.10.4 and 9.10.5, shall be subject to resolution by court proceedings. Prior to the initiation of the court proceedings, the parties shall endeavor to resolve disputes by a meeting of CEO's or mediation in accordance with the provisions of Section 4.5.

Replace Section 4.6.2 with the following:

§ 4.6.2 Claims not resolved by a CEO meeting or mediation shall be decided by court litigation, unless otherwise agreed upon by the parties in writing after the dispute arises.

4.6.2 At the beginning of Section 4.6.3, replace the words "A demand for arbitration shall be made" with the words: "A lawsuit shall be filed".

4.6.3 Delete Section 4.6.4.

4.6.4 Delete Section 4.6.5.

4.6.5 Delete Section 4.6.6.

ARTICLE 5; SUBCONTRACTORS

5.3 Subcontractual Relations

Add the following new Sections:

5.3.2 Coordination of Subcontractors

§ 5.3.2.1 The Contractor shall provide supervisory, administrative, management, inspection and related services as required to properly coordinate, schedule and sequence the Work of the Subcontractors with each other (to avoid both duplication and omission of Work) and with the activities and responsibilities of the Contractor, the Owner and the Architect to complete the Work in accordance with the requirements of the Contract

Documents with respect to cost, time and quality and to ensure that the other goals of the Work are otherwise met or exceeded.

§ 5.3.2.2 The Contractor shall schedule and conduct with the Subcontractors pre-construction and construction progress and any other meetings deemed necessary to discuss such matters as procedures, progress, problems, safety, inspections, sequencing, and scheduling, and shall prepare and promptly distribute minutes. Construction progress meetings will be conducted by the Contractor weekly unless otherwise directed by the Owner and attended by all Subcontractors whose Work has not been completed. Executive level progress meetings will be held on a monthly basis. All progress meeting minutes shall be provided to the Owner by the Contractor within five (5) days after the meeting and distributed to all attendees promptly after they have been approved by the Owner. The Owner will act promptly in providing its approval.

5.4 Contingent Assignment of Subcontracts

5.4.2 Add the following at the end of Section 5.4.2:

* * * if the suspension was not a result of the Contractor's fault.

ARTICLE 7; CHANGES IN THE WORK

7.2 Change Orders

7.2.3 Add the following Section 7.2.3:

§ 7.2.3 Notwithstanding any other provisions of this Article, changes in the Work may only be accomplished by Change Order, or Construction Change Directive, subject to the limitations stated in the Contract Documents. No action, conduct, omission, prior failure, or course of dealing by the Owner shall act to waive, modify, change or alter the requirement that Change Orders and Construction Change Directives must be in writing and signed by the Owner and Construction Manager. Such written Change Orders or Directives are the exclusive methods for effecting any change to the Contract Sum, the Guaranteed Maximum Price or the Contract Time. The Construction Manager understands and agrees that the Contract Sum, Guaranteed Maximum Price and Contract Time cannot be changed by implication, oral agreements, actions, inactions, course of conduct, bulletins, or constructive change order. The Construction Manager shall cause this provision to be inserted in all contracts with its Subcontractors or Suppliers. This provision applies to any and all changes in the Project, including, but not limited to:

- .1 Any changes in labor or material and their respective cost;
- .2 Changes in design or scope of the Project;
- .3 Any decrease or increase in quantities based on final measurements that are different from those shown in the bidding schedule;
- .4 Any increase or decrease in the time to complete the Project; or

.5 Any increase or decrease in the Contract Sum or the Guaranteed Maximum Price.

7.2.4 Add the following Section 7.2.4:

§ 7.2.4 Written agreement by the Owner, Architect and Contractor on any Change Order shall constitute a final settlement of and a waiver of and permanent bar to all claims by Architect or Contractor relating to the change in the Work which is the subject of the Change Order, including all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum, Guaranteed Maximum Price or the Contract Time. The Contractor shall include the Work covered by such Change Orders in its Application for Payment as if such Work were originally part of the Contract Documents.

7.3 Construction Change Directives

7.3.6 In the first sentence, delete the words "a reasonable allowance for overhead and profit" and substitute "an allowance for overhead and profit in accordance with Sections 7.3.10.1 through 7.3.10.5 below."

7.3.10 Add the following Section 7.3.10 to Section 7.3:

§ 7.3.10 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their priority 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. Where major cost items are Subcontracts, they shall be itemized also. In no case will a change involving over \$1,000 be approved without such itemization. Further, in Section 7.3.6, the allowance for the combined overhead and profit included in the total cost of the Owner shall be based on the following schedule:

1 For the Contractor, for Work performed by the Contractor's own forces, 10 percent of the cost.

.2 For the Contractor, for Work performed by the Contractor's Subcontractors, 5 percent of the amount due the Subcontractor.

.3 For each Subcontractor or Sub-subcontractor involved, for Work performed by that Subcontractor's or Sub-Subcontractor's own forces, 10 percent of the cost.

.4 For each Subcontractor, for Work performed by the Subcontractor's Subcontractors, 5 percent of the amount due the Subcontractor.

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

7.3.11 Add the following as Section 7.3.11:

§ 7.3.11 In no event shall the Contractor be entitled to receive, and the Contractor hereby waives the right to receive any payment or any extension of time for additional or changed work, whether partially or fully completed or simply proposed, unless such additional work is authorized by a written Change Order or Construction Change Directive signed by the Owner, nor shall the Contractor be obligated to proceed with any such work. Only the Owner shall have the right to issue a written Change Order or Constructive Change Directive to the Contractor authorizing an addition, deletion, or other revision in the scope of the Work and/or an adjustment in the Contract Sum, Guaranteed Maximum Price, or the Construction Schedule. The parties agree to cooperate with each other and to act expeditiously with respect to the preparation, issuance, and signing of Change Orders and Change Directives including the gathering of information required for said actions.

ARTICLE 9; PAYMENTS AND COMPLETION

9.0 Add the following at the beginning of the Article.

All written requests for progress payments by the Contractor shall be made in writing by the Construction Manager's representative for this Project - Patrick Podges, the Christman Company, 208 N. Capitol Avenue, Lansing, MI 48933; telephone: 734-245-0131; e-mail: pat.podges@christmanco.com.

All written requests for progress payments from the Contractor shall be submitted to:

Adrian Iraola, President of Park Avenue Consultants, Inc., 116 E. Washington, Suite 200, Ann Arbor, MI 48104, Telephone: 734-216-9830; e-mail: adrian@parkavenueconsultant.com.

All written requests for progress payments shall be submitted to the Owner's designated person in a manner and at such times as provided in the Contract Documents.

9.3 Applications for Payment

9.3.1 Add the following sentence to Section 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 or such other form as shall be satisfactory to the Owner in the event that the Construction Manager does not utilize this AIA form."

9.3.1.1 Add the following at end of Section 9.3.1.1: "Except as otherwise provided in this Section, such application may not include requests for payment on account of changes in the Work for which a Change Order has not been signed by all parties."

9.3.1.3 Add the following Section 9.3.1.3:

§ 9.3.1.3 As provided in Act 524 of 1980, and notwithstanding any other provision to the contrary, after the work is 50% in place, additional retainage shall not be withheld unless the Owner determines that the Contractor is not making satisfactory progress, or for other specific cause relating to the Contractor's performance under the Agreement. If the Owner so determines, the Owner may retain not more than 10% of the dollar value of the

Work after more than 50% of the Work is in place. Determination of the amount by which the retainage shall be reduced shall be made by the Owner.

As provided in Act 524 of 1980, notwithstanding any other provisions to the contrary, payment of retainage and interest shall be released to Construction Manager when the Final Payment is due to Construction Manager.

9.5 Decisions to Withhold Certification

9.5.1 Add the following at the end of 9.5.1.7:

.8 Failure to have supplied operations and maintenance manuals, record documents, schedules, cost projections, and/or other information that may be required by other sections of the Contract Documents on a timely basis;

.9 Any other failure of the Contractor to perform its obligations under the Contract; or

.10 Stop work notices.

9.9.3 Add the following:

Any such agreement shall be in writing.

9.10 Final Completion and Final Payment

9.10.2 Add the following at the end of Section 9.10.2:

In addition to any conditions contained in the Agreement, the following are additional conditions precedent to Final Payment to Contractor:

.1 Submission by the Construction Manager to the Architect and Owner of required written guarantees and warranties, properly indexed and placed in a loose leaf binder or electronic file in form and substance satisfactory to Owner. Unless provided to the contrary elsewhere in the Contract, all warranties and guarantees shall commence upon Owner's occupation of the Project (only as to any part actually occupied) or Substantial Completion of the Work, whichever occurs first;

.2 If part of Construction Manager's basic services or Construction Manager has otherwise agreed to provide to Architect and/or Owner, submission by the Construction Manager to the Architect and Owner of as-built drawings;

.3 Submission by the Construction Manager to the Owner of a complete list of subcontractors and principal vendors on the Project, including addresses and telephone numbers;

.4 Submission by the Construction Manager to the Architect and Owner, in an indexed loose leaf binder or electronic file in form and substance satisfactory to Owner, of complete installation, operation and maintenance manuals, including all manufacturer's literature, of equipment and materials used in the Work;

.5 Completion by the Owner of any audit permitted under the Construction Contract;

.6 Submission by the Construction Manager to the Owner, in an indexed loose leaf binder or electronic file in form and substance satisfactory to Owner, of all inspection

reports, permits and certificates of occupancy and licenses necessary for the occupancy of the Project; provided, however, that Construction Manager shall be responsible for obtaining any required final certificates of occupancy or licenses even if Final Payment has been made;

.7 The Construction Manager has fully performed the Contract except for punch list items where Owner is holding back an amount agreed upon by the parties or permitted by the Contract Documents that approximates the projected cost of completion of the punch list items and the Construction Manager's responsibility to correct Work; and

.8 Submission by the Contractor to the Architect and Owner of satisfactory evidence that full payment has been made to all union fringe benefits and into all union trust funds, if applicable, and any and all taxes and insurance for the Project.

9.10.3 Replace Section 9.10.3 with the following:

§ 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, the Owner shall, upon application by the Contractor and confirmation by Architect of the foregoing, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Owner prior to approval 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 Add the following at the end of Section 9.10.4:

.4 Unknown personal injuries or property damage caused by Construction Manager or others engaged by Construction Manager or its Subcontractors or Suppliers; or

.5 Defects in workmanship, latent defects, and defects obstructed from plain view at the time of Final Payment.

9.10.6 Add the following Section 9.10.6:

§ 9.10.6 The amount of the Final Payment shall be the Contract Sum or Guaranteed Maximum Price, whichever is less, less the amount paid to date. If the aggregate of prior payments made by the Owner exceeds the amount due the Contractor, the Contractor shall immediately reimburse the difference to the Owner

9.10.7 Add the following Section 9.10.7:

The provisions of Act 524 of 1980, MCL Section 125.1564 are incorporated by reference herein, and shall supersede any provisions in the Contract Documents to the contrary.

9.11 Audits by the Owner (New Section)

9.11.1 Add the following new Section 9.11.1:

§ **9.11.1** The Contractor agrees that the Owner or any of its duly authorized representatives shall, until the expiration of the record retention period (as described in Section 9.11.2), have access to and the right to examine and copy where pertinent to verifying the Cost of the Work or other items reimbursed to Contractor under the Agreement on the basis of costs, books, documents, records, contracts, correspondence, instructions, receipts, vouchers, purchase orders, memoranda, papers, and all other records of the Contractor related to the Agreement for any reason.

9.11.2 Add the following new Section 9.11.2:

§ **9.11.2** The Contractor shall maintain in accordance with Generally Accepted Accounting principles separate records and accounts of its services and transactions on behalf of the Owner in connection with the Work and shall make such records and accounts available to the Owner for inspection and audit during normal business hours and upon reasonable prior notice. Records shall be kept in such form and detail as the Owner may reasonably request. Such records shall include time sheets, invoices from the Contractor and its Subcontractors memoranda and analyses in support of management decisions, and such other primary resources as necessary to support and justify all business conducted in connection with the Work, but shall not include internal memoranda or reports, communications or discussions with incidental references to the Work or documents which discuss multiple projects. Such records will be kept by the Contractor for a period of not less than seven (7) years. Contractor is not required to maintain records not ordinarily maintained by Contractor for projects where the Contractor's compensation is based on Owner's payment of the cost of the work subject to a Guaranteed Maximum Price unless the records are required by Generally Accepted Accounting Principles or reasonably requested by Owner in writing.

9.11.3 Add the following new Section 9.11.3:

§ **9.11.3** The Contractor shall include in all its Subcontracts under the Agreement a provision to the effect that the Subcontractors agree that the Owner or any of its duly authorized representatives shall, until expiration of three (3) years after Final Payment under the Subcontracts and any supply agreements, have access to and the right to examine and copy where directly pertinent to verifying the cost of change orders or other items reimbursed to such Subcontractor on the basis of cost, books, documents, papers, and records of such consultants, involving transactions relating to the Work.

ARTICLE 10; PROTECTION OF PERSONS AND PROPERTY

10.5 Replace Section 10.5 with the following:

§ 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 reimburse Contractor for the cost of remediation.

10.7 Add Sections 10.7 and 10.7.1:

§ 10.7 Dust; smoke; fumes; noxious odors (New Section)

§ 10.7.1 The Contractor shall take appropriate steps to control and minimize the negative effects of dust, smoke fumes and noxious odors on the public and shall cause each Subcontractor (and itself) to conduct operations in such a manner as to control blowing dust, smoke, fumes and noxious odors and to minimize or prevent the spread to adjacent public and private properties, to avoid creation of a nuisance in the surrounding area, and to avoid violation of any applicable law.

10.8 Add Section 10.8:

§ 10.8 With respect to Section 11.2.1 of the Addendum to the Agreement and any other Sections of the Contract Documents involving hazardous materials, the parties wish to make clear that except as otherwise provided in the General Conditions, such as, for example, the Contractor's negligence, the Owner is solely responsible for all costs or expenses arising from the presence of hazardous materials on the Project site.

ARTICLE 11; INSURANCE AND BONDS

11.1 Contractor's Liability Insurance

11.1.1.1 Delete the semicolon at the end of Section 11.1.1.1 and add:

, including private entities performing Work at the site and exempt from the coverage on account of number of employees or occupation, which entities shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project;

11.1.1.2 Delete the semicolon at the end of Section 11.1.1.2 and add:

or persons or entities excluded by statute from the requirements of Section 11.1.1.1 but required by the Contract Documents to provide the insurance required by that Section;

11.1.1 Add the following Sections:

§ 11.1.1.9 At a minimum, Liability Insurance shall include all major divisions of coverage and be on a comprehensive basis including, but not limited to:

- .1 Premises Operations (including X, C and U coverages as applicable);
- .2 Independent Contractors' Protective;
- .3 Products and Completed Operations;
- .4 Personal Injury Liability with Employment Exclusion deleted;

- .5 Contractual, including specified provision for Contractor's obligation under Section 3.18;
- .6 Owned, non-owned and hired motor vehicles; and
- .7 Broad Form Property Damage including Completed Operations.

If the General Liability coverages are provided by a Commercial General Liability Policy on a claims-made basis, the policy date or Retroactive Date shall predate the Agreement; the termination date of the policy or applicable extended reporting period shall be no earlier than three (3) years after Substantial Completion certified in accordance with Section 9.10.2.

11.1.2 Add the following at the end of the Section:

Specifically, the Contractor shall provide not less coverage than the insurance specified in Exhibit C of the Contract, a copy of which is attached to the Supplementary Conditions and which is incorporated by reference herein.

11.4 Property Insurance

11.4.1 Add the following at the end of Section 11.4.1. Builder's risk insurance shall be included in the Cost of the Work and is included in the Guaranteed Maximum Price. The Contractor is required to obtain said insurance and provide satisfactory proof of said insurance to the Owner and any other information required by the Contract Documents.

11.4.1.3 Delete this Section in its entirety and insert the following Section:

§ 11.4.1.3 If the property insurance requires minimum deductibles and such deductibles are identified in the Contract Documents, the Contractor shall pay costs not covered because of such deductibles to the extent any claim arises from Contractor's fault; provided, however, said amounts may be paid from the Construction Manager's Risk Contingency Fund. If the Owner or insurer increases the required minimum deductibles above the amounts so identified or if the Owner elects to purchase this insurance with voluntary deductible amounts, the Owner shall be responsible for payment of the additional costs not covered because of such increased or voluntary deductibles. If deductibles are not identified in the Contract Documents, the Owner shall pay costs not covered because of deductibles. Any such deductibles paid by Contractor shall be included in the Cost of the Work subject to the Guaranteed Maximum Price.

11.4.1.4 Delete this Section and insert the following Section:

§ 11.4.1.4 Unless otherwise provided in the Contract Documents, this property insurance shall cover portions of the Work stored off the site after written approval of the Architect or Owner at the value established in the approval, and also portions of the Work in transit.

11.6 Add the following Section:

§ 11.6 Application to Subcontractors. Construction Manager shall require all contractors, Subcontractors and their agents to maintain the insurance requirements that Construction Manager is required to provide herein, except:

- .1 Umbrella/excess liability insurance shall be adequate if not less than \$1,000,000;
- .2 Professional liability is not required unless Subcontractor or its agent is an architect, engineer or similar consultant;
- .3 Pollution liability is not required unless Contractor, Subcontractor or Engineer/Consultant provides services related to environmental, including, but not limited to, asbestos, lead, or mold remediation.

All insurance coverages required of Subcontractors and others as set forth in this provision shall be at the sole cost and expense of said entities or those providing third party services, and any deductible shall be assumed by, for the account of, and at their sole cost.

11.7 Add the following Section

§ 11.7 To the fullest extent possible, the Contractor shall report to the Owner each claim immediately after an occurrence of a loss with relevant detail and documentation and such other information as the Owner shall request.

ARTICLE 12; UNCOVERING AND CORRECTION OF WORK

12.2 Correction of Work

12.2.1 Before or After Substantial Completion

12.2.1.1 Add the following at the end of Section 12.2.1.1:

In addition, the Contractor shall promptly remedy damage and loss arising in conjunction with the Project caused by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable and for which the Contractor is responsible.

12.2 After Substantial Completion

12.2.2.1 Add the following at the end of Section 12.2.2.1:

Nothing herein shall be deemed to waive or decrease Contractor's responsibility under any express warranties in the Contract Documents or Contractor's liability for latent defects.

12.2.6 Add Section 12.2.6 to Article 12:

§ 12.2.6 The correction requirement contained in Article 12 provides the minimum correction requirement and does not diminish or otherwise lessen any warranty provisions specified in the Contract Documents. Contractor provides not less than a one (1) year warranty against defects on all labor and material provided pursuant to the Contract Documents and agrees to repair or replace any defective Work at Owner's sole option and Contractor's sole expense. The Contract Documents may extend this warranty as further detailed in the specifications. All warranty work shall be at Contractor's sole expense and shall not increase the Contract Sum or the Guaranteed Maximum Price.

ARTICLE 13; MISCELLANEOUS PROVISIONS

13.5 Tests and Inspections

13.5.1 Replace the last sentence of Section 13.5.1 with the following:

The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded unless otherwise provided in the Contract Documents.

13.6 Interest

13.6.1 Add the following at the end of Section 13.6.1:

Interest pursuant to this provision shall not exceed 100 basis points above the prime lending rate appearing in the Wall Street Journal.

13.8 Equal Opportunity

Add the following Section 13.8:

13.8 Equal Opportunity

§ 13.8.1 The Contractor shall maintain policies of employment as follows:

§ 13.8.1.1 The Contractor and the Contractor's Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin. The Contractor shall take affirmative action to ensure that applicants are employed, and that the employees are treated during employment, without regard to their race, religion, color, sex or national origin. Such action shall include 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 setting forth these policies of non-discrimination.

§ 13.8.1.2 The Contractor and the Contractor's Subcontractors shall, in all solicitations or advertisements for employees placed by them or on their behalf, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex or national origin.

§ 13.8.1.3 The Contractor will furnish all information and reports required by applicable law, and by the rules, regulations and orders of any government agency or authority having jurisdiction. The Contractor shall permit access to the Contractor's books, records, and accounts by the applicable administrative agency and other appropriate officials for the purposes of investigation to ascertain compliance with such rules, regulations and orders.

13.9 Add the following new Section:

13.9 No Oral Waiver

§ 13.9.1 The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a writing signed by Owner. No

person is authorized on behalf of the Owner to orally 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. Any change, waiver, approval, or consent granted to the Contractor shall be limited to the specific matters stated in the writing signed by Owner, and shall not relieve Contractor of any other of the duties and obligation under the Contract Documents. No "constructive" changes shall be allowed.

ARTICLE 14; TERMINATION OR SUSPENSION OF THE CONTRACT

14.2 Termination by the Owner for Cause

14.2.1.4 Add the following after Section 14.2.1.4:

* * * or,

.5 fails to perform the Work required pursuant to the Contract Documents where the failure or breach has not been cured within fifteen (15) days after written notice thereof; or

.6 becomes a Debtor in a bankruptcy proceeding or a receiver is otherwise appointed for Contractor; or

.7 Deleted; or

.8 Contractor including Subcontractors, Suppliers, laborers or others engaged by Contractor, fails to strictly comply with all security or other procedures of Owner or the Contract Documents.

14.2.2 In Section 14.2.2, replace the phrase " , upon certification by the Architect that sufficient cause exists to justify such action," with the words "if sufficient cause exists to justify such action".

14.4.1 Replace Section 14.4.1 with the following:

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

14.4.2 Replace Section 14.4.2 with the following:

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 this Section:

.1 cease operations as specified in the notice and deliver to the Owner the originals or legible copies of all Drawings, Specifications, reports and other data, records and materials in the Construction manager's custody and control, pertaining to the portion of the Work for which the employment of the Contractor was terminated;

.2 enter into no additional Subcontracts except as necessary to complete continuing portions of the Contract;

.3 terminate, on the most favorable terms possible, all Subcontracts to the extent they relate to the Work terminated, or, if required by Owner and permitted by the Contract Documents, assign said Subcontracts to Owner;

.4 take actions that may be necessary or that the Owner may direct, for the protection and preservation of the terminated Work and of materials, plant and equipment in transit or stored.

14.4.3 Replace Section 14.4.3 with the following:

Upon such termination, Owner shall pay, and the Contractor, as its sole remedy, may recover payment, including a reasonable allowance for overhead and profit (not to exceed a pro rata share of the Contractor's Fee as specified in the GMP Proposal), for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination, for items previously, properly and timely fabricated of the Work Site, delivered and stored in accordance with the Owner's instructions, and for any actual out-of-pocket costs it incurs in complying with Section 14.4.2, such as reasonable demobilization costs. The Contractor hereby waives all other claims whatsoever against Owner based on the termination for convenience.

14.5 Add the following Section 14.5:

§ 14.5 Notwithstanding any other provision to the contrary, termination of the Agreement shall not release either party from their respective obligations under the Agreement with regard to Work already delivered or performed, including, without limitation, obligations of payment, maintenance, correction, warranty, indemnity, and any other terms which the Contract Documents specifically provide shall survive termination or which apply to any Work previously performed by Contractor. Additional terms which shall survive termination include provisions relating to ownership of Project Materials, confidentiality, Owner's audit rights, and any other provisions that operate to protect the Owner's interests relating to the Project.

15. Miscellaneous

15.1 Add the following Section 15.1:

§ 15.1 In the event any of the provisions of the Contract Documents fail to comply with applicable law, said provision(s) shall automatically be revised to conform to any such requirement and all provisions not contained in the Contract Documents that are required by applicable law shall be included in the General Conditions..

§ 15.2 In the event that Contractor has commenced work prior to execution of this Agreement, any such work shall be subject to the terms of the Contract Documents including the Contract and the General Conditions.

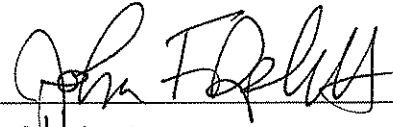
§ 15.3 The Contractor and Owner agree that incorporating environmentally sustainable elements and procedures into the Project to minimize environmental impact and maximize energy efficiency are a priority. The parties agree to work together to

implement these goals into the Project, whenever possible, and Contractor shall notify its Subcontractors of these goals. However, unless such items are specifically required by the Contract Documents, no such sustainable items shall be included without the prior approval of the Owner, Architect and Contractor as to these items; provided, however, that nothing herein shall diminish the Contractor's obligations and rights relating to means, methods, sequences, techniques or procedures used in the performance of the Work.

Signature Page – Supplementary Conditions

Ann Arbor Downtown Development
Authority

The Christman Company

By: 
Its: CHAIR

By: 
Its: 
Steven F. Roznowski
Chief Executive Officer

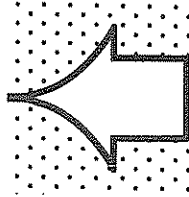


EXHIBIT C — Contractor's Insurance

A. The Contractor shall procure and maintain during the life of this Contract, including any guarantee or warranty period including work, such insurance policies, including those set forth below, as will protect itself, the Ann Arbor Downtown Development Authority (DDA), the City of Ann Arbor, Park Avenue Consultants, Inc., Carl Walker, Inc., and their respective subconsultants, and the respective successors and assigns of the foregoing entities, including directors, officers, representatives including those named or otherwise referenced in the Contract Documents, and employees of any of them (collectively the "Protected Parties") from all claims for bodily injuries, death or property damage which may arise under this Contract; whether the acts were made by the Contractor or by any subcontractor or anyone employed by them directly or indirectly. The following insurance policies are required:

1. Worker's Compensation Insurance in accordance with all applicable state and federal statutes. Further, Employers Liability Coverage shall be obtained in the following minimum amounts:

Bodily Injury by Accident - \$1,000,000 each accident
Bodily Injury by Disease - \$1,000,000 each employee
Bodily Injury by Disease - \$1,000,000 each policy limit

2. Commercial General Liability Insurance equivalent to, as a minimum, Insurance Services Office form CG 00 01 07 98. The Protected Parties shall be named by endorsement as additional insured parties. There shall be no added exclusions or limiting endorsements including, but not limited to: Products and Completed Operations, Explosion, Collapse and Underground coverage or Pollution except as otherwise agreed upon by the parties, for example, as to the pollution exclusion, in the event that Contractor names the City of Ann Arbor and the DDA as additional insureds on its existing pollution liability policy. Further, the following minimum limits of liability are required (except as to the pollution liability policy which is limited to \$2,000,000 per occurrence and \$2,000,000 aggregate):

- (i) \$5,000,000 - Each occurrence as respect Bodily Injury Liability or Property Damage Liability, or both combined.
- (ii) \$15,000,000 - Per Job General Aggregate
- (iii) \$5,000,000 - Personal and Advertising Injury
- (iv) \$15,000,000 - Products and Completed Operations Aggregate

3. Motor Vehicle Liability Insurance, including Michigan No-Fault Coverages, equivalent to, as a minimum, Insurance Services Office form CA 00 01 07 97. There shall be no added exclusions or limiting endorsements. Coverage shall include all owned vehicles, all non-owned vehicles and all hired vehicles. Further,



the limits of liability shall be \$1,000,000 for each occurrence as respects Bodily Injury Liability or Property Damage Liability, or both combined.

4. Umbrella/Excess Liability Insurance shall be provided to apply excess of the Commercial General Liability, Employers Liability and the Motor Vehicle coverage enumerated above, for each occurrence and for aggregate in the amount of \$15,000,000. The Protected Parties shall be named as additional insureds by endorsement.
- B. Insurance required under Section A.2 and A.3 of this Contract shall be considered primary as respects any other valid or collectible insurance that the Protected Parties may possess, individually or collectively, including any self-insured retentions the Protected Parties may have; and any other insurance the Protected Parties does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. Further, the parties agree to waive any right of subrogation by their respective insurers against the other.
- C. In the case of all Contracts involving on-site work, the Contractor shall provide to the DDA and the City of Ann Arbor before the commencement of any work under this Contract or as soon as possible thereafter documentation demonstrating it has obtained the above-mentioned policies. Documentation must provide and demonstrate an unconditional 30-day written notice of cancellation is required to be provided to the DDA by the applicable insurance company. Further, the documentation must explicitly state the following: (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts; (b) any deductibles or self-insured retentions which shall be approved by the DDA, in its sole discretion; (c) that the policy conforms to the requirements specified. An original certificate of insurance may be provided as an initial indication of the required insurance, provided that no later than 21 calendar days after commencement of any work the Contractor supplies a copy of the endorsements required on the policies. Upon request, the Contractor shall provide within 30 days a copy of the policy(ies) to the DDA. If any of the above coverages expire by their terms during the term of this Contract, the Contractor shall deliver proof of renewal and/or new policies to the Administering Department at least ten days prior to the expiration date. Provision of the documents required by this Provision is a condition precedent to payment of any amounts otherwise due to the Contractor and failure to do so is a default under the terms of the Contract..
- D. Any Insurance provider of Contractor shall be admitted and authorized to do business in the State of Michigan and shall carry and maintain a minimum rating assigned by A.M. Best & Company's Key Rating Guide of "A-" Overall and a minimum Financial Size Category of "V". Insurance policies and certificates issued by non-admitted insurance companies are not acceptable unless approved in writing by the DDA.