



AIA[®] Document A295[™] – 2008

General Conditions of the Contract for Integrated Project Delivery

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

THE OWNER:
(Name, legal status and address)

THE ARCHITECT:
(Name, legal status and address)

THE CONTRACTOR:
(Name, legal status and address)

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

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 ARCHITECT
- 4 CONTRACTOR
- 5 CONCEPTUALIZATION PHASE
- 6 CRITERIA DESIGN PHASE
- 7 DETAILED DESIGN PHASE
- 8 IMPLEMENTATION DOCUMENTS PHASE
- 9 CONSTRUCTION PHASE
- 10 CLOSEOUT PHASE
- 11 INSURANCE AND BONDS
- 12 MISCELLANEOUS PROVISIONS
- 13 CLAIMS AND DISPUTES

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INDEX

(Numbers and Topics in Bold are Section Headings)

Acceptance of Nonconforming Work

9.23.6.6, 9.23.8.3, **9.25.3**

Acceptance of Work

9.23.6.6, 9.23.8.3, 9.25.3, 10.1.4, 10.2.1, 10.2.3,

Access to Work

9.16, 9.20.2.1, 9.25.1

Accident Prevention

9.24

Acts and Omissions

9.2, 9.3.4, 9.12.8, 9.18, 9.22.3.1, 9.23.5.1, 9.24.2.5,
9.24.2.8, 9.26.4.1, 12.3.2, 12.6, 13.2

Additional Costs, Claims for

9.7.4, 9.7.5, 9.20.1.1, 9.21.3.7.5, 9.24.3, 13.1.4

Additional Inspections and Testing

9.23.4.2, 9.25.2.1, 10.1.5, **12.4**

Additional Insured

11.1.4

Additional Time, Claims for

9.2.4, 9.7.4, 9.7.5, 9.10.2, 9.22.3.2, **13.1.5**

Administration of the Contract, Architect's

9.1.2, 9.23.4, 9.23.5, **9.26**

Aesthetic Effect

9.26.4.4

After Substantial Completion (Correction of Work)

9.25.2.2

Allowances

9.8, 9.21.3.8

All-risk Insurance

11.3.1, 11.3.1.1

Applications for Payment

9.21.3.9, 9.23.2, **9.23.3**, 9.23.4, 9.23.5.1, 9.23.6.3,
9.23.7, 10.2, 11.1.3

Approvals

2.1.1, 2.2.4, 4.2.6, 9.1.2, 9.10.2, 9.12.8, 9.12.9,
9.23.3.2, 9.25.2.7, 9.26.5.1, 9.26.5.2, 12.4.1

Arbitration

9.22.3.1, 11.3.10, 13.3.2, **13.4**

ARCHITECT

3

Architect, Definition of

3.1.1

Architect, Extent of Authority

3.1, 9.12.7, 9.19.2, 9.20.3, 9.21.1.2, 9.21.3.7, 9.21.4,
9.23.2, 9.23.3.1, 9.23.4, 9.23.5, 9.23.6.3, 9.25.1,
9.25.2.1, 9.25.2.7, 9.26, 10.1, 10.2.1, 10.2.3, 12.4.1,
12.4.2, 13.1.3, 13.2.1

Architect, Limitations of Authority and Responsibility

2.1.1, 3.1.2, 3.2.3, 4.2.6, 9.12.4, 9.12.8, 9.19.2.1,
9.21.4, 9.23.4.2, 9.23.5.3, 9.23.6.4, 9.26.1, 9.26.2,
9.26.4.1, 9.26.4.2, 9.26.4.4, 9.26.5.2, 13.1.3, 13.2

Architect's Additional Services and Expenses

3.2.3, 9.25.2.2.1, 9.25.2.7, 11.3.1.1, 12.4.2, 12.4.3

Architect's Administration of the Contract

9.1.2, 9.7.4, 9.23.4, 9.23.5, **9.26**, 13.2

Architect's Approvals

9.1.2, 9.5, 9.10.2, 9.25.2.7, 9.26.5.2

Architect's Authority to Reject Work

9.5, 9.25.1.2, 9.25.2.1, 9.26.4.2

Architect's Copyright

1.3.6, 1.5

Architect's Decisions

9.7.4, 9.20.3, 9.21.3.7, 9.21.3.9, 9.22.1.2, 9.22.3.1,
9.23.2, 9.23.4.1, 9.23.5, 9.23.8.1, 9.26.4.2, 9.26.4.3,
9.26.4.4, 9.26.5.2, 9.26.5.4, 10.1.6, 12.4.2, 13.2, 13.3

Architect's General Services

3.2

Architect's Inspections

9.7.4, 9.23.4.2, 9.23.8.2, 9.26.4.1, 10.1.1, 10.1.5,
10.2.1, 12.4

Architect's Instructions

9.2.4, 9.3.1, 9.26.4.2, 9.26.5.2, 12.4.2

Architect's Interpretations

9.26.4.3, 9.26.4.4

Architect's Relationship with Contractor

1.3.9, 1.5, 3.1.2, 3.1.3, 9.1.2, 9.2.2, 9.2.3, 9.2.4, 9.3.1,
9.4.2, 9.5, 9.7.4, 9.7.5, 9.9.2, 9.9.3, 9.10, 9.11, 9.12,
9.16, 9.18, 9.19.2, 9.20.2.2, 9.21, 9.22.3, 9.23.2,
9.23.3, 9.23.4, 9.23.5, 9.23.7, 9.23.8, 9.24.2.6, 9.24.3,
9.25, 9.26, 10.1, 11.3.7, 12.3.2, 12.4, 13.2

Architect's Relationship with Subcontractors

1.3.9, 9.23.6.3, 9.23.6.4, 9.26.4.1, 9.26.4.2, 11.3.7

Architect's Representations

9.23.4.2, 9.23.5.1, 10.2.1

Architect's Site Visits

9.7.4, 9.23.4.2, 9.23.5.1, 9.23.8.2, 9.26.4.1, 10.1.1,
10.2.1, 12.4

Asbestos

9.24.3.1

Attorneys' Fees

9.18.1, 9.24.3.3, 10.2.2

Award of Separate Contracts

9.20.1.1, 9.20.1.2

Award of Subcontracts and Other Contracts for Portions of the Work

9.19.2

Basic Definitions

1.3

Before or After Substantial Completion (Correction of Work)

9.25.2.1

Bidding Requirements

11.4.1

Binding Dispute Resolution

9.23.7, 11.3.9, 11.3.10, 13.1, 13.2.5, 13.2.6.1, 13.3.1,
13.3.2, 13.4.1

Boiler and Machinery Insurance

11.3.2

Bonds, Lien

9.21.3.7.4, 10.2.2, 10.2.3

Bonds, Performance, and Payment

9.21.3.7.4, 9.23.6.7, 10.2.3, 11.3.9, **11.4**

Building Information Model

1.3.5, 1.3.8, 1.4.2, 1.5.1, 1.5.2, 5.5, 7.1, 8.2

Building Permit

9.7.1

Capitalization

1.4.4

Certificate of Substantial Completion

10.1.5, 10.1.6, 10.1.9

Certificates for Payment

9.23.3.3, **9.23.4**, 9.23.5, 9.23.6.1, 9.23.6.6, 9.23.7, 10.1.1, 10.2.1, 10.2.3, 13.1.3

Certificates of Inspection, Testing or Approval
12.4.4

Certificates of Insurance

10.2.2., 11.1.3

Change Orders

1.3.8, 9.4.2, 9.7.4, 9.8.2.3, 9.11, 9.12.8, 9.19.2.3, 9.21.1.2, 9.21.1.3, **9.21.2**, 9.21.3.2, 9.21.3.6, 9.21.3.9, 9.21.3.10, 9.22.3.1, 9.23.3.1.1, 9.24.3.2, 9.25.1.2, 9.25.2.7, 10.2.3, 11.3.1.2, 11.3.4, 11.3.9, 13.1.3

Change Orders, Definition of

9.21.2.1

CHANGES IN THE WORK

2.2.2, 9.11, **9.21**, 9.21.2.1, 9.21.3.1, 9.21.4, 9.22.3.1, 9.23.3.1.1, 11.3.9

Claims, Definition of

13.1.1

CLAIMS AND DISPUTES

9.2.4, 9.20.1.1, 9.20.3, 9.21.3.9, 9.23.3.3, 9.24.3.3, 10.2.4, **13**, 13.4

Claims and Timely Assertion of Claims
13.4.1

Claims for Additional Cost

9.2.4, 9.7.4, 9.20.1.1, 9.21.3.9, 9.24.3.2, **13.1.4**

Claims for Additional Time

9.2.4, 9.7.4, 9.20.1.1, 9.22.3.2, 9.24.3.2, **13.1.5**

Claims for Consequential Damages

13.1.6

Cleaning Up

9.15, 9.20.3

Concealed or Unknown Conditions, Claims for
9.7.4

Claims for Damages

9.2.4, 9.18, 9.20.1.1, 9.22.3.3, 9.23.5.1, 9.23.6.7, 9.24.3.3, 11.1.1, 11.3.5, 11.3.7, 13.1.6

Claims Subject to Arbitration

13.3.1, 13.4.1

CLOSEOUT PHASE

10

Commencement of the Work, Conditions Relating to
2.2.2, 8.6, 9.2.2, 9.4.1, 9.7.1, 9.10.1, 9.12.6, 9.19.2.1, 9.19.2.3, 9.20.2.2, 9.22.2.2, 9.22.3.1, 11.1, 11.3.1, 11.3.6, 11.4.1, 13.1.4

Commencement of the Work, Definition of
8.6

Communications Facilitating Contract Administration
3.22, 9.9.1

Completion, Conditions Relating to

9.4.1, 9.11, 9.15, 9.22.2, 9.23.4.2, 9.23.8.1, 9.26.4.1, 9.25.2, 10.1, 10.2, 12.6

Completion, Substantial

9.22.1.1, 9.22.1.2, 9.22.2.3, 9.23.4.2, 9.23.8.1, 9.25.2, 10.1.1, 10.1.2, 10.2.3, 12.6

Compliance with Laws

1.5.2, 3.1.1, 4.2.6, 9.2.3, 9.6, 9.7, 9.13, 9.23.6.4, 9.24.2.2, 11.1, 11.3, 12.3, 12.4.1, 12.4.2, 12.5, 13.2.8, 13.4.2, 13.4.3

Concealed or Unknown Conditions

9.7.4, 9.22.3.1, 9.24.3

CONCEPTUALIZATION PHASE

5

Conditions of the Contract

1.3.8, 9.20.1.1, 9.20.1.4

Consent, Written

3.1.2, 9.4.2, 9.7.4, 9.12.8, 9.14.2, 9.23.3.2, 9.23.8.1, 10.1.9, 10.2.2, 10.2.3, 11.3.1, 12.1, 12.3.2, 13.4.4.2

Consolidation or Joinder

13.4.4

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

1.3.2, **9.20**

Construction Change Directive, Definition of
9.21.3.1

Construction Change Directives

1.3.8, 9.4.2, 9.12.8, 9.21.1.1, 9.21.1.2, 9.21.1.3, **9.21.3**, 9.23.3.1.1

CONSTRUCTION PHASE

9

Construction Schedules, Contractor's

9.10, 9.12.1, 9.12.2, 9.20.1.3, 13.1.5.2

Contingent Assignment of Subcontracts

9.19.4

Continuing Contract Performance

13.1.3

Contract, Definition of

1.3.9

Contract Administration

9.1.2, 9.23.4, 9.23.5, **9.26**

Contract Award and Execution, Conditions Relating to
9.7.1, 9.10, 9.19.2, 9.20.1, 11.1.3, 11.3.6, 11.4.1

Contract Documents, The

See Guaranteed Maximum Price Documents, The
Contract Sum

9.7.4, 9.8, 9.19.2.3, 9.21.2, 9.21.3, 9.21.4, **9.23.1**, 9.23.4.2, 9.23.5.1.4, 9.23.6.7, 9.23.7, 9.24.3.2, 11.3.1, 13.1.4, 13.2.5

Contract Sum, Definition of

9.23.1

Contract Time

9.7.4, 9.7.5, 9.10.2, 9.19.2.3, 9.21.2.1.3, 9.21.3.1, 9.21.3.5, 9.21.4, 9.22.1.1, 9.22.2.1, 9.22.3.1, 9.23.5.1, 9.23.7, 9.24.3.2, 9.25.1.1, 13.1.5.1, 13.2.5

Contract Time, Definition of

9.22.1.1

CONTRACTOR

4

Contractor, Definition of

4.1, 9.20.1.2

Contractor's Construction Schedules

9.10, 9.12.1, 9.12.2, 9.20.1.3, 13.1.5.2

Contractor's Employees

9.3.4, 9.4.3, 9.8.1, 9.9, 9.18.2, 9.24.2, 9.24.3, 9.26.4.1, 9.26.4.2, 11.1.1, 11.3.7

Contractor's Estimates

4.2.3, 4.2.4, 4.2.5

Contractor's Liability Insurance

11.1

Contractor's Relationship with Separate Contractors and Owner's Forces

9.12.5, 9.14.2, 9.20, 9.25.1.2, 9.25.2.4, 11.3.7

Contractor's Relationship with Subcontractors

1.4.2, 9.3.4, 9.18.1, 9.18.2, 9.19, 9.23.6.2, 9.23.6.7, 10.2.2, 11.3.1.2, 11.3.7, 11.3.8

Contractor's Relationship with the Architect

1.3.9, 1.5, 3.1.3, 9.1.2, 9.2.2, 9.2.3, 9.2.4, 9.3.1, 9.4.2, 9.5, 9.7.4, 9.10, 9.11, 9.12, 9.16, 9.18, 9.19.2, 9.20.2.2, 9.21, 9.22.3.1, 9.23.2, 9.23.3, 9.23.4, 9.23.5, 9.23.7, 9.23.8, 9.24.2.6, 9.24.3, 9.25, 9.26, 10.1, 11.3.7, 12.4, 13.1.2, 13.2.1

Contractor's Representations

9.2.1, 9.2.2, 9.5, 9.12.6, 9.20.2.2, 9.22.2.1, 9.23.3.3, 10.1.4

Contractor's Responsibility for Those Performing the Work

9.3.4, 9.18, 9.19.3, 9.20.1.3, 9.20.2, 9.23.5.1, 9.24.2.8

Contractor's Review of Contract Documents

9.2

Contractor's Right to Stop the Work

9.23.7

Contractor's Right to Terminate the Contract

13.1.6

Contractor's Submittals

9.10, 9.11, 9.12.4, 9.19.2.1, 9.19.2.3, 9.23.2, 9.23.3, 9.23.8.1, 9.26.5.2, 10.1.4, 10.1.5, 10.2.2, 10.2.3, 11.1.3, 11.4.2

Contractor's Superintendent

9.9, 9.24.2.6

Contractor's Supervision and Construction Procedures

1.4.2, 4.2.6, 9.3, 9.4, 9.20.1.3, 9.20.2.4, 9.21.1.3, 9.21.3.5, 9.21.3.7, 9.22.2, 9.24, 9.25, 9.26.2, 9.26.4.1, 9.26.5.2, 13.1.3

Contractual Liability Insurance

11.1.1.8, 11.2

Coordination

1.6, 9.3.1, 9.10, 9.12.6, 9.20.1.3, 9.20.2.1

Copies Furnished of Drawings and Specifications

1.5, 9.11

Copyrights

1.5, 9.17

Correction of Work

9.7.3, 9.23.4.2, 9.23.8.1, 9.25.1.2, 9.25.2, 9.25.2.6, 9.25.2.7, 10.1.4, 10.1.5

Correlation and Intent of the GMP Documents

1.4, 9.2.1

Cost, Definition of

9.21.3.7

Costs

9.2.4, 9.7.3, 9.8.2, 9.15.2, 9.19.4.2, 9.20.1.1, 9.20.2.3, 9.21.3.3.3, 9.21.3.7, 9.21.3.8, 9.21.3.9, 9.24.3.2, 9.24.3.6, 9.25.1.2, 9.25.2.1, 9.25.2.4, 9.25.2.7, 10.2.2, 11.3, 12.4

CRITERIA DESIGN PHASE

6

Cutting and Patching

9.14, 9.20.2.5

Damage to Construction of Owner or Separate Contractors

9.14.2, 9.20.2.4, 9.24.2.1.2, 9.24.2.5, 9.24.4, 9.25.2.4, 11.1.1, 11.3

Damage to the Work

9.14.2, 9.23.8.1, 9.24.2.1.2, 9.24.2.5, 9.24.4, 9.25.2.4, 11.3.1

Damages, Claims for

9.2.4, 9.18, 9.20.1.1, 9.22.3.3, 9.23.5.1, 9.23.6.7, 9.24.3.3, 11.1.1, 11.3.5, 11.3.7, 13.1.6

Damages for Delay

9.20.1.1, 9.22.3.3, 9.23.5.1.6, 9.23.7, 9.24.3.2

Date of Commencement of the Work

8.6

Date of Substantial Completion, Definition of 9.22.1.2

Day, Definition of

9.22.1.3

Decisions of the Architect

9.7.4, 9.20.3, 9.21.3.7, 9.21.3.9, 9.22.1.2, 9.22.3.1, 9.23.2, 9.23.4, 9.23.5.1, 9.23.8.1, 9.26.4.2, 9.26.4.3, 9.26.4.4, 9.26.5.2, 10.1.6, 12.4.2, 13.1, 13.2

Decisions to Withhold Certification

9.23.4.1, 9.23.5, 9.23.7

Defective or Nonconforming Work, Acceptance, Rejection and Correction of

9.5, 9.20.2.5, 9.23.5.1, 9.23.5.2, 9.23.6.6, 9.23.8.3, 9.25.2.1, 9.25.2.6, 9.25.2.7, 9.26.4.2, 10.1.4, 10.2.4

Defective Work, Definition of

9.5

Definitions

1.3, 2.1.1, 3.1.1, 4.1.1, 9.5, 9.12.1, 9.12.2, 9.12.3, 9.19.1, 9.20.1.2, 9.21.2.1, 9.21.3.1, 9.22.1, 9.23.1, 10.1.2, 13.1.1,

Delays and Extensions of Time

9.2, 9.7.4, 9.19.2.3, 9.21.2.1, 9.21.3.1, 9.21.4, 9.22.3, 9.23.5.1, 9.23.7, 9.24.3.2, 9.24.4, 13.1.5, 13.2.5

DETAILED DESIGN PHASE

7

Disputes

9.20.3, 9.21.3.9, 13.1, 13.2

Documents and Samples at the Site

9.11

Drawings, Definition of

1.3.3

Drawings and Specifications, Use and Ownership of 9.11

Effective Date of Insurance

9.22.2.2, 11.1.2

Emergencies

9.24.4, 13.1.4

Employees, Contractor's

9.3.4, 9.4.3, 9.8.1, 9.9, 9.18.2, 9.24.2, 9.24.3.3,
9.26.4.1, 9.26.4.2, 11.1.1, 11.3.7

Equipment, Labor, Materials or

1.3.1, 1.3.4, 9.4, 9.5, 9.8.2, 9.8.3, 9.12, 9.13, 9.15.1,
9.19.2.1, 9.20.2.1, 9.21.3.7, 9.23.3.2, 9.23.3.3,
9.23.5.1.3, 9.24.2.1, 9.24.2.4, 9.26.4.2, 9.26.5.2,
10.2.2

Evaluations of the Work

9.26.4

Execution and Progress of the Work

1.3.1, 1.4.1, 1.4.2, 2.2.5, 4.1, 9.3.1, 9.4.1, 9.5, 9.7.1,
9.10.1, 9.12, 9.14, 9.20.2.2, 9.21.1.3, 9.21.3.5, 9.22.2,
9.23.5.1, 9.23.8.1, 9.24.2, 9.24.3, 9.25.2, 9.26, 13.1.3

Extensions of Time

9.2.4, 9.7.4, 9.19.2.3, 9.21.2.1, 9.21.3, 9.21.4,
9.23.5.1, 9.23.7, 9.24.3.2, 9.24.4, 13.1.5, 13.2.5

Failure of Payment

9.23.5.1.3, **9.23.7**, 10.2.2, 12.5

Faulty Work

(See Defective or Nonconforming Work)

Final Completion and Final Payment

9.25.3, 9.26.1, 10.1.1, 10.1.4, **10.2**, 11.1.2, 11.1.3,
11.3.1, 11.3.5

Financial Arrangements, Owner's

2.2.2, 12.1.2

Fire and Extended Coverage Insurance

11.3.1.1

General Consultation Responsibilities (of
Contractor)

4.2

GENERAL PROVISIONS

1

Guaranteed Maximum Price, The

1.3.7

Guaranteed Maximum Price Documents, The

1.3.8, 1.4, 9.19.3

Guarantees (See Warranty)

Hazardous Materials

9.24.2.4, **9.24.3**

Identification of Subcontractors and Suppliers

9.19.2.1

Implementation Documents, The

1.3.10

IMPLEMENTATION DOCUMENTS PHASE

8

Indemnification

9.17, **9.18**, 9.24.3, 9.24.3.5, 9.24.3.6, 10.2.2, 11.3.1.2,
11.3.7

Information and Services Required of the Owner

2.1.5, **2.2**, 4.2.6, 9.2.2, 9.12.4, 9.20.1.3, 9.20.1.4,
9.20.2.5, 9.23.6.1, 9.23.6.4, 9.23.8.2, 9.24.3.3, 10.2.3,
11.2, 11.4, 12.4.1, 12.4.2, 13.1.3

Initial Decision

13.2

Initial Decision Maker, Definition of

1.3.12

Initial Decision Maker, Decisions

13.2.1, 13.2.2, 13.2.3, 13.2.4, 13.2.5

Initial Decision Maker, Extent of Authority

13.1.3, 13.2.1, 13.2.2, 13.2.3, 13.2.4, 13.2.5

Initial Information

1.2

Injury or Damage to Person or Property

9.24.2.8, 9.24.4

Inspections

9.1.2, 9.3.5, 9.7.1, 9.23.4.2, 9.23.8.2, 9.25.2.1,
9.26.4.1, 9.26.4.2, 10.1.1, 10.1.5, 10.2.1, 12.4

Instructions to the Contractor

9.2.4, 9.3.1, 9.8.1, 9.19.2.1, 9.21, 9.22.2.2, 9.25,
12.4.2

Instruments of Service, Definition of

1.3.6

Insurance

9.8.4, 9.18.1, 9.20.1.1, 9.21.3.7, 9.23.3.2, 9.23.8.1,
10.2.2, **11**

Insurance, Boiler and Machinery

11.3.2

Insurance, Contractor's Liability

11.1

Insurance, Effective Date of

9.22.2.2, 11.1.2

Insurance, Loss of Use

11.3.3

Insurance, Owner's Liability

11.2

Insurance, Property

9.24.2.5, **11.3**

Insurance, Stored Materials

9.23.3.2, 11.4.1.4

INSURANCE AND BONDS

11

Insurance Companies, Consent to Partial Occupancy

9.23.8.1, 11.4.1.5

Insurance Companies, Settlement with

11.4.10

Integrated Project Delivery

1.3.13

Intent of the Contract Documents

1.4.1, 9.21.4, 9.26.5.2, 9.26.4.4

Interest

12.5

Interpretation

1.4.3, **1.4.5**, 3.1.1, 9.19.1, 9.20.1.2, 13.1.1

Interpretations, Written

9.26.4.3, 9.26.4.4, 13.1.4

Judgment on Final Award

13.4.2

Labor and Materials, Equipment

1.3.1, 1.3.4, 9.1.2, **9.4**, 9.5, 9.8.3, 9.12, 9.15.1,
9.19.2.1, 9.20.2.1, 9.21.3.7, 9.23.3.2, 9.23.3.3,
9.23.5.1.3, 9.24.2.1, 9.24.2.4, 9.26.4.2, 9.26.5.2,
10.1.4, 10.2.2

Labor Disputes

9.22.3.1

Laws and Regulations

1.5, 3.1.1, 3.2.4, 3.2.5, 4.2.1, 4.2.2, 4.2.6, 9.2.3, 9.6, 9.7, 9.13, 9.23.6.4, 9.23.8.1, 9.24.2.2, 11.1.1, 11.3, 12.3, 12.4.1, 12.4.2, 12.5, 13.2.8, 13.4

Liens

2.1.5, 9.23.3.3, 10.2.2, 10.2.4, 13.2.8

Limitations, Statutes of

9.25.2.5, 12.6, 13.4.1.1

Limitations of Liability

4.2.6, 9.2.2, 9.5, 9.17, 9.18.1, 9.20.2.2, 9.23.4.2, 9.23.6.4, 9.23.6.7, 9.24.2.5, 9.24.3.3, 9.25.2.5, 9.25.2.6, 9.26.4.2, 9.26.4.4, 9.26.5.2, 11.1.2, 11.2, 11.3.7, 12.3.2

Limitations of Time

2.1.5, 2.2, 9.2.2, 9.10, 9.11, 9.12.5, 9.15.1, 9.19.2, 9.19.3, 9.19.4.1, 9.20.2.4, 9.21.3, 9.21.4, 9.22.2, 9.23.2, 9.23.3.1, 9.23.3.3, 9.23.4.1, 9.23.5, 9.23.6, 9.23.7, 9.23.8, 9.25.2, 9.25.2.7, 9.26.5.2, 10.1, 10.2, 11.1.3, 11.3.1.5, 11.3.6, 11.3.10, 12.4, 12.6

Loss of Use Insurance

11.3.3

Material Suppliers

1.5, 9.12.1, 9.19.2.1, 9.23.3, 9.23.4.2, 9.23.6, 9.26.4.2, 10.2.5

Materials, Hazardous

9.24.2.4, **9.24.3**

Materials, Labor, Equipment and

1.3.1, 1.3.4, 1.5, 9.4.1, 9.5, 9.8.3, 9.12, 9.13, 9.15.1, 9.19.2.1, 9.20.2.1, 9.21.3.7, 9.23.3.2, 9.23.3.3, 9.23.5.1.3, 9.24.2.1.2, 9.24.2.4, 9.26.4.2, 9.26.5.2, 10.1.4, 10.2.2

Means, Methods, Techniques, Sequences and Procedures of Construction

4.2.6, 9.3.1, 9.23.4.2, 9.26.2, 9.26.5.2,

Mechanic's Lien

2.1.5, 13.2.8

Mediation

9.22.3.1, 9.24.3.5, 9.24.3.6, 13.2.1, 13.2.5, 13.2.6, **13.3**, 13.4.1

Minor Changes in the Work

1.3.8, 9.12.8, 9.21.1, **9.21.4**

MISCELLANEOUS PROVISIONS

12

Modifications, Definition of

1.3.8

Modifications to the Contract

1.3.8, 1.3.9, 3.1.2, 9.11, 9.19.2.3, 9.21, 9.22.3.1, 9.23.7, 9.24.3.2, 9.26.1, 11.3.1

Mutual Responsibility

9.20.2

Nonconforming Work, Acceptance of

9.23.6.6, 9.23.8.3, **9.25.3**

Nonconforming Work, Rejection and Correction of
9.5, 9.20.2.4, 9.23.5.1, 9.23.8.3, 9.25.2.1, 9.25.2.6, 9.25.2.7, 9.26.4.2, 10.1.4, 10.2.4

Notice

2.2.2, 9.2.4, 9.3.1, 9.7.2, 9.12.9, 9.19.2.1, 9.23.7, 9.24.2.2, 9.25.2.2.1, 9.25.2.6, 9.25.2.7, 10.2, 11.1.3, 11.4.6, 12.2, 12.4.1, 12.4.2, 13.2.8, 13.4.1

Notice, Written

4.2.6, 9.3.1, 9.9.2, 9.12.9, 9.19.2.1, 9.23.7, 9.24.2.2, 9.24.3, 9.25.2.2.1, 9.25.2.6, 9.25.2.7, 10.2, 11.1.3, 11.3.6, **12.2**, 13.2.8, 13.4.1

Notice of Claims

9.7.4, 9.24.2.8, **13.1.2**, 13.4

Notice of Testing and Inspections

12.4.1, 12.4.2

Observations, Contractor's

9.2, 9.7.4

Occupancy

2.2.4, 9.23.6.6, 10.1, 11.3.1.5

Orders, Written

1.3.8, 7, 9.9.2, 9.22.2.2, 9.25.1, 9.25.2.2.1, 9.25.2.6, 11.3.9, 12.4.2

OWNER

2

Owner, Definition of

2.1.1

Owner, Information and Services Required of the

2.1.5, **2.2**, 4.2.6, 9.2.2, 9.20.1.3, 9.20.1.4, 9.20.2.5, 9.23.3.2, 9.23.6.1, 9.23.6.4, 9.23.8.2, 9.24.3.3, 10.2.3, 11.2, 11.3, 12.4.1, 12.4.2, 13.1.3

Owner's Authority

1.5, 2.1.1, 3.1.2, 3.1.3, 4.2.6, 9.4.2, 9.8.1, 9.14.2, 9.19.2.1, 9.19.2.4, 9.19.4, 9.20.1, 9.20.3, 9.21.2.1, 9.21.3.1, 9.22.2.2, 9.22.3.1, 9.23.3.1, 9.23.3.2, 9.23.5.1, 9.23.6.4, 9.23.8.1, 9.24.3.2, 9.25.2.2, 9.25.2.6, 9.25.2.7, 9.25.3, 10.1.1, 10.2.2, 11.1.3, 11.3.3, 11.3.10, 12.1.2, 13.2.7

Owner's Budget for the Work

1.3.11

Owner's Financial Capability

2.2.2, 12.1.2

Owner's Liability Insurance

11.2

Owner's Loss of Use Insurance

11.3.3

Owner's Relationship with Subcontractors

1.3.9, 9.19.2, 9.19.3, 9.19.4, 9.23.6.4, 10.2.2

Owner's Right to Carry Out the Work

9.25.2.7

Owner's Right to Clean Up

9.20.3

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

9.20.1

Owner's Right to Stop the Work

9.25.2.6

Partial Occupancy or Use

9.23.6.6, **9.23.8**, 11.3.1.5

Patching, Cutting and

9.14, 9.20.2.5

Patents

9.17

Payment, Applications for

9.21.3.7, 9.23.2, **9.23.3**, 9.23.4, 9.23.5, 9.23.6.3, 9.23.7, 10.1.9, 10.2.1

Payment, Certificates for

9.23.3.3, **9.23.4**, 9.23.5, 9.23.6.1, 9.23.6.6, 9.23.7, 10.1.1, 10.2.1, 10.2.3, 12.6

Payment, Failure of

9.23.5.1.3, **9.23.7**, 10.2.2, 12.5

Payment, Final

9.25.3, 9.26.1, 10.1.1, 10.1.4, 10.2, 11.1.2, 11.1.3, 11.4.1, 11.4.5, 12.6

Payment Bond, Performance Bond and

9.21.3.7.4, 9.23.6.7, 10.2.3, **11.4**, 11.4.9

PAYMENTS

9.23

Payments, Progress

9.23.3, **9.23.6**, 10.1.9, 10.2.3, 12.5, 13.1.3

Payments to Subcontractors

9.19.4.2, 9.23.5.1.3, 9.23.6.2, 9.23.6.3, 9.23.6.4, 9.23.6.7, 11.4.8

PCB

9.24.3.1

Performance Bond and Payment Bond

9.21.3.7.4, 9.23.6.7, 10.2.3, 11.4.9, **11.4**

Permits, Fees, Notices and Compliance with Laws

2.2.2, 3.13, **9.7**, 9.21.3.7.4, 9.24.2.2

PERSONS AND PROPERTY, PROTECTION OF

9.14

Polychlorinated Biphenyl

9.24.3.1

Product Data, Definition of

9.12.2

Product Data and Samples, Shop Drawings

9.11, **9.12**, 9.26.5.2

Progress and Completion

9.22.2, 9.23.8.1, 9.26.4.1, 10.1, 13.1.3

Progress Payments

9.23.3, **9.23.6**, 10.1.9, 10.2.3, 12.5, 13.1.3

Project, Definition of the

1.3.2

Project Completion

10.1

Property Insurance

9.24.2.5, **11.3**

PROTECTION OF PERSONS AND PROPERTY

9.24

Purpose

1.1

Regulations and Laws

1.5, 3.1.1, 4.2.6, 9.1.2, 9.2.3, 9.6, 9.7, 9.23.6.4, 9.23.8.1, 9.24.2.2, 11.1, 11.4, 12.3, 12.4.1, 12.4.2, 12.5, 13.2.8, 13.4

Rejection of Work

9.5, 9.25.2.1, 9.26.4.2

Releases and Waivers of Liens

10.2.2

Representations

9.2.1, 9.5, 9.12.6, 9.20.2.2, 9.22.2.1, 9.23.3.3, 9.23.4.2, 9.23.5.1, 10.1.4, 10.2.1

Representatives

2.1.1, 3.1.1, 4.1.1, 9.9, 9.19.1.1, 9.19.1.2, 9.26.1, 9.26.2, 9.26.4.1, 12.1.1

Responsibility for Those Performing the Work

9.3.4, 9.18, 9.19.3, 9.20.1.3, 9.20.2, 9.20.3, 9.23.5.1, 9.24, 9.26.4.1

Retainage

9.23.3.1, 9.23.6.2, 9.23.8.1, 10.1.9, 10.2.2, 10.2.3

Review of GMP Documents and Field Conditions by Contractor

9.2, 9.12.7, 9.20.1.3

Review of Contractor's Submittals by Owner and Architect

9.10.1, 9.10.2, 9.11, 9.12, 9.19.2, 9.20.1.3, 9.23.2, 9.26, 10.1.4

Review of Shop Drawings, Product Data and Samples by Contractor

9.12

Rights and Remedies

1.9.9, 8.3, 9.5, 9.7.4, 9.15.2, 9.19.3, 9.19.4, 9.20.1, 9.20.3, 9.21.3.1, 9.23.5.1, 9.23.7, 9.24.2.5, 9.24.3, 9.25.2.2, 9.25.2.4, 9.25.2.6, 9.25.2.7, 9.26.4.2, **12.3**, 13.4

Royalties, Patents and Copyrights

9.17

Rules and Notices for Arbitration

13.4.1

Safety of Persons and Property

9.24.2, 9.24.4

Safety Precautions and Programs

9.3.1, 9.19.3, **9.24.1**, 9.24.2, 9.24.4, 9.26.2, 9.26.5.2

Samples, Definition of

9.12.3

Samples, Shop Drawings, Product Data and

9.11, **9.12**, 9.26.5.2

Samples at the Site, Documents and

9.11

Schedule of Values

9.23.2, 9.23.3.1

Schedules, Construction

9.10, 9.12.1, 9.12.2, 9.20.1.3, 13.1.5.2

Separate Contracts and Contractors

1.3.2, 6, 9.12.5, 9.14.2, 9.22.3.1, 9.25.1.2, 9.26.5.2, 11.4.7

Shop Drawings, Definition of

9.12.1

Shop Drawings, Product Data and Samples

9.11, **9.12**, 9.26.5.2

Site, Use of

9.13, 9.20.1.1, 9.20.2.1

Site Inspections

9.2.2, 9.3.5, 9.7.1, 9.7.4, 9.23.4.2, 9.26, 10.2.1, 12.4

Site Visits, Architect's

9.7.4, 9.23.4.2, 9.23.5.1, 9.23.8.2, 9.26.4.1, 10.1.1, 10.2.1, 12.4

Software and Data Exchange Protocols

1.5.2

Special Inspections and Testing

9.25.2.1, 9.26.4.2, 12.4

Specifications, Definition of the

1.3.4

Specifications, The

1.3.4, 1.3.8, 1.4.2, 1.5, 4.2.6, 9.11, 9.17, 9.26.5.4

Statute of Limitations

12.6, 13.4.1.1

Stopping the Work

9.23.7, 9.24.3, 9.25.2.6

Stored Materials

9.20.2.1, 9.23.3.2, 9.24.2.1.2, 9.24.2.4, 11.4.1.4

Subcontractor, Definition of

9.19.1.1

SUBCONTRACTORS

9.19

Subcontractors, Work by

1.4.2, 9.3.4, 9.12.1, 9.19.2.3, 9.19.3, 9.19.4,

9.23.3.1.2, 9.23.6.7, 9.26.4.1

Subcontractual Relations

9.19.3, 9.19.4, 9.23.3.1.2, 9.23.6, 9.24.2.1, 10.2,

11.4.7, 11.4.8

Submittals

9.10, 9.11, 9.12, 9.19.2.1, 9.19.2.3, 9.21.3.7, 9.23.2,

9.23.3, 9.23.8.1, **9.26.5**, 10.1, 10.2.2, 10.2.3, 11.1.3

Submittal Schedule

9.10.2, 9.12.5, 9.26.5.2

Subrogation, Waivers of

9.20.1.1, **11.3.7**, 11.4.5

Substantial Completion

9.22.1.1, 9.22.1.2, 9.22.2.3, 9.23.4.2, 9.23.8.1, 9.25.2,

10.1, 10.2.3, 12.6

Substantial Completion, Definition of

10.1.2

Substitution of Subcontractors

9.19.2.3, 9.19.2.4

Substitution of Architect

3.1.3

Substitutions of Materials

9.4.2, 9.5, 9.21.3.8

Sub-subcontractor, Definition of

9.19.1.2

Subsurface Conditions

9.7.4

Successors and Assigns

12.1

Superintendent

9.9, 9.24.2.6

Supervision and Construction Procedures

1.4.2, 4.2.6, **9.3**, 9.4, 9.20.1.3, 9.20.2.4, 9.21.1.3,

9.21.3.7, 9.22.2, 9.22.3.1, 9.23.4.2, 9.24, 9.25, 9.26.2,

9.26.5.2, 13.1.3

Surety

9.19.4.1.2, 10.1.9, 10.2.2, 10.2.3, 13.2.7

Surety, Consent of

10.2.2, 10.2.3

Surveys

2.2.5

Suspension of the Work

9.19.4.2

Suspension or Termination of the Contract

9.19.4.1.1, 11.4.9

Taxes

9.6, 9.21.3.7.4, 10.1.4.1

Termination, Owner-Contractor

9.19.4.1.1, 13.1.6

Termination of the Architect

3.1.3

Tests and Inspections

9.1.2, 9.3.5, 9.23.4.2, 9.23.8.2, 9.24.3.2, 9.25.2.1,

9.26.4.1, 9.26.4.2, 10.1.1, 10.1.5, 10.2.1, 11.4.1.1,

12.4

TIME

9.22

Time, Delays and Extensions of

7.2.1, 9.2.4, 9.7.4, 9.19.2.3, 9.21.3.1, 9.21.4, **9.22.3**,

9.23.5.1, 9.23.7, 9.24.3.2, 9.24.4, 13.1.5, 13.2.5

Time Limits

2.1.5, 2.2, 9.2.2, 9.10, 9.11, 9.12.5, 9.15.1, 9.19.2,

9.19.3, 9.19.4, 9.20.2.4, 9.21.3, 9.21.4, 9.22.2, 9.23.2,

9.23.3.1, 9.23.3.3, 9.23.4.1, 9.23.5, 9.23.6, 9.23.7,

9.23.8, 9.25.2, 9.26, 10.1, 10.2, 11.1.3, 11.4.1.5,

11.4.6, 11.4.10, 12.4, 12.6, 13.1.2, 13.4

Time Limits on Claims

9.7.4, 9.24.2.8, **12.6**, 13.1.2

Title to Work

9.23.3.2, 9.23.3.3

Transmission of Data in Digital Form

1.5.2

UNCOVERING AND CORRECTION OF WORK

9.25

Uncovering of Work

9.25.1

Unforeseen Conditions, Concealed or Unknown

9.7.4, 9.22.3.1, 9.24.3

Unit Prices

9.21.3.3.2, 9.21.3.4

Use of Drawings, Specifications and Other

Instruments of Service

1.3.4, 1.3.6, 1.3.8, **1.5**, 9.2.2, 9.11, 9.17, 9.19.3,

9.26.4.4

Use of Site

9.1.3, 9.20.1.1, 9.20.2.1

Values, Schedule of

9.23.2, 9.23.3.1

Waiver of Claims by the Architect

12.3.2

Waiver of Claims by the Contractor

10.2.5, 11.4.7, 12.3.2, 13.1.6

Waiver of Claims by the Owner

9.23.8.3, 9.25.2.2.1, 10.2.3, 10.2.4, 11.4.3, 11.4.5,

11.4.7, 12.3.2, 13.1.6

Waiver of Consequential Damages

13.1.6

Waiver of Liens

10.2.2, 10.2.4

Waivers of Subrogation

9.20.1.1, 11.4.5, **11.3.7**

Warranty

9.5, 9.23.3.3, 9.23.8.1, 9.25.2.2, 10.1.1, 10.1.6, 10.2.4,

12.6.1

Weather Delays

13.1.5.2

Work, Definition of

1.3.1

Written Consent

1.5, 3.1.2, 9.4.2, 9.7.4, 9.12.8, 9.14.2, 9.23.3.2,
9.23.8.1, 10.1.9, 10.2.2, 10.2.3, 11.4.1, 12.1, 12.3.2,
13.4.4.2

Written Interpretations

9.26.4.3, 9.26.4.4

Written Notice

4.2.6, 9.3.1, 9.9, 9.12.9, 9.19.2.1, 9.22.2.2, 9.23.7,
9.24.2.2, 9.24.3, 9.25.2.2, 9.25.2.4, 9.25.2.6, 9.25.2.7,
10.2, 11.1.3, 11.4.6, **12.2**, 13.4.1

Written Orders

1.3.8, 9.9, 9.21, 9.22.2.2, 9.25.1, 9.25.2, 9.25.2.6,
11.4.9, 12.4.2, 13.1.2

Sample

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 PURPOSE

The Owner, Architect and Contractor have agreed to plan, design, and construct the Project in a collaborative environment following the principles of Integrated Project Delivery and to utilize Building Information Modeling to maximize the use of their knowledge, skills, and services for the benefit of the Project. The Architect and Contractor will deliver the Project in the following phases, which may overlap: Conceptualization, Criteria Design, Detailed Design, Implementation Documents, Construction and Closeout.

§ 1.2 INITIAL INFORMATION

The Owner, Architect and Contractor may rely on the Initial Information. Each, however, recognizes that such information may materially change and, in that event, the parties shall agree upon appropriate adjustments to the Architect's and Contractor's services and compensation, and the schedule. The Initial Information is as follows: *(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")*

§ 1.2.1 The Owner's program for the Project:

(Identify documentation or state the manner in which the program will be developed.)

§ 1.2.2 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

§ 1.2.3 The Owner's Budget for the Work:

(Provide total and, if known, a line item breakdown.)

§ 1.2.4 The Owner's anticipated design and construction schedule:

- .1 Design phase milestone dates, if any:

- .2 Commencement of construction:

- .3 Substantial Completion date or milestone dates:

- .4 Other:

§ 1.2.5 The Owner's requirements for accelerated or fast-track scheduling, or phased construction are set forth below:

(List number and type of procurement packages.)

§ 1.2.6 Other Project information:

(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)

§ 1.2.7 The Owner identifies the following representative in accordance with Section 2.1.1:

(List name, address and other information.)

§ 1.2.8 The persons or entities, in addition to the Owner's representative, who are required to review submittals to the Owner are as follows:

(List name, legal status, address and other information.)

§ 1.2.9 The Owner will retain the following consultants and Contractors:

(List name, address and other information.)

.1 Geotechnical Engineer:

.2 Other, if any:

§ 1.2.10 The Architect identifies the following representative in accordance with Section 3.1.1:

(List name, address and other information.)

§ 1.2.11 The Architect will retain the following consultants:
(List name, legal status, address and other information.)

.1 Structural Engineer:

.2 Mechanical Engineer:

.3 Electrical Engineer:

.4 Other, if any:

§ 1.2.12 The Contractor identifies the following representative in accordance with Section 4.1.1:
(List name, address and other information.)

§ 1.2.13 The Contractor will retain the following consultants and Subcontractors to assist the Contractor in its performance of the Pre-GMP Services:
(List name, address and other information.)

§ 1.2.14 Other Initial Information:

§ 1.3 BASIC DEFINITIONS

§ 1.3.1 THE WORK

The term "Work" means the construction and services required of the Contractor by the Guaranteed Maximum Price 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.

§ 1.3.2 THE PROJECT

The Project consists of the whole of the Architect's Services and the Work as that term is defined in Section 1.3.1 above and the professional services related thereto.

§ 1.3.3 THE DRAWINGS

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

§ 1.3.4 THE SPECIFICATIONS

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

§ 1.3.5 BUILDING INFORMATION MODEL

The Building Information Model (Model(s)), is a digital representation of the physical and functional characteristics of the Project. The term "Model" may be used to describe a single model or multiple models used in the aggregate. "Building Information Modeling" (BIM) means the process and technology used to create the Model.

§ 1.3.6 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work provided by the Architect, the Architect's consultants, the Contractor, Subcontractors, or Sub-subcontractors under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, Models, sketches, drawings, specifications, and other similar materials.

§ 1.3.7 THE GUARANTEED MAXIMUM PRICE

The Guaranteed Maximum Price represents an amount that the Contract Sum shall not exceed as agreed to by the Owner and Contractor.

§ 1.3.8 THE GUARANTEED MAXIMUM PRICE DOCUMENTS

The Guaranteed Maximum Price Documents (GMP Documents) consist of the agreement between the Owner and Contractor (Owner-Contractor Agreement), General, Supplementary and other Conditions of the Contract (Conditions of the Contract), Drawings, Specifications, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect.

§ 1.3.9 THE CONTRACT

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

§ 1.3.10 THE IMPLEMENTATION DOCUMENTS

The Implementation Documents consist of the Architect and Contractor's further development of the GMP Documents as necessary to construct the Project.

§ 1.3.11 OWNER'S BUDGET FOR THE WORK

The Owner's Budget for the Work is the amount the Owner has budgeted to construct all elements of the Project designed or specified by the Architect and includes contractors' general conditions costs, overhead and profit. The Owner's Budget for the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 1.3.12 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Owner-Contractor Agreement to render initial decisions on Claims in accordance with Section 13.2 and certify termination of the Owner-Contractor Agreement under Section 7.2.2 of the Owner-Contractor Agreement, A195-2008, Standard Form of Agreement Between Owner and Contractor for Integrated Project Delivery.

§ 1.3.13 INTEGRATED PROJECT DELIVERY

Integrated Project Delivery is a project delivery approach that integrates people, systems, business structures and practices into a process that collaboratively harnesses the talents and insights of all participants to reduce waste and optimize efficiency through all phases of design, fabrication and construction.

§ 1.4 CORRELATION AND INTENT OF THE GMP DOCUMENTS

§ 1.4.1 The intent of the GMP Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The GMP 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 GMP Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.4.2 Neither organization of the Specifications into divisions, sections and articles, arrangement of Drawings, organization of the Model, or the issuance of separate Models shall control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

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

§ 1.4.4 CAPITALIZATION

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

§ 1.4.5 INTERPRETATION

In the interest of brevity, words such as “all” and “any” and articles such as “the” and “an” may be omitted, 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 USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

The Architect, Architect’s consultants, Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized, solely and exclusively for use in completion of the Project, to use and reproduce the Instruments of Service provided to them. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Architect, Architect’s consultants, Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use another author’s Instruments of Service on other projects or for additions to this Project without the specific written consent of the Owner and the author of the Instruments of Service.

§ 1.5.1 The Architect and Contractor shall utilize a Model as Instruments of Service to the greatest extent practicable and pursuant to Section 1.5.2. Unless the parties mutually agree otherwise, the Architect shall be responsible for the integration and coordination of the Model throughout the design and construction of the Project.

§ 1.5.2 SOFTWARE AND DATA EXCHANGE PROTOCOLS

The Owner, Architect and Contractor shall, at the earliest practical moment, meet and delineate the types of software to be used on the Project and establish protocols, standards and tolerances as may be required for the proper execution of the Work. The Owner, Architect and Contractor shall work together to establish the permitted uses for all digital information, including the Model, to be exchanged on the Project. Such determinations shall be set forth in AIA Document E201™-2007, or a similar document, that shall be incorporated by reference into all agreements for services or construction for the Project.

§ 1.6 COORDINATION

The Owner, Architect and Contractor shall coordinate the services provided by one another’s consultants, subconsultants, contractors and Subcontractors. Upon request, the Owner, Architect and Contractor shall furnish copies of the scopes of services in the services contracts they hold. The Owner shall require that its consultants and

contractors maintain professional liability insurance and other liability insurance, as appropriate to the services provided.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in this document and is referred to 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. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish information or services required of the Owner by the GMP Documents in a timely manner. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Architect and Contractor's performance with reasonable promptness after receiving the written request for such information or services.

§ 2.1.3 The Architect and Contractor shall be entitled to rely on the accuracy and completeness of information furnished by the Owner.

§ 2.1.4 The Owner shall provide prompt written notice to the Architect and Contractor if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Instruments of Service.

§ 2.1.5 The Owner shall furnish to the Architect and Contractor, within fifteen days after receipt of a written request, information necessary and relevant 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 provide information regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements.

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

§ 2.2.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the Budget for the Work; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's Budget for the Work, the Owner shall notify the Architect and Contractor. The Owner and the Architect and Contractor shall thereafter agree to a corresponding change in the Owner's Budget for the Work or in the Project's scope and quality.

§ 2.2.4 Except for permits and fees that are the responsibility of the Contractor under the GMP Documents, including those required under Section 9.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

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

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§ 2.2.6 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

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

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

ARTICLE 3 ARCHITECT

§ 3.1 GENERAL

§ 3.1.1 The Architect is the person or entity identified as such in this document and is referred to as if singular in number. The Architect shall be lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. The Architect shall designate in writing a representative who shall have express authority to bind the Architect with respect to all matters related to the Project. The term "Architect" means the Architect and the authorized representative.

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

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

§ 3.2 ARCHITECT'S GENERAL SERVICES

§ 3.2.1 The Architect shall assist the Owner in establishing a list of prospective contractors for the Project.

§ 3.2.2 The Architect shall manage the Architect's services, consult with the Owner and Contractor, research applicable design criteria, attend Project meetings, and report Project progress to the Owner.

§ 3.2.3 The Architect shall be entitled to rely on the accuracy and completeness of the Contractor's Estimates, as that term is defined in Section 4.2.3, as the Architect progresses with the preparation of the Criteria Design, Detailed Design and Implementation Documents. The Architect shall prepare, as an Additional Service, revisions required due to inaccuracies or incompleteness in the Contractor's Estimates. The Architect shall review the Contractor's Estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 3.2.4 The Architect shall, at appropriate times, contact the governmental authorities required to approve the GMP Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.2.5 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project. The Architect shall generate documents suitable for submission to the necessary governmental authorities.

ARTICLE 4 CONTRACTOR

§ 4.1 GENERAL

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

§ 4.1.2 If the employment of the Contractor is terminated, the Owner shall employ a successor contractor as to whom the Architect has no reasonable objection and whose status under the GMP Documents shall be that of the Contractor.

§ 4.2 GENERAL CONSULTATION RESPONSIBILITIES

§ 4.2.1 Throughout the development of the GMP Documents, the Contractor shall advise the Owner and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Contractor shall also provide recommendations on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, the Owner's Budget for the Work, and possible cost reductions.

§ 4.2.2 The Contractor shall assist the Owner in connection with the Owner's responsibility for obtaining approval for the Work from governmental authorities having jurisdiction over the Project.

§ 4.2.3 The Contractor shall provide estimating services throughout the design of the Project as specifically required in Articles 5, 6 and 7, and at other various times agreed to by the Owner, Architect and Contractor. The Contractor shall provide estimates of the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit (Contractor's Estimate). The Contractor's Estimate shall not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work, or other costs that are the responsibility of the Owner. The Contractor's Estimates shall increase in detail and refinement as the Architect progresses with the preparation of the Criteria Design, Detailed Design and Implementation Documents.

§ 4.2.3.1 In preparing the Contractor's Estimates, the Contractor shall include contingencies for design, procurement, and reasonable price escalation. The Contractor's Estimate shall be based on current area, volume or similar conceptual estimating techniques.

§ 4.2.4 For each of the Contractor's Estimates, provided pursuant to Section 4.2.3, the Contractor shall provide adequate detail to support the estimate. The Contractor shall submit its estimates for the Architect's review and the Owner's acceptance. The Contractor shall advise the Owner and Architect if it appears that any of Contractor's Estimates may exceed the Owner's most recent Budget for the Work and, in consultation with the Architect, make recommendations for corrective action.

§ 4.2.5 The Contractor does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price.

§ 4.2.6 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the GMP 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 GMP Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 4.2.6, 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.

ARTICLE 5 CONCEPTUALIZATION PHASE

§ 5.1 The Owner, Architect and Contractor shall review the program furnished by the Owner to ascertain the requirements of the Project and shall arrive at a mutual understanding of those requirements. The Architect shall present its preliminary evaluation to the Owner and Contractor and discuss possible alternative approaches to design

and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner and Contractor regarding the requirements of the Project.

§ 5.2 As soon as practicable, the Architect shall submit to the Owner and Contractor a schedule of the Architect's services for inclusion in the Project schedule. The schedule of the Architect's services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's review (2) for the performance of the Owner's consultants, and (3) for approval of submissions by authorities having jurisdiction over the Project.

§ 5.3 The Contractor shall prepare and periodically update a Project schedule in collaboration with the Architect. The Project schedule shall coordinate and integrate the Contractor's services, the Architect's services, and the Owner's responsibilities, and highlight items that could affect the Project's timely completion.

§ 5.4 Once the Owner, Architect and Contractor agree to the time limits established by the Project schedule, the Owner, Architect and Contractor shall not exceed them, except for reasonable cause.

§ 5.5 The Architect and Contractor shall provide a preliminary evaluation of the Owner's program and Budget for the Work, each in terms of the other as well as recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall take into consideration cost information, constructability, and procurement and construction scheduling issues. To the extent possible, the information shall be integrated into the Model.

ARTICLE 6 CRITERIA DESIGN PHASE

§ 6.1 The Architect, in consultation with the Contractor, shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 6.2 Based on the Owner's approval of the preliminary design, the Architect, in consultation with the Contractor, shall prepare Criteria Design Documents for the Owner's approval. The Criteria Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, and Models. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 6.2.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and Budget for the Work. The Owner may obtain other environmentally responsible design services as an Additional Service.

§ 6.2.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's schedule and Budget for the Work.

§ 6.3 During the Criteria Design Phase, the Architect shall meet with the Owner and Contractor as appropriate to the progress of the design to review the Criteria Design Documents as necessary.

§ 6.4 The Contractor shall obtain information from Subcontractors and material suppliers regarding proposed systems or products, including material procurement scheduling, product data sheets, life cycle and energy efficiency data, cost data necessary to validate estimates and schedules for their scopes of work, tolerances, and prefabrication opportunities.

§ 6.5 The Contractor, for the Architect's review and the Owner's acceptance, shall prepare a procurement schedule for items that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Contractor. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Contractor and the Contractor shall thereafter accept responsibility for them.

§ 6.6 At the conclusion of the Criteria Design Phase, the Owner, Architect and Contractor shall meet to review the Criteria Design Documents.

§ 6.7 Based upon the Criteria Design Documents, the Contractor shall update the Contractor's Estimate and Project schedule.

§ 6.7.1 If revisions to the Criteria Design Documents are required to comply with the Owner's Budget for the Work at the conclusion of the Criteria Design Phase, the Architect shall consult with the Owner and Contractor to determine appropriate solutions. The Architect shall then incorporate any agreed-upon revisions during the Detailed Design Phase.

ARTICLE 7 DETAILED DESIGN PHASE

§ 7.1 Based on the Owner's approval of the Criteria Design Documents, as well as the Owner's authorization of any adjustments in the Project requirements and the Owner's Budget for the Work pursuant to Section 2.2.3, the Architect, in consultation with the Owner and Contractor, shall prepare Detailed Design Documents for the Owner's approval. The Detailed Design Documents shall illustrate and describe the development of the approved Criteria Design Documents and shall consist of drawings, other documents and the Model.

§ 7.2 During the Detailed Design Phase, the Architect shall meet with the Owner and Contractor as appropriate and necessary to the progress of the design to review the Detailed Design Documents.

§ 7.3 Prior to the conclusion of the Detailed Design Phase, the Contractor shall furnish to the Owner and Architect a list of possible Subcontractors and material suppliers.

§ 7.4 The Contractor shall provide updates to the Contractor's Estimate and the Project schedule to ensure consistency with the Detailed Design Documents and to incorporate information received from Subcontractors and material suppliers pursuant to Section 6.4. The Contractor shall require any such Subcontractors and material suppliers to provide additional information as needed to coordinate systems, including mechanical, electrical, plumbing and structural, and to verify tolerances.

§ 7.4.1 If the Contractor's Estimate at the conclusion of the Detailed Design Phase exceeds the Owner's Budget for the Work, the Owner shall

- .1 give written approval of an increase in the Owner's Budget for the Work;
- .2 in consultation with the Architect and Contractor, revise the Project program, scope, or quality as required to bring the Contractor's Estimate within the Owner's Budget for the Work; or
- .3 implement any other mutually acceptable alternative.

§ 7.4.2 If the Owner chooses to proceed under Section 7.4.1.2, the Architect, without additional compensation, shall incorporate the agreed upon modifications as necessary to comply with the Owner's Budget for the Work, or the Owner's Budget for the Work as adjusted under Section 7.4.1.1. After incorporation of such modifications to comply with this Section 7.4.2, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that exceed the Owner's Budget for the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

§ 7.5 At the conclusion of the Detailed Design Phase, the Architect shall submit Detailed Design Documents consistent with the Owner's Budget for the Work to the Owner. The Owner, Architect and Contractor shall meet to review the Detailed Design Documents.

§ 7.6 Upon the Owner's acceptance of the Detailed Design Documents, the Contractor shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance.

§ 7.7 To the extent that the GMP Documents are anticipated to require further development in the Implementation Documents Phase, the Contractor shall provide in the Guaranteed Maximum Price proposal for such further development consistent with the GMP 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.

§ 7.8 The Contractor shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A complete list of the documents and information 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 Contractor's clarifications and assumptions, if any, with regard to the GMP Documents and information relied upon in preparation of the Guaranteed Maximum Price proposal.
- .4 The proposed Guaranteed Maximum Price, including a statement of the estimated cost organized by trade categories, allowances, contingencies, the Contractor's Fee, and other items that comprise the Guaranteed Maximum Price.
- .5 The anticipated date of Substantial Completion upon which the Guaranteed Maximum Price proposal is based, and a schedule for the issuance dates of the Implementation Documents upon which the anticipated Substantial Completion date relies.

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

§ 7.10 Once accepted by the Owner, the Guaranteed Maximum Price, including the written statement required under Section 7.8 as appropriate, shall be set forth in an amendment to the Owner-Contractor Agreement, a copy of which amendment the Owner shall provide to the Architect. Upon the Owner's acceptance of the Guaranteed Maximum Price proposal, the Detailed Design Documents upon which the approved Guaranteed Maximum Price is based shall become part of the GMP Documents.

§ 7.10.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Section 9.21.3.3.

§ 7.10.2 If no specific provision is made in the Contractor's Guaranteed Maximum Price for adjustment of the Contractor'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 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

ARTICLE 8 IMPLEMENTATION DOCUMENTS PHASE

§ 8.1 Based on the GMP Documents and the Guaranteed Maximum Price, the Architect and Contractor shall prepare Implementation Documents. The Implementation Documents shall illustrate and describe the further development of the approved GMP Documents and shall set forth in detail the requirements for the construction of the Work.

§ 8.2 The Contractor shall coordinate with Subcontractors and material suppliers to obtain finalized cost information and schedules for their scopes of work and to ensure that the Implementation Documents include sufficient and unambiguous information for completion of the Work.

§ 8.3 During preparation of the Implementation Documents, the Architect shall consider the Contractor's recommendations for substitutions, and shall incorporate that information, as well as cost or product data, into the Implementation Documents.

§ 8.4 The Architect and the Contractor shall incorporate into the Implementation Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 8.5 Pursuant to a schedule the Architect and Contractor agree to, the Contractor shall provide Shop Drawings and other submittals for the Architect's review and approval, and incorporation into the Implementation Documents. The review of such submittals shall be made pursuant to Section 9.12.

§ 8.6 The Owner and the Contractor shall agree, in writing, on the commencement date for construction of the Work. If the Owner and Contractor agree, the Contractor may begin construction of the Work during the Implementation Documents Phase, as appropriate.

§ 8.7 At the conclusion of the Implementation Documents Phase, the Owner, Architect and Contractor shall meet to review the Implementation Documents. Upon the Owner's approval of the Implementation Documents, they shall become part of the GMP Documents and shall take priority over the Detailed Design Documents.

ARTICLE 9 CONSTRUCTION PHASE

§ 9.1 GENERAL PROVISIONS

§ 9.1.1 The Contractor shall perform the Work in accordance with the GMP Documents.

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

§ 9.1.3 The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform its services in an expeditious and economical manner consistent with the Owner's interests.

§ 9.2 REVIEW OF GMP DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 9.2.1 The Contractor shall visit the site and become generally familiar with local conditions under which the Work is to be performed and correlate personal observations with requirements of the GMP Documents.

§ 9.2.2 Because the GMP Documents are complementary, the Contractor shall, before starting construction of each portion of the Work, carefully study and compare the various GMP Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.5, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. The Contractor shall promptly report to the Architect and Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

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

§ 9.2.4 Due to the responsibility the Contractor assumes throughout the development of the GMP Documents, neither the Owner nor the Architect shall be liable to the Contractor for damages resulting from errors, inconsistencies or omissions the Contractor reports pursuant to Section 9.2.2. However, if the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's requests for information pursuant to Section 9.2.3, the Contractor shall make Claims as provided in Article 13. If the Contractor fails to perform the obligations of either Sections 9.2.2 or 9.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations.

§ 9.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 9.3.1 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. The Contractor shall evaluate the jobsite safety thereof and shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures.

§ 9.3.2 The Contractor shall provide monthly written reports to the Owner and Architect on the progress of the entire Work. The Contractor 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.

§ 9.3.3 The Contractor 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 Contractor shall identify variances between actual and estimated costs and report the variances to the Owner and Architect at regular intervals.

§ 9.3.4 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.

§ 9.3.5 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.

§ 9.4 LABOR AND MATERIALS

§ 9.4.1 Unless otherwise provided in the GMP 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.

§ 9.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 9.21.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

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

§ 9.5 WARRANTY

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

§ 9.6 TAXES

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

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

§ 9.7.1 Unless otherwise provided in the GMP Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured and legally required at the time the Guaranteed Maximum Price is established.

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

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

§ 9.7.4 CONCEALED OR UNKNOWN CONDITIONS

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those upon which the parties relied in the development of the GMP Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the GMP Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If

either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 13.

§ 9.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the GMP Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 13.

§ 9.8 ALLOWANCES

§ 9.8.1 The Contractor shall include in the Contract Sum all allowances stated in the GMP 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.

§ 9.8.2 Unless otherwise provided in the GMP Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 9.8.2.1 and (2) changes in Contractor's costs under Section 9.8.2.2.

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

§ 9.9 SUPERINTENDENT

§ 9.9.1 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.

§ 9.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

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

§ 9.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 9.10.1 The Contractor shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the GMP 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 GMP Documents, and shall provide for expeditious and practicable execution of the Work.

§ 9.10.2 If the GMP Documents require submittals during the Construction Phase, the Contractor shall prepare a submittal schedule, promptly after the Owner's acceptance of the Guaranteed Maximum Price and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the GMP Documents require that the Contractor provide a submittal schedule and the Contractor fails

to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals. Shop Drawings, Product Data, Samples and similar submittals required during the Construction Phase are not GMP Documents.

§ 9.10.3 The Contractor shall perform the Work in general accordance with the most recent construction schedules submitted to the Owner and Architect.

§ 9.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the GMP Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved submittals provided during construction. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 9.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 9.12.1 Shop Drawings are drawings, diagrams, models, 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.

§ 9.12.2 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.

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

§ 9.12.4 The purpose of Shop Drawings, Product Data, Samples and similar submittals is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the GMP Documents for those portions of the Work for which the GMP Documents require submittals. Review by the Architect is subject to the limitations of Section 9.26.5.2. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the GMP Documents. Submittals that are not required by the GMP Documents may be returned by the Architect without action.

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

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

§ 9.12.7 The Contractor shall perform no portion of the Work that requires submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 9.12.8 The Work shall be in accordance with approved submittals.

§ 9.12.9 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.

§ 9.13 USE OF SITE

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

§ 9.14 CUTTING AND PATCHING

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

§ 9.14.2 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.

§ 9.15 CLEANING UP

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

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

§ 9.16 ACCESS TO WORK

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

§ 9.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the GMP 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.

§ 9.18 INDEMNIFICATION

§ 9.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 9.18.

§ 9.18.2 In claims against any person or entity indemnified under this Section 9.18 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 9.18.1 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.

§ 9.19 SUBCONTRACTORS

§ 9.19.1 DEFINITIONS

§ 9.19.1.1 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 GMP 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.

§ 9.19.1.2 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 GMP Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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

§ 9.19.2.1 Unless otherwise stated in the GMP Documents the Contractor, as soon as practicable after execution of the Contract, shall furnish in writing to the Owner and 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 Owner and Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that additional time is required for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 9.19.2.2 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.

§ 9.19.2.3 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.

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

§ 9.19.3 SUBCONTRACTUAL RELATIONS

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 GMP 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 GMP 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 GMP 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 GMP Documents and other documents to which the Subcontractor will be bound.

§ 9.19.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 9.19.4.1 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 7.2.2 of the Owner-Contractor Agreement and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

§ 9.19.4.2 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.

§ 9.19.4.3 Upon such assignment to the Owner under this Section 9.19.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

§ 9.20 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 9.20.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 9.20.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 13.

§ 9.20.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the GMP Documents in each case shall mean the Contractor who executes each separate contract.

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

§ 9.20.1.4 Unless otherwise provided in the GMP Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Contract.

§ 9.20.2 MUTUAL RESPONSIBILITY

§ 9.20.2.1 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 GMP Documents.

§ 9.20.2.2 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.

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

§ 9.20.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner, separate contractors as provided in Section 9.25.2.5.

§ 9.20.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 9.14.

§ 9.20.3 OWNER'S RIGHT TO CLEAN UP

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

§ 9.21 CHANGES IN THE WORK

§ 9.21.1 GENERAL

§ 9.21.1.1 Changes in the Work may be accomplished after execution of the Contract 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 Section 9.21 and elsewhere in the GMP Documents.

§ 9.21.1.2 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.

§ 9.21.1.3 Changes in the Work shall be performed under applicable provisions of the GMP 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.

§ 9.21.2 CHANGE ORDERS

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

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

§ 9.21.3 CONSTRUCTION CHANGE DIRECTIVES

§ 9.21.3.1 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.

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

§ 9.21.3.3 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 GMP 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 9.21.3.7.

§ 9.21.3.4 If unit prices are stated in the GMP 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.

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

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

§ 9.21.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Owner-Contractor Agreement, or if no such amount is set forth in the Owner-Contractor Agreement, a reasonable amount. In such case, and also under Section 9.21.3.3.3, 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 GMP Documents, costs for the purposes of this Section 9.21.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .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.

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

§ 9.21.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 13.

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

§ 9.21.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the GMP Documents. Prior to issuing a Minor Change, the Architect shall notify the Contractor of the nature, extent and anticipated time of issuance of the proposed directive. The Architect and Contractor shall make adjustments to the GMP Documents to reflect the proposed directive for the review of the Owner, Architect and Contractor. The Contractor should determine the effect of the proposed directive on the cost and time of completion of the Work and on the Contractor's ability to construct the work in accordance with the revised GMP Documents and provide appropriate recommendations to the Owner and Architect. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

§ 9.22 TIME

§ 9.22.1 DEFINITIONS

§ 9.22.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the GMP Documents for Substantial Completion of the Work after commencement of Construction.

§ 9.22.1.2 The date of Substantial Completion is the date certified by the Architect in accordance with Section 10.1.

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

§ 9.22.2 PROGRESS AND COMPLETION

§ 9.22.2.1 Time limits stated in the GMP Documents for the Substantial Completion of the Work are of the essence of the Contract. By executing the GMP Amendment the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 9.22.2.2 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.

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

§ 9.22.3 DELAYS AND EXTENSIONS OF TIME

§ 9.22.3.1 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 that 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.

§ 9.22.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 13.

§ 9.22.3.3 This Section 9.22.3 does not preclude recovery of damages for delay by either party under other provisions of the GMP Documents.

§ 9.23 PAYMENTS

§ 9.23.1 CONTRACT SUM

The Contract Sum is the total amount payable by the Owner to the Contractor for performance of the Work under the GMP Documents, subject to the Guaranteed Maximum Price.

§ 9.23.2 SCHEDULE OF VALUES

The Contractor shall submit to the Architect, before the first Application for Payment submitted for construction of the Work, a schedule of values allocating the entire Contract Sum to the various portions of the Work and 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.

§ 9.23.3 APPLICATIONS FOR PAYMENT

§ 9.23.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.23.2, for completed portions of the Work. 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 shall reflect retainage if provided for in the GMP Documents.

§ 9.23.3.1.1 As provided in Section 9.21.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

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

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

§ 9.23.3.3 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.

§ 9.23.4 CERTIFICATES FOR PAYMENT

§ 9.23.4.1 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 9.23.5.1.

§ 9.23.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the GMP Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the GMP Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the GMP 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.

§ 9.23.4.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 9.23.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.23.5.1 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 9.23.4.2 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 9.23.4.1. 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 9.3.2, 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 damage to the Owner or a separate contractor;
- .5 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
- .6 repeated failure to carry out the Work in accordance with the GMP Documents.

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

§ 9.23.5.3 If the Architect withholds certification for payment under Section 9.23.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.23.6 PROGRESS PAYMENTS

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

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

§ 9.23.6.3 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.

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

§ 9.23.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.23.6.2, 9.23.6.3 and 9.23.6.4.

§ 9.23.6.6 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 GMP Documents.

§ 9.23.6.7 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.

§ 9.23.7 FAILURE OF PAYMENT

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

§ 9.23.8 PARTIAL OCCUPANCY OR USE

§ 9.23.8.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the GMP Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 10.1.4. 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.

§ 9.23.8.2 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.

§ 9.23.8.3 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 GMP Documents.

§ 9.24 PROTECTION OF PERSONS AND PROPERTY

§ 9.24.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 9.24.2 SAFETY OF PERSONS AND PROPERTY

§ 9.24.2.1 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.

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

§ 9.24.2.3 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.

§ 9.24.2.4 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.

§ 9.24.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the GMP Documents) to property referred to in Sections 9.24.2.1.2 and 9.24.2.1.3 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 9.24.2.1.2 and 9.24.2.1.3, 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 9.18.

§ 9.24.2.6 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.

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

§ 9.24.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If Owner or Contractor suffers injury or damage to person or property because of an act or omission of the other, 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 within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other to investigate the matter.

§ 9.24.3 HAZARDOUS MATERIALS

§ 9.24.3.1 The Contractor is responsible for compliance with any requirements included in the GMP Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the GMP Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl

(PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

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

§ 9.24.3.3 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 9.24.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 9.24.3.4 The Owner shall not be responsible under this Section 9.24.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the GMP Documents. The Owner shall be responsible for materials or substances required by the GMP Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 9.24.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 9.24.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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

§ 9.24.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 13 and Section 9.21.

§ 9.25 UNCOVERING AND CORRECTION OF WORK

§ 9.25.1 UNCOVERING OF WORK

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

§ 9.25.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the GMP 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 GMP Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 9.25.2 CORRECTION OF WORK

§ 9.25.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 9.25.2.2 AFTER SUBSTANTIAL COMPLETION

§ 9.25.2.2.1 In addition to the Contractor's obligations under Section 9.5, 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 9.23.8.1, or by terms of an applicable special warranty required by the GMP Documents, any of the Work is found to be not in accordance with the requirements of the GMP 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 9.25.2.7.

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

§ 9.25.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 9.25.2.

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

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

§ 9.25.2.5 Nothing contained in this Section 9.25.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the GMP Documents. Establishment of the one-year period for correction of Work as described in Section 9.25.2.2 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 GMP 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.

§ 9.25.2.6 OWNER'S RIGHT TO STOP THE WORK

Upon commencement of the Work, if the Contractor fails to correct Work that is not in accordance with the requirements of the GMP Documents as required by Section 9.25.2 or repeatedly fails to carry out Work in accordance with the GMP 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 9.20.1.3.

§ 9.25.2.7 OWNER'S RIGHT TO CARRY OUT THE WORK

Upon commencement of the Work, if the Contractor defaults or neglects to carry out the Work in accordance with the GMP Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, 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.

§ 9.25.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the GMP 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.

§ 9.26 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

§ 9.26.1 The Architect shall provide administration of the Contract as set forth below.

§ 9.26.2 The Architect shall advise and consult with the Owner during the Construction Phase. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the GMP Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 9.26.3 The Architect responsibility to administer the Contract terminates on the date the Architect issues the final Certificate for Payment.

§ 9.26.4 EVALUATIONS OF THE WORK

§ 9.26.4.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 1.5.4 in the Agreement between the Owner and Architect, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the GMP Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the GMP Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the Work.

§ 9.26.4.2 The Architect has the authority to reject Work that does not conform to the GMP Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the GMP Documents, 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.

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

§ 9.26.4.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the GMP Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the GMP Documents.

§ 9.26.5 SUBMITTALS

§ 9.26.5.1 The Architect shall review the Contractor's submittal schedule, if any, and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 9.26.5.2 In accordance with the Architect-approved submittal schedule, the Architect shall 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 GMP Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. 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.

§ 9.26.5.3 If the GMP Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 9.26.5.4 The Architect shall review and respond to requests for information about the GMP Documents. The Architect shall set forth in the GMP Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 9.26.5.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the GMP Documents.

ARTICLE 10 CLOSEOUT PHASE

§ 10.1 PROJECT COMPLETION

§ 10.1.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the GMP Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the GMP Documents.

§ 10.1.2 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 GMP Documents so that the Owner can occupy or utilize the Work for its intended use.

§ 10.1.3 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the GMP Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 10.1.4 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 GMP Documents.

§ 10.1.5 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 GMP 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.

§ 10.1.6 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the GMP 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.

§ 10.1.7 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the GMP Documents.

§ 10.1.8 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

§ 10.1.9 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 GMP Documents.

§ 10.2 FINAL COMPLETION AND FINAL PAYMENT

§ 10.2.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the GMP 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 GMP 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 10.2.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 10.2.2 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 GMP 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 GMP 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.

§ 10.2.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the GMP 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.

- § 10.2.4 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 GMP Documents; or
 - .3 terms of special warranties required by the GMP Documents.

§ 10.2.5 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 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 and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 9.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the GMP 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 the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the GMP Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. 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. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the GMP Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the GMP 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 10.2 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

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

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

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

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

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.23.8 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

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

§ 11.3.3 LOSS OF USE INSURANCE

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

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Owner shall, if possible, include such insurance, and the cost thereof shall be charged to the Contractor by appropriate Change Order.

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of

Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

§ 11.3.7 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 Section 9.20, if any, and any of their Subcontractors, Sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have 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 Section 9.20, if any, and the Subcontractors, Sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

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

§ 11.3.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such 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 Section 9.21.

§ 11.3.10 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 in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the GMP Documents on the date of execution of the Contract.

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

ARTICLE 12 MISCELLANEOUS PROVISIONS

§ 12.1 SUCCESSORS AND ASSIGNS

§ 12.1.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the GMP Documents. Except as provided in

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Section 12.1.2, 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.

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

§ 12.2 WRITTEN NOTICE

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

§ 12.3 RIGHTS AND REMEDIES

§ 12.3.1 Duties and obligations imposed by the GMP 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.

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

§ 12.4 TESTS AND INSPECTIONS

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

§ 12.4.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 12.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 12.4.3, shall be at the Owner's expense.

§ 12.4.3 If such procedures for testing, inspection or approval under Sections 12.4.1 and 12.4.2 reveal failure of the portions of the Work to comply with requirements established by the GMP 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.

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

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

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

§ 12.5 INTEREST

Payments due and unpaid under the GMP 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.

§ 12.6 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with Article 13 within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 12.6.

ARTICLE 13 CLAIMS AND DISPUTES

§ 13.1 CLAIMS

§ 13.1.1 DEFINITION

A Claim is a demand or assertion by the Owner, or Contractor seeking, as a matter of right, payment of money, or other relief with respect to disputes and matters in question between arising out of or relating to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 13.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 13.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.23.7 and Article 7 of the Owner-Contractor Agreement, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the GMP Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 13.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 9.24.4.

§ 13.1.5 CLAIMS FOR ADDITIONAL TIME

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

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

§ 13.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to the 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 the termination of the Owner-Contractor Agreement. Nothing contained in this Section 13.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the GMP Documents.

§ 13.2 INITIAL DECISION

§ 13.2.1 Claims arising after the commencement date of the Work, excluding those arising under Sections 9.24.3, 9.24.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Owner-Contractor Agreement. Except for those Claims excluded by this Section 13.2.1, an initial decision shall be required as a condition precedent to mediation of any such Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

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

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

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

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

§ 13.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 13.2.6.1.

§ 13.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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

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

§ 13.3 MEDIATION

§ 13.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Project except those waived as provided for in Sections 10.2.4, 10.2.5, and 13.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 13.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Owner-Contractor Agreement. A request for mediation

shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 13.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

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

§ 13.4 ARBITRATION

§ 13.4.1 Any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the Owner and Contractor mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Owner-Contractor Agreement. A demand for arbitration shall be made in writing, delivered to the other parties, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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

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

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

§ 13.4.4 CONSOLIDATION OR JOINDER

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

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

§ 13.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 13.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under the Owner-Contractor Agreement.