



# AIA® Document A201™ – 2007

## General Conditions of the Contract for Construction

### for the following PROJECT:

*(Name and location or address)*

Self-Provisioned Fiber Project and Services Provided over Third Party Networks

### THE OWNER:

*(Name, legal status and address)*

Board of Education of the Centerville City School District  
111 Virginia Avenue  
Centerville, Ohio 45458

### THE ARCHITECT:

*(Name, legal status and address)*

Levin Porter Architects  
3011 Newmark Drive  
Miamisburg, Ohio 45342

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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 BASIC DEFINITIONS

#### § 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are defined and enumerated in the Agreement between the Owner and Contractor.

#### § 1.1.2 THE CONTRACT

The Contract Documents form the Contract. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor except as set forth in Sections 5.3 and 5.4 or (3) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of Contractor's obligations under the Contract intended to facilitate performance of the Architect's duties.

#### § 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. The Contractor acknowledges and agrees that the Contract Documents are sufficient to provide for the completion of the Work and include Work, whether or not shown or described, which reasonably may be inferred to be required or useful for the completion of the Work in accordance with applicable laws, codes, and customary standards of the construction industry.

The Contractor shall familiarize itself with the Contract Documents and complete the Work intended to be described and shall not avail itself of any manifest error or omission should such exist.

#### § 1.1.4 THE PROJECT

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

#### § 1.1.5 THE DRAWINGS

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

#### § 1.1.6 THE SPECIFICATIONS

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

#### § 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service include, but are not limited to, studies, surveys, models, sketches drawings, specifications (including the Drawings and Specifications as defined herein), and other similar materials.

#### § 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2.

#### § 1.1.9 PROJECT MANUAL

The term "Project Manual" means a volume assembled for the Work which may include sample forms, Conditions of the Contract and Specifications.

#### § 1.1.10 ARCHITECT

The term "Architect" means the person providing professional design services for the Project, including that person's authorized representative. Professional design services include services within the scope of practice of an architect or

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landscape architect registered under Ohio Revised Code Chapter 4703 or a professional engineer or surveyor registered under Ohio Revised Code Chapter 4733.

### § 1.1.11 MISCELLANEOUS DEFINITIONS

- .1 Where "complete" is used, it shall mean complete with connections, supports, attachments, and incidental items necessary for a finished and properly operating assembly or installation.
- .2 The term "connect" means to bring utility service(s) to point of installation and make final connections to the service(s) to the installed equipment, and to provide miscellaneous auxiliary appurtenances necessary to make operable for its intended use.
- .3 The term "furnish" means to supply (only) to another party for their use of installation, including cost of delivery and unloading at the job site.
- .4 The term "install" means to distribute, uncrate, assemble and fix into the intended final positions, complete and ready for intended service or use, the Contractor to provide all operations connected with installation including all reasonably inferable and necessary miscellaneous hardware, accessories, rigs, testing, supports and supplies required to anchor and support securely, place in operation, clean up, and dispose of rubbish.
- .5 The terms "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall mean that which the Contractor knows (or should know), recognizes (or should recognize) and discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor exercising the care, skill, and diligence required of the Contractor by the Contract Documents.
- .6 The term "or equal" means an equal approved in writing by the Architect.
- .7 The term "product" as used herein includes materials, systems, and equipment.
- .8 The term "provide" means to furnish, install, connect, complete, test, place in operation and service, including, as applicable, all connections to utilities or service, complete anchorage and suspension, fastening or anchor devices, controls, trim, supports, operation and other related items, unless specified otherwise.
- .9 The terms "remove and reinstall" shall mean remove existing, store to prevent damage, clean, prepare surfaces, and reinstall within Work.
- .10 The term "replace" unless otherwise specifically noted, shall mean remove existing and provide new.
- .11 Where "request", "approval", "satisfactory", "adequate", "proper", "as directed" and similar words appear, it is the request, approval, or satisfaction of the Architect that is intended.
- .12 The term "supplier" as used herein, includes a firm or organization furnishing or delivering products directly to the job site, and because of such direct delivery, could be construed under the lien laws of the State of Ohio as having lien rights with respect to the Project.

### § 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary and reasonably inferable for the proper execution and completion of the Work by the Contractor, whether or not expressly shown or described. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Architect in dividing the Work on the Project among separate Contractors, nor shall it control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Whenever a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other standards, the Contractor shall present such documents and information from the manufacturer when requested by the Architect or required in the Specifications, certifying the product complies with its particular Standard or Specification. When requested by the Architect or specified, support test data shall be submitted to substantiate compliance.

**§ 1.2.4** When a duplication of material or equipment occurs in the Drawings or the Specifications by assignment of Work to a separate contract add "or" to end of "contract", each Contractor shall be deemed to have bid or to have submitted a proposal on the basis of each furnishing such material or equipment. The Architect will decide which Contractor(s) shall furnish the same and which contract amount shall be adjusted for not incorporating such material or equipment into the Project.

### **§ 1.3 CAPITALIZATION**

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

### **§ 1.4 INTERPRETATION**

In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The use of the word "including," when following any general statement, term, or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term, or matter.

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

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

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

**§ 1.5.3** The Owner alone owns all Project-related documents, including those in electronic form, prepared by the Contractor and Subcontractors, and every right, title, and interest therein from the moment of creation. The Contractor must execute and deliver and cause its employees and agents and all Subcontractors to execute and deliver, to the Owner any transfers, assignments, documents, or other instruments (if any) necessary to vest in the Owner complete right, title, interest in and ownership of the Contractor's documents. The Contractor may retain copies, including reproducible copies, of the Contractor's documents for information, reference, and performance of the Work. The submission or distribution of the Contractor's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not a waiver of the Owner's reserved rights in the Contractor's documents. Any unauthorized use of the Contractor's documents shall be at the sole risk of the entity making the unauthorized use.

### **§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM**

The Owner, at its option, may elect at its sole discretion to provide or cause to be provided to Contractor electronic files, including, but not limited to, Revit, Computer-Aided Design ("CAD") or Building Information Modeling ("BIM") files (collectively "Electronic Files"). It is understood that Electronic Files are provided solely for the Contractor's convenience and use related to the Project, and any use of the Electronic Files shall be at the sole risk of the Contractor. The Electronic Files are not products, and the Contractor shall not use the Electronic Files for any purpose other than as a convenience for preparing Shop Drawings, as-built drawings, or fabrication data for components, systems, and assemblies intended solely for use on the Project. The Contractor shall indemnify and hold harmless the Owner and Architect from and against all claims, damages, losses, and expenses (including, but not limited to, the fees and charges of engineers, architects, attorneys, and other professionals) arising out of, or related to

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the Contractor's or Subcontractor's use of the Electronic Files. The Owner and the Architect make no warranties, either express or implied, of the merchantability or fitness of the Electronic Files for any particular purpose. The Contractor understands and accepts that the Electronic Files may deteriorate or be inadvertently or otherwise modified without authorization of the Owner or the Architect, and the Owner and the Architect make no representations as to compatibility, usability, or readability of the Electronic Files resulting from the use of software, application packages, operating systems, or computer hardware differing from those used to create the Electronic Files. The Contractor alone is responsible to check, verify, and otherwise confirm the accuracy of data on the Electronic Files. In the event of a conflict between the Contract Documents and the Electronic Files, the Contract Documents shall control, take precedence over, and govern the Electronic Files. Contractor shall additionally follow any other protocols governing the Electronic Files as may be established by the Owner and Architect.

## **ARTICLE 2 OWNER**

### **§ 2.1 GENERAL**

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative. The Owner's representative shall only have such authority as is expressly authorized by the Owner's governing board and as is permitted under the laws of the State of Ohio. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

*(Paragraph deleted)*

### **§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER**

**§ 2.2.1** At the time of the execution of the Agreement, the Owner will provide the Contractor with a certificate, required by law, certifying as to the availability of funds to pay the Contract Sum, and the Owner's total liability under the Contract will be limited to the amount certified. Under no circumstances will the officers, employees, board members, or agents of the Owner be personally liable for any obligations or claims arising out of or related to the Contract.

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

**§ 2.2.3** The Owner shall not be responsible for furnishing surveys (unless required for the execution of the Work, requested by the Contractor in writing, and not otherwise required of the Contractor) or other information as to the physical characteristics of, legal limitations of, or utility locations for the Project site, but as necessary for the Work, shall furnish or cause to be furnished to the Contractor a legal description of the Project site, which shall not constitute one of the Contract Documents. The Contractor shall confirm the location of each utility, shall relocate or dispose of each on-site utility and shall cap each utility as required by the Work or the Specifications. The Contractor shall not be entitled to additional compensation resulting from its failure to confirm the location of the site utilities or existing structures.

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

**§ 2.2.5** Contractor may purchase copies of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

### **§ 2.3 OWNER'S RIGHT TO STOP THE WORK**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2, fails or refuses to provide a sufficient workforce, fails to follow the directives of the Architect and/or Owner, or otherwise fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. The rights of the Owner under this Section 2.3 are in addition to Owner's rights and remedies contained elsewhere in the Contract Documents.

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## § 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in any respect in accordance with the Contract Documents and fails to correct such default or neglect within three (3) business days after written notice thereof from the Architect or the Owner (or such additional time as granted in writing by Owner) following such notice to the satisfaction of the Architect and the Owner, then the Owner may, upon written notice to the Contractor and without prejudice to the other remedies the Owner may have, correct such deficiencies. If such default or neglect is an emergency and/or results in a threat to the safety of persons or property, the Contractor shall immediately commence to correct such default or neglect upon receipt of written or oral notice thereof, and if Contractor does not immediately commence correction of such default or neglect, or if Contractor is not available to correct such default or neglect, then Owner may correct the deficiencies. The Contractor shall bear the costs of correcting such deficiencies including compensation for the Architect's additional services made necessary by such default, neglect, or failure and the Owner's administrative and legal expense, including the time of the Owner's personnel and consultants in dealing with such deficiencies. A Change Order shall be issued deducting from the payments then or thereafter due the Contractor the costs of correcting such deficiencies. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner and the Contractor's surety shall be responsible for the deficiency if the Contractor should fail to pay the deficiency. The rights of Owner under this Section 2.4 are in addition to the rights of Owner as set forth in Articles 12 and 14 herein.

## ARTICLE 3 CONTRACTOR

### § 3.1 GENERAL

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

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

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

§ 3.1.4 The Contractor shall attend preconstruction meetings with representatives of the Architect and Owner. The Contractor shall have any of its Subcontractors and suppliers at the meeting as necessary or as requested by the Architect. The preconstruction meetings will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the Project. The date, time, and place of the meetings will be designated by the Owner.

### § 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited and carefully and diligently investigated the site and surrounding area, become thoroughly familiar with local conditions under which the Work is to be performed, including generally occurring climatic conditions, and correlated personal observations with requirements of the Contract Documents. By executing the Agreement, the Contractor certifies that it has evaluated and satisfied itself as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas, including but not limited to utilities, access restraints to the Project site and access restraints to neighboring facilities, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools, and equipment, and (v) other similar issues. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section 3.2.1.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. The Contractor

shall satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, Contractor shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner. These obligations are for the purpose of facilitating coordination and construction by the Contractor, for determining that the Work is constructible, for determining if the Work of the Contractor is coordinated in the Contract Documents with the Work of separate contractors under a separate contract with the Owner, and for verifying that field conditions, including the Work of other Contractors, are consistent with the information in the Contract Documents and ready for Work and are not for the purpose of discovering errors, omissions, or inconsistencies in the design information contained in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information. The Owner assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available to the Contractor, nor does the Owner assume responsibility for any understanding reached or representation made concerning conditions which can affect the Work by any of its officers or agents before the execution the Contract, unless that understanding or representation is expressly stated in this Contract.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information. Proceeding without providing such request shall make the Contractor responsible for any costs and expenses incurred by the Contractor related to the claimed deficiencies.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor, within seven (7) business days after the Architect issues its response, shall give the Owner written notice of the Contractor's position, and not proceed with the subject Work without first receiving a Construction Change Directive or Change Order related to it. The Contractor waives its right to an adjustment of the Contract Sum or Contract Times on account of such clarifications or instructions by: starting the Work which is the subject of the such clarifications or instructions; or failing to give the notice within seven (7) business days after receiving such clarifications or instructions.

**§ 3.2.5** The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for evaluating and responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents and/or where the requested information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation.

**§ 3.2.6** If the Architect does not specify a form for Contractor to submit a request for information, then Contractor shall utilize the AIA Document G-716.

### **§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention and shall provide such levels of supervision as is necessary to prosecute the Work and coordinate with other trades. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors, Sub-subcontractors and material suppliers of any tier 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. The Contractor shall be responsible for scheduling and coordinating the work of its Subcontractors and material

suppliers. This section shall apply with equal force and effect regardless of whether any Subcontractors are selected by the Contractor or assigned by the Owner.

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

**§ 3.3.3** If any of the Work is required to be inspected or approved by any public authority, then the Contractor shall cause such inspection or approval to be performed. No inspection performed or failed to be performed by the Owner hereunder shall be a waiver of any of the Contractor's obligations hereunder nor shall it be construed as an approval or acceptance of the Work or any part thereof.

### **§ 3.4 LABOR AND MATERIALS**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, enclosed storage and other facilities and services necessary for proper execution and completion of the Work, including but not limited to field offices, toilets, other trailers, or buildings, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Responsibility for ensuring that materials are fabricated accurately to field measurements shall be that of the Contractor, who shall pay all costs involved in replacing or correcting any such improperly fitting materials. The Contractor shall use best efforts to conserve any utilities furnished by Owner.

**§ 3.4.2** Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, which the Owner may withhold in its sole discretion, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. The Contractor shall provide all data, information, regulations and certifications required by Architect and Owner in evaluating the proposed substitution. The Owner shall be entitled to reimbursement from the Contractor for amounts paid for reviewing the Contractor's proposed substitutions and making agreed-upon changes in the Drawings and Specifications resulting from such substitutions.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them and shall promptly remove and replace such persons with a competent employee. Informational picketing shall not justify any work stoppage.

**§ 3.4.4** Contractor shall perform or cause to be performed an Ohio Bureau of Criminal Investigation and Identification and Federal Bureau of Investigation criminal background check of any person whether an employee of Contractor or of any Subcontractor, that will perform Work or services or otherwise be present at the Project site and within the proximity of minors. Prior to the performance of any services by such employees, the criminal background check shall be performed and completed at Contractor's sole cost and expense. No person shall be employed on site by Contractor or by any Subcontractor who has been found guilty of any of the criminal offenses enumerated in Ohio Revised Code Section 3319.39 or any equivalent provisions under Federal law or the laws of any of the other states. Contractor shall remove (and shall cause its subcontractor to remove) any person from the Project site found (during the criminal background check or otherwise) to have violated any of the offenses listed in Section 3319.39 of the Ohio Revised Code or equivalent provisions thereof under Federal law or the laws of any of the other states. The foregoing shall not (i) be cause for any claim against the Owner for any reason, including without limitation, interference or delay, and (ii) excuse Contractor or any Subcontractor from meeting the construction schedule.

### **§ 3.5 WARRANTY**

**§ 3.5.1** In addition to any other warranties, guarantees, or obligations set forth in the Contract Documents or applicable as a matter of law and not in limitation of the terms of the Contract Documents, the Contractor warrants that:

- .1 The Work and materials and equipment incorporated into the Work will be new except for such materials that the Architect authorizes in writing that may be removed and reinstalled.
- .2 The Work and materials and equipment incorporated into the Work will be of good quality and free from defects, including defects in the workmanship or materials.
- .3 The Work and equipment incorporated into the Work will be fit for the purpose for which they are intended.
- .4 The Work and materials and equipment incorporated into the Work will be merchantable.

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- .5 The Work and materials and equipment incorporated into the Work will conform in all respects to the Contract Documents.

Work, materials, or equipment not conforming to these requirements shall be considered defective.

**§ 3.5.2** In addition to the warranties set forth above, Contractor shall assign to Owner any and all manufacturer's or installer's warranties for equipment or materials not manufactured by Contractor and provided as part of the Work, to require all warranties to be executed in writing for the benefit of the Owner, and to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

**§ 3.5.3** The Contractor's warranty excludes remedy for damage or defect caused by abuse, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage.

### **§ 3.6 TAXES**

The Contractor shall pay sales, consumer, use, commercial activity, 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. Owner will provide to Contractor, upon request, a completed State of Ohio Sales and Use Tax Construction Contract Exemption Certificate.

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

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Owner through the Architect shall secure and pay for the required plan approvals from the building department having jurisdiction over the Project. Contractor shall secure and pay for all other permits, fees, charges, assessments, licenses, and inspections by utilities or government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded, provided that Owner shall bear the costs where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

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

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

**§ 3.7.4 Subsurface, Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist, not reasonably contemplated, and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than seven (7) calendar days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If Contractor disputes the Architect's determination or recommendation, the Contractor may proceed as provided in Article 15, and the time limit for initiating a Claim as set forth in Section 15.1.2 herein related to subsurface, concealed or unknown conditions begins to run on the date the Architect issues its determination or recommendation.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall

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continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### § 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but shall not be chargeable against the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2. The Contractor shall obtain a Change Order before incurring any costs in excess of an allowance.

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

### § 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent 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.

§ 3.9.2 If not already approved in advance by Owner, the Contractor, upon execution of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of the proposed superintendent. The Architect may reply within seven (7) 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 seven (7) day period shall constitute notice of no reasonable objection. The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection.

§ 3.9.3 The Architect and Owner shall have the right to require the Contractor to remove a superintendent from the Project whose performance is not satisfactory, and to replace the superintendent with a superintendent who is satisfactory to the Architect and Owner. The Contractor shall not replace the superintendent without the consent of the Architect and the Owner, except with another superintendent who is satisfactory to the Architect and Owner. The Contractor shall promptly provide any information requested by Owner and Architect related to the replacement superintendent.

### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

*(Paragraphs deleted)*

§ 3.10.1 The Contractor is responsible for scheduling the Work, and coordinating the Subcontractors. If not already provided to Owner, the Contractor, not later than three (3) days following commencement of the Work, shall prepare and submit for the Owner's and Architect's approval a Contractor's construction schedule for the Work. The schedule shall be in such detail satisfactory to the Owner and the Architect and shall (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction, milestone dates and occupancy; (iii) identify activities and durations for review and approval of Shop Drawings and other action submittals, fabrication and review of mock-up Work, coordination drawings, product review and procurement, fabrication, shop inspection and delivery, including, but not limited to, lead time, coordination drawing delivery, substantial completion inspection, completion or correction of deficient items of Work, Project close-out requirements, final completion and occupancy requirements; (iv) identify disruptions and shutdowns due to other operations; (v) identify the critical path of the Work; (vi) identify the crew size and total resource hours for each activity in the schedule; and (vii) set forth dates that are critical in ensuring the timely and orderly commencement and completion of the Work in accordance with the requirements of the Contract Documents. The Contractor shall sign the schedule indicating the Contractor's approval. If the schedule is not accepted by the Owner and Architect, the

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Contractor shall promptly revise the schedule in accordance with the recommendations of the Owner and Architect and resubmit to Owner and Architect for acceptance. The schedule shall not exceed time limits established under the Contract Documents, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

**§ 3.10.1.1** In certain occupied buildings, tasks might be of such a nature that noise and vibration cannot be tolerated. In such spaces, Work shall be scheduled for other than normal working hours. The Contractor is cautioned that weekend or overtime work, if required to avoid such noise and vibration, shall be performed at no additional cost. Permission to work other than standard hours shall be received from the Owner prior to the occurrence. Weekend and overtime Work shall be reflected in the Construction Progress Schedule.

**§ 3.10.2** The Contractor shall provide weekly progress reports to the Owner and Architect which shall include recommendations for adjusting the construction schedule to meet milestone completion, Substantial Completion and final completion dates, provided that Contractor may provide the reports at different intervals if approved in writing by Owner. In the event that critical path activities, schedule milestone completion dates, Substantial Completion or final completion dates will not be met, Contractor shall devise an affirmative time recovery plan acceptable to the Owner and Architect to avoid or minimize any delay. Such a plan may include, without limitation, increasing the Contractor's workforce in such quantities as will eliminate the backlog of Work, increasing the number of working hours per shift, shifts per workday, workdays per week, the amount of construction equipment, or any combination thereof, rescheduling of activities to achieve maximum practical concurrency of Work efforts and, if appropriate, time extensions.

**§ 3.10.3** The Contractor shall update on a weekly basis the construction schedule consistent with time limits established under the Contract Document and shall obtain the Owner's and Architect's approval, provided that Contractor may provide the updates at different intervals if approved in writing by Owner. The updated construction schedule shall show all changes to the previous schedule. The updated construction schedule shall be signed by the Contractor and shall serve as an affirmation that the Contractor agrees to and can meet the requirements of the updated construction schedule.

**§ 3.10.4** Free float and total float are resources of the Project, and the use of float associated with an activity is not permitted without the concurrence of the Owner and the Architect. The Contractor shall exhaust existing float before claiming additional time for a Change Order, or show that it is not possible to use float to cover the requirements of the Change Order.

**§ 3.10.5** The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules and the Contractor shall coordinate its Work with the activities of the Owner's own forces and of separate Contractors. The Contractor shall make any revisions to the construction schedule in order to coordinate its Work as required by this Section.

**§ 3.10.6** The Contractor shall lay out and install its Work at such time or times and in such manner as not to delay or interfere with the carrying forward of the Work of separate contractors, and 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. The Contractor shall connect and coordinate the Contractor's construction and operations with that of the Owner and other contractors as required by the Contract Documents and construction schedule.

**§ 3.10.7** 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.

**§ 3.10.8** The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor retained by the Owner and not under the Contractor's control because of the Contractor's delays, improperly timed activities or defective construction including acceleration costs provided that Owner notifies Contractor of the need to coordinate its work with that of the separate contractor. If such other separate contractors initiate legal or other

proceedings against the Owner on account of damage alleged to have been caused by the Contractor, and if judgment or award against the Owner arises therefrom, the Contractor shall pay or satisfy it and shall reimburse the Owner for attorneys' fees and court or other costs which the Owner has incurred over and above those paid for directly by the Contractor.

### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE

Contractor shall maintain at the site for the Owner one copy of the Drawings; Specifications; Addenda; accurate, current and reproducible as-built drawings (showing Work as actually performed, variations from the original Contract Documents and the location of any concealed and/or buried items, utilities, mechanical or electrical systems and components); Change Orders and other Modifications and all back up data; a record of changes made to the Specifications; and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals in good order and marked currently to indicate field changes and selections made during construction. Contractor shall also maintain at the site: a daily log in which it has recorded Project related information, including but not limited to, weather, number of workers on site, identification of equipment, Work accomplished, problems encountered and other similar relevant Project data; manufacturers' installation, operating and/or maintenance instructions or requirements, certificates and warranties; any special guarantees or warranties required by the Contract Documents; all the Contractor's communications, including but not limited to letters, memoranda, e-mails, invoices and bills of lading, arising out of or related to the Project with the Architect, Owner, and/or its subcontractors, materialmen and/or employees; assignment of all guarantees or warranties from Subcontractors, vendors, suppliers or manufacturers; a list of the names, addresses and telephone numbers of all Subcontractors and any other persons providing guarantees and warranties; quality control procedures and documents related thereto; and the payroll reports for its employees and the employees of its Subcontractors working on the Project. These shall be available to the Architect and Owner at all times and shall also be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.11.1 If the Project is designed and constructed under the LEED® ("Leadership in Energy and Environmental Design") program developed by the U.S. Green Building Council or another rigorous rating system used to facilitate achievement of sustainability goals for the Project, the Contractor shall provide submittals certifying achievement of sustainable design rating system criteria for verification by a third party, and the submittals shall be provided in accordance with any deadlines set forth in the schedule and Contract Documents. In the absence of schedules or deadlines, the Contractor will submit the documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or separate contractors. The Contractor grants to the Architect and Owner the right to submit the Contractor's submittals to the rating system as required in order to achieve or maintain the sustainability goal.

### § 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents, in accordance

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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. The Contractor shall pay all costs incurred by the Architect and Owner for attendant delay, interference, hindrance or disruption of the Project due to (i) review of submittals out of sequence from the agreed-upon schedule and/or (ii) due to excessive re-submittals without fault of the Architect. Unless otherwise provided in the Contract Documents, re-submittals in excess of one (1) without fault of the Architect or Owner shall be deemed excessive. If the Shop Drawings or other submittals show variations from the requirements of the Contract Documents, the Contractor shall specify such variations in the Contractor's letter of submittal to the Architect accompanying the submittal. Variations must be approved in writing.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Architect's review shall not extend to means, methods, manners, techniques, field measurements, sequences or procedures of construction, or to safety precautions or incident programs.

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

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

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

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

**§ 3.12.11** Unless otherwise expressly provided in the Contract Documents, the Contractor shall provide typed or printed instructions covering the operation, maintenance and cleaning of each item of equipment furnished in a notebook submitted to Architect for review and for transmittal to Owner.

### § 3.13 USE OF SITE

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

§ 3.13.2 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

§ 3.13.3 Without limitation of any other provision of the Contract Documents, the Contractor shall use best efforts to minimize any interference with the occupancy or beneficial use of (i) any areas and buildings adjacent to the site of the Work and (ii) the Project site and any buildings located thereon in the event of partial occupancy, as more specifically described in Section 9.9. Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Owner.

### § 3.14 CUTTING AND PATCHING

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

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

### § 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials, dirt, dust 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 except that the Contractor shall give to the Owner any surplus materials that are required by the Contract Documents, but not incorporated into the Project, for future maintenance or repairs. The Contractor shall be responsible for compliance with all requirements regarding notification and disposal of construction demolition debris.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor. The Architect's determination of the costs to be charged to the Contractor shall be final.

### § 3.16 ACCESS TO WORK

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

### § 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

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

### **§ 3.18 INDEMNIFICATION**

**§ 3.18.1** The Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of them from and against claims, damages, fines, penalties, punitive damages, losses and expenses, including but not limited to attorneys' and consultants' fees and the cost of their staff, arising out of or related to the Contractor's performance of the Work and its obligations under the Contract, including but not limited to claims for bodily injury, sickness, disease or death, or to injury to or destruction of or loss of use of real or personal property, claims due to delays in or acceleration of the work of separate contractors, claims for loss of productivity, claims for additional storage and handling charges, claims for escalation of the cost of labor and materials, claims for home office overhead, liens, attested accounts, and claims related to the removal, handling or use of hazardous materials to the proportional amount of fault attributable to 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, compared to the proportional amount of fault, if any, attributable to all parties indemnified hereunder. The Owner may set off an amount equal to the sums for which it is entitled to be indemnified from the amounts otherwise due the Contractor under the Contract Documents.

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

### **§ 3.19 UNDERGROUND UTILITY FACILITIES**

**§ 3.19.1** The Contractor, at least two (2) working days prior to commencing construction in an area which may involve underground utility facilities, shall give notice to the Architect, the registered underground utility protection services, and the owners of underground utility facilities shown in the Contract Documents who are not registered members of the registered underground utility protection services. The Contractor shall alert immediately the occupants of any premises near the Work and the Architect as to any emergency that it may create or discover. The Contractor shall notify the operator of the underground facility and the Architect of any break or leak in the utility lines or any dent, gouge, groove, or other damage to such lines made or discovered in the course of excavation. In the event that any underground utility owner fails to timely perform, the Contractor shall notify the Owner and shall contact the owner of the underground utility.

### **§ 3.20 LIEN WAIVERS AND NOTICES OF FURNISHING**

**§ 3.20.1** The Contractor will provide Subcontractors and suppliers a copy of the Contractors bond. By entering into an agreement to provide labor, materials, equipment and/or supplies for the Project, such Subcontractors and suppliers agree to provide lien waivers to the Contractor as may be required by Owner from time to time. Upon receipt of notices of furnishing, the Contractor will deliver copies of the notices of furnishing to the Architect.

**§ 3.20.2** The Contractor shall provide a copy of any notice of commencement prepared by Owner to its Subcontractor and any known Sub-subcontractors and the Contractor shall further require its Subcontractor to provide a copy of the notice to any of the Sub-subcontractors.

**§ 3.21** All Work shall be maintained and repaired by Contractor prior to Substantial Completion, and Contractor shall keep records of all maintenance and repairs performed prior to Substantial Completion and shall turn these records over to Owner upon final completion of the Work.

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 GENERAL**

**§ 4.1.1** The Owner shall, if required, retain an architect as defined in Section 1.1.10 herein. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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

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

#### § 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents, and will be a representative of Owner (1) during construction, (2) until final payment is due and (3) from time to time during the one-year period for correction of Work described in Section 12.2 and for such additional periods as Owner and Architect may agree. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents and as authorized by the Owner.

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

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

#### § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

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

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work, including those tests and inspections as provided in Section 13.5, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to

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permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under the Contract Documents, including but not limited to Sections 3.3, 3.5 and 3.12 herein. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

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

**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and execute and distribute a final Certificate for Payment pursuant to Section 9.10.

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

**§ 4.2.11** The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

**§ 4.2.12** Interpretations and decisions of the Architect will be in accordance with its standard of care and shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by Contractor.

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

**§ 4.2.14** The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information. If no agreement is made concerning the time within which such interpretations shall be furnished, then delay shall not be recognized on account of Architect's failure to furnish such interpretations until 15 days after written request is made for them and the Contractor establishes the Architect's delay in responding.

## **ARTICLE 5 SUBCONTRACTORS**

### **§ 5.1 DEFINITIONS**

**§ 5.1.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work and which may include the furnishing of supplies, materials, equipment or services. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

**§ 5.1.2** A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work and which may include the furnishing of supplies, materials, equipment or services. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor of any tier or an authorized representative of the Sub-subcontractor.

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

§ 5.2.1 Retention of Subcontractors shall be as set forth in the Agreement between Owner and Contractor.

*(Paragraphs deleted)*

## § 5.3 SUBCONTRACTUAL RELATIONS

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

Contractor shall promptly provide to Owner copies of any agreement between the Contractor and a Subcontractor along with copies of all bids or other proposals from Subcontractors. The subcontract form between the Contractor and a Subcontractor shall meet the applicable requirements of Ohio Administrative Code 153:1-3-01 and 153:1-3-02.

§ 5.3.2 Notwithstanding the provisions of Section 5.3.1, any part of the Work performed for the Contractor by a Subcontractor or its Sub-subcontractor shall be pursuant to a written Subcontract between the Contractor and such Subcontractor (or the Subcontractor and its Sub-subcontractor at any tier) which provides that the Owner is an intended third-party beneficiary of such subcontract, and Contractor shall provide copies of such Subcontracts to Owner upon request. The Architect will assume no responsibility for reviewing, monitoring, or verifying activities or relationships involving a Subcontractor or its Sub-subcontractor.

§ 5.3.3 If the Architect fails to approve and issue a Certificate for Payment at the fault of the Contractor, the Contractor shall pay its Subcontractors on demand, at any time after the Certificate for Payment should otherwise have been issued, provided the Architect's failure to approve is not the fault of a particular Subcontractor and provided the Contractor is not in a bona fide dispute with that Subcontractor affecting payment. Nothing within this Section or in the Contract shall be construed as limiting the Contractor's obligations under Revised Code 4113.61.

## § 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

- .1 assignment is effective only after termination of the Contract by the Owner pursuant to Article 14 herein 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 except for any prior default of the Contractor.

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

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

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

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## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and/or 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.

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

§ 6.1.3 The Owner may provide materials for incorporation into the Project, and the Contractor, if specified within the Contract Documents, shall incorporate such materials as part of its Work for the Project. The Contractor shall be fully responsible for and the Contract Sum shall cover, all matters relating to the receipt of materials provided by Owner as if the Contractor were the original purchaser, including but not limited to verifying correct quantities; coordinating purchases; providing, obtaining and managing all warranties and guarantees required by the Contract Documents; inspection and acceptance of the materials; and loss or damage to the materials following acceptance of the materials by the Owner due to the negligence of the Contractor. The Contractor shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by the Contractor for the particular material furnished. The Contractor shall provide all services required for the unloading, handling and storage of materials through installation. The Contractor shall ensure that Owner-provided materials conform to the Contract Documents and shall determine prior to incorporation into the Work if such materials are patently defective. If the Contractor discovers defects or non-conformities upon such visual inspection, the Contractor shall not utilize such materials in the Contractor's Work and instead shall properly notify the Owner of the defective or nonconforming condition so that repair or replacement of those materials can occur without undue delay or interruption to the Project. If the Contractor fails to perform such inspection and incorporates such defective or non-conforming materials into the Contractor's Work, Contractor shall be responsible for all damages to the Owner resulting from Contractor's incorporation of such materials into the Work. The Contractor shall maintain records of all Owner-provided materials it incorporates into the Work and shall account to the Owner for all Owner-provided materials delivered into the Contractor's or Subcontractor's possession.

*(Paragraph deleted)*

### § 6.2 MUTUAL RESPONSIBILITY

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

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

*(Paragraphs deleted)*

### § 6.3 OWNER'S RIGHT TO CLEAN UP

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

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. The Owner shall also issue a Change Order to reconcile the difference between the scheduled and actual quantities of Work performed and materials furnished. The Contractor shall proportionately increase the amount of its bond whenever the Contract Sum is increased. If notice of any change affecting the Contract is required by a provision of the bond, giving the notice shall be the Contractor's responsibility. A Change Order signed by the Contractor without any indication of change in the Contract Sum and/or Contract Time indicates the Contractor's agreement that there will be no change in the Contract Sum and/or Contract Time.

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

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

§ 7.1.4 The Contractor shall not proceed with any Change in the Work without the appropriate written authorization. Except as otherwise provided herein, the Contractor's failure to obtain prior written authorization for a Change in the Work shall constitute a waiver by the Contractor of an adjustment to the Contract Sum and/or Contract Time for the related Work. No course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

## § 7.2 CHANGE ORDERS

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

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

§ 7.2.2 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs and consequential damages associated with such change, the cumulative impact of the associated change in the Work in combination with one or more other changes in the Work, and any and all adjustments to the Contract Sum and the construction schedule. The Contractor is not entitled to reserve any rights or take other similar action with respect to a Change Order if the effect or intent of the reservation or action would be to accommodate a further adjustment of the Contract Sum or Contract Times, or both, after the Contractor signs the Change Order. Unless otherwise designated by the Architect, the Change Order form shall be the AIA Document G-701.

## § 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon (as may be adjusted in accordance with Section 7.3.4 herein);
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If the actual quantity of a Unit Price item differs from the scheduled quantity by 20 percent or more, so that application of the Unit Price to the quantities of Work proposed would create an undue hardship on either the Owner or the Contractor, the Architect shall issue a Construction Change Directive to adjust the Unit Price. If the actual quantity of a Unit Price item exceeds the scheduled quantity by 20 percent or more, the Contractor shall immediately notify the Architect and Owner who shall issue a Construction Change Directive and subsequent Change Order to authorize an adjustment in the scheduled quantity.

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**§ 7.3.5** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and, within seven (7) days following receipt of the Construction Change Directive, advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**§ 7.3.5.1** If the Contractor disagrees with the method for adjusting the Contract Time, the Contractor shall provide along with the notice in Section 7.3.5 herein a written description of the nature of the interference, disruption, hindrance or delay which shall include identification of persons and events responsible for the interference, disruption, hindrance or delay; the date, or anticipated date, of commencement of the interference, disruption, hindrance or delay; activities on the Construction Schedule which may be affected by the interference, disruption, hindrance or delay, or new activities created by the interference, disruption, hindrance or delay and the relationship with existing activities; anticipated duration of the interference, disruption, hindrance or delay and of any remobilization period; specific number of days of extension requested and specific number of days for remobilization requested; and recommended action to avoid or minimize any future interference, disruption, hindrance or delay.

**§ 7.3.5.2** If the Contractor disagrees with the method for adjusting the Contract Sum, the Contractor shall provide in writing the items set forth in Section 7.3.3 herein.

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

**§ 7.3.7** If the Contractor does not respond timely or disagrees with the method for adjustment in the Contract Sum and/or Contract Time, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present a true and accurate itemized accounting of all labor and material with appropriate supporting data. If the Architect prescribes a format for such accounting, the Contractor shall provide the accounting in such format. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be itemized by Contractor in writing and shall be limited to the following:

- a** Labor: All field labor shall be priced at the current base rate, excluding fringe benefits, paid by the Contractor. The payroll is to be based on the straight time only and is to include number of hours and rate of pay for each classification of work. If overtime is approved, list only the straight time portion of this term. Any Contractor performing time and materials or cost-plus basis Work shall submit certified payroll records for all employees performing that Work.;
- b** Fringes: All established payroll taxes, assessments and fringe benefits on the labor on item (a). This may include, but is not limited to FICA, Federal and State unemployment, Health and Welfare Pension Funds, Workers' Compensation, and Apprentice Fund. Each of the fringes is to be a separate item.
- c** Equipment Rentals: All charges for certain non-owned heavy or specialized equipment at up to 100 percent of the documented rental cost attributable to the Project. No rental charges will be allowed for hand tools, minor equipment, simple scaffolds, etc. Downtime due to repairs, maintenance and weather delays will not be allowed.

*(Paragraphs deleted)*

- d** Owned Equipment: All charges for certain owned, heavy or specialized equipment at up to 100 percent of the cost listed by the Associated Equipment Dealers Blue Book. No recovery will be allowed for hand tools, minor equipment, simple scaffolds, etc. The longest period of time that the equipment is to be required for the Work will be the basis for pricing. Downtime due to repairs, maintenance and weather delays will not be allowed.
- e** Trucking: A reasonable delivery charge or per mile trucking charge for delivery of required materials or equipment. Charges for use of a pickup truck will not be allowed.
- f** Materials: (i) all materials purchased by the Contractor and incorporated into the changed Work, showing costs, quantities, or unit prices or all items, as appropriate. Reimbursement or material costs shall only be allowed in the amount of the Contractor's actual cost including any and all discounts, rebates, or related credits; and (ii) one-third of the cost of reusable materials for each use, such as formwork lumber, shoring, or temporary enclosures.;

- .g Overhead: Includes telephone, telephone charges, facsimile, telegrams, postage, photos, photocopying, hand tools, simple scaffolds (one level high), tool breakage, tool repairs, tool replacement, tools blades, tool bits, home office estimating and expediting, home office clerical and accounting support, home office labor, legal services, travel and parking expenses.;
- .h Miscellaneous: The following items are allowable at the cost of the Work, with no overhead or profit: (i) the cost of extending the bond and the cost of extending liability, property damage, builder's risk or specialty coverage insurance; (ii) the premium portion only for approved overtime (labor and fringes) (the straight time portion is included in items (.a) and (.b)); and (iii) fees for permits, licenses, inspections, tests, etc.; and
- .i Costs that will NOT be reimbursed for Change Order work include the following: (i) employee profit sharing plans (regardless of how defined or described, the Contractor will pay these charges from Contractor profit and will not be reimbursed); (ii) voluntary employee deductions (examples are United Way and U.S. Savings Bonds, etc.).

**§ 7.3.7.1** Overhead and profit on any add Change Order shall not exceed: (a) For work completed by the Contractor with its own labor, fifteen (15) percent shall be added to the items noted in clauses .a, .b, .c, .d, .e, and .f of Subparagraph 7.3.7; (b) For work completed by Subcontractors of the Contractor, ten (10) percent shall be added to the items noted in clauses .a, .b, .c, .d, .e, and .f of Subparagraph 7.3.7. However, the percentage for profit and overhead may be less depending on the nature, extent, or complexity of the change where the percentage is not commensurate with the responsibility and administration involved. The Contractor shall not assign any portion of the work to another person or entity whereby the Contractor would benefit directly or indirectly from the double application of charges for overhead or profit.

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect plus credit for overhead and profit equal to the percentages for overhead and profit for add change orders as set for in Section 7.3.7.1. 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 or decrease, if any, with respect to that change.

**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

**§ 7.3.10** When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive. Disagreements with the Architect's final determination shall be resolved in accordance with Article 15, and the timeline for initiating a Claim as set forth in Section 15.1.2 herein related to the Architect's final determination on a Construction Change Directive begins to run on the date the Architect issues its final determination.

## **§ 7.4 MINOR CHANGES IN THE WORK**

**§7.4.1** The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order conspicuously marked as a minor change in the Work and signed by the Architect and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. Unless otherwise designated by the Architect, the form to be utilized by Architect in authorizing minor changes in the Work shall be the AIA Document G-710, Architect's Supplemental Instructions.

**§7.4.2** If the Contractor reasonably believes that it would be entitled to an adjustment of the Contract Sum or Contract Times, or both, on account of an order for a minor change in the Work, the Contractor, within seven (7) business days after receiving the order, shall give the Owner written notice of the Contractor's position, and not proceed with the subject Work without first receiving a Construction Change Directive or Change Order related to it. The Contractor waives its right to an adjustment of the Contract Sum or Contract Times on account of an order for a minor change in

the Work by: starting the Work which is the subject of the order for a minor change in the Work; or failing to give the notice within seven (7) business days after receiving the order for a minor change in the Work.

## **§7.5 PROPOSAL REQUESTS**

**§7.5.1** The Architect may issue to Contractor at any time a proposal request for a Change in the Work, including a change in the Contract Sum and Contract Time (a "Proposal Request"). A Proposal Request is not a Change Order, a Construction Change Directive, an order for a minor change in the Work, or authorization to proceed with the change in the work described in the Proposal Request. Unless otherwise designated by the Architect, the form to be utilized by Architect for a Proposal Request shall be the AIA Document G709, Work Changes Proposal Request.

**§7.5.2** In any Proposal for an adjustment of the Contract Sum, the Contractor shall specifically identify the items set forth in Section 7.3.3 herein. In any Proposal for an adjustment of the Contract Time, the Contractor shall specifically identify the items set forth in Section 7.3.5.1 herein.

**§7.5.3** The Contractor shall respond with a Proposal to the Architect within seven (7) days after receiving the Proposal Request. The allowable time for the Contractor's response may be extended by written agreement of the Contractor, the Owner and the Architect. Failure to respond within the allowed time frame may result in the Owner proceeding with the work through any other means. It is also understood that Owner may at any time issue a Construction Change Directive for the Change in Work described in the Proposal Request.

**§7.5.4** The Contractor shall hold the Proposal valid and open for acceptance for at least thirty (30) days. The acceptance period may be adjusted by mutual written consent of the Contractor and the Owner.

**§7.5.5** The Owner may accept the Proposal in writing at which point the Contractor's obligations to perform the work as outlined in the Proposal shall become binding. The parties promptly thereafter shall memorialize the Owner's acceptance of the Proposal through a Change Order, provided, however, that the Contractor's refusal to execute the Change Order memorializing the acceptance of the Proposal shall not affect the Contractor's binding obligation to perform the work as outlined in the Proposal as accepted by the Owner.

## **ARTICLE 8 TIME**

### **§ 8.1 DEFINITIONS**

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

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

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

**§ 8.1.4** Except when a consecutive calendar day is specified, when the Contract Documents refer to a period of time by a number of days, it excludes the first day and includes the last day of the period. If the last day of the period falls on a Saturday, Sunday, or a legal holiday, that day shall be omitted and the period shall end on the next day which is not a Saturday, Sunday, or legal holiday. It is understood that for purposes of the Contract, a legal holiday shall be a legal holiday as observed by the State of Ohio.

### **§ 8.2 PROGRESS AND COMPLETION**

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

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

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

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§ 8.2.4 The Contractor, i) will cooperate with the Architect and all separate contractors by freely providing timely information for the scheduling of the times and sequence of the operations required for the Work to be substantially complete as required by the Contract Documents, ii) will continuously monitor the current progress schedule so as to be fully familiar with the timing, phasing, and sequence of the operations of the Work and to the other Work on the Project, and iii) will execute the Work in accordance with the requirements of the current progress schedule.

### § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 Subject to other provisions of the Contract, the Contractor will be entitled to an extension of the Contract Time on account of delay in the commencement or progress of Work on the critical path of the construction schedule caused by acts of nature or the public enemy, acts of the government not arising from the Contractor's failure to comply with applicable law, fires, floods, epidemics, weather, and labor disputes beyond the Contractor's control. The Contractor shall not be permitted to make a Claim for an increase in the Contract Sum for acceleration, either constructive or actual, in the performance of the Work unless the Contractor has first made a Claim for an extension of the Contract Time as permitted by this Section 8.3.1 and the Claim for an extension of the Contract Time is denied.

§ 8.3.1.1 Notwithstanding any other provision of the Contract Documents to the contrary, the Contractor shall not be entitled to an increase in the Contract Sum, or an extension of the Contract Time, or both: (i) on account of the impact of any normal adverse weather on any of the Work or on account of the impact of any abnormal adverse weather on Work not on the critical path; (ii) to the extent that a delay occurs concurrently with a delay attributable to the Contractor; or (iii) on account of the delay of any Work not on the critical path.

§ 8.3.1.2 Notwithstanding any other provision of the Contract Documents to the contrary, the Contractor shall not be entitled to an increase in the Contract Sum or any type of damages on account of a delay in the commencement or progress of Work on the critical path unless (i) the delay is caused by the Owner or (ii) the delay was not authorized or permitted under the Contract.

§ 8.3.1.3 Derivative Claims. Notwithstanding any other provision of the Contract to the contrary, if the Owner prosecutes a claim, suit, or appeal against a separate contractor to recover damages the Contractor suffers on account of the acts or neglects of a separate contractor or a person or entity for whom the separate contractor is legally responsible, the Owner's liability to the Contractor shall not exceed the amount the Owner actually recovers from the separate contractor on account of those damages less the costs the Owner incurs recovering them. The Owner is not obligated to prosecute any such claim, suit, or appeal.

§ 8.3.2 Claims under Section 8.3 shall be made in accordance with applicable provisions of Article 15.

*(Paragraph deleted)*

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 CONTRACT SUM

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

### § 9.2 SCHEDULE OF VALUES

Unless a different timeline is specified in the Contract Documents, the Contractor shall submit to the Architect within ten (10) days following the date of commencement 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. The Contractor shall utilize AIA Document G-703 in submitting its schedule of values unless a different form is designated. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. By submitting such schedule of values, the Contractor represents for the reliance of the Architect and the Owner that the allocation of the values to the portions of the Work is a fair and reasonable estimate of such allocation. Once approved, the Contractor will not change the allocations in the Schedule of Values without the Architect's and Owner's further written approval. The Architect may from time to time require the Contractor to adjust such schedule if the Architect determines it to be in any way unreasonable or inaccurate. The Contractor then shall adjust the schedule of values as required by the Architect within ten (10) days. This schedule, with any adjustments approved by the Architect shall be used as a basis for reviewing the Contractor's Applications for Payment. The Contractor shall include a separate line item in its schedule of values for staffing and general conditions costs.



### § 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 Applications for Payment shall be made in accordance with the dates established in the Agreement, and Applications for Payment shall be prepared in accordance with the schedule of values and shall be supported by such data substantiating the Contractor's right to payment as the Owner or the Architect may require. Contractor shall submit with EACH Application for Payment, including the final Application for Payment, (i) an Affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the previous Application for Payment was submitted have been paid or otherwise satisfied; (ii) a current list of the Subcontractors and suppliers showing their respective contract sums, amounts paid, and amounts due; (iii) releases or waivers of liens arising out of the Contract from the Contractor and from each Subcontractor, material supplier, and/or laborer of the Contractor as the Owner may require; (iv) schedule of all materials and equipment stored on-site; (v) documentation required for materials and equipment stored off-site; and (vi) such other supplemental information the Architect or Owner may require. The form of the Application for Payment shall be designated by the Architect, or if the Architect does not designate a form, the Contractor shall use AIA Documents G-702, Application and Certificate for Payment, and G-703, Continuation Sheet.

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

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. Materials stored off site is permitted. The Contractor may erect temporary storage facilities but only with the approval of the Owner, and such temporary facilities shall be removed by not later than Substantial Completion. Where circumstances indicate that the Owner's best interest is served by off-site storage, the Contractor shall make written request to the Architect for approval to include such material costs in its next Application for Payment. The Contractor's request shall include the following information:

- .1 A list of the fabricated materials consigned to the Project (which shall be clearly identified), giving the place of storage, together with copies of invoices and reasons why materials cannot be delivered to the site.
- .2 Certification that items have been tagged for delivery to the Project and that they will not be used for another purpose.
- .3 A letter from the Contractor's surety indicating agreement to the arrangements and that payment to the Contractor shall not relieve the Contractor of its responsibility to complete the Work.
- .4 Evidence of adequate insurance covering the material in storage, which shall name the Owner as an additional insured.
- .5 Information pertaining to the Contractor's place of storage, the layout and security of the place of storage, and such information that verifies that the materials are securely stored at the place of storage.
- .6 Subsequent Applications for Payment shall itemize the materials and their cost which were approved on previous Applications for Payment and remain in off-site storage.
- .7 When a partial payment is allowed on account of material delivered on the site of the Work or in the vicinity thereof or under possession and control of the Contractor but not yet incorporated therein, such material shall become the property of the Owner, but if such material is stolen, destroyed or damaged by casualty before being used, the Contractor will be required to replace it at its own expense.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall 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. Contractor shall indemnify Owner from any expenses incurred by Owner, including legal fees, in connection with any liens, claims and attested accounts by any Subcontractor or Sub-subcontractors provided such expenses are not the result of a default by Owner in making timely payment to Contractor.

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## § 9.4 CERTIFICATES FOR PAYMENT

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

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

## § 9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

- .1 The Contractor is in default of the performance of any of its obligations under the Contract Documents, including, but not limited to: failure to provide sufficient skilled workers; Work, including equipment or materials, which is defective or otherwise does not conform to the Contract Documents; failure to conform to the Project schedule or scheduling requirements; or failure to follow the directions of or instructions from the Architect or Owner.
- .2 The Contractor is in default in the performance of any of its obligations under another Contract which it has with the Owner.
- .3 The filing of third party claims or reasonable evidence that third party claims have been or will be filed.
- .4 Work has not proceeded to the extent set forth in the Application for Payment.
- .5 Representations made by the Contractor are untrue.
- .6 The failure of the Contractor to make payments to its Subcontractors, materialpersons, or laborers.

*(Paragraph deleted)*

- .7 Damage to the Owner's property or the property of a separate Contractor or person.
- .8 Reasonable evidence that the Work will not be completed within the Contract Time and/or that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay and/or the completion of the Work.
- .9 Costs and expenses that the Contractor is required to reimburse the Owner.

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

§ 9.5.3 If the Contractor disputes a determination by the Architect with regard to a Certificate of Payment, and during any related dispute resolution, litigation, or other proceeding, the Contractor nevertheless shall continue to prosecute the Work.

§ 9.5.4 In the event that the Owner receives a claim affidavit in accordance with Ohio Revised Code Chapter 1311 relating to amounts due and unpaid for labor and work performed and material furnished for the Work, the Owner shall

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detain the amount due and owing from the Contractor unless and until the claim is released and/or discharged as more particularly set forth in said Chapter 1311.

## § 9.6 PROGRESS PAYMENTS

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

§ 9.6.2 The Contractor shall 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. Neither the Contractor nor its Subcontractors shall withhold retainage beyond the retainage withheld by the Owner from the Contractor.

§ 9.6.3 [Intentionally Deleted]

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

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

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

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

## § 9.7 FAILURE OF PAYMENT

If the Owner, through no fault of the Contractor, does not pay the Contractor within fourteen days after the date established in the Agreement the amount certified by the Architect, then the Contractor may, upon fourteen additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received provided that Contractor shall not stop Work for non-payment if the Owner initiates the payment process for any undisputed amounts due the Contractor.

## § 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents, including all necessary testing and/or startup, and when all required occupancy permits and any other necessary permits and approvals, if any, have been issued, so the Owner can occupy or utilize the Work for its intended use, subject only to the completion or correction of minor items of Work that will not interfere with or hinder the Owner's use of the Work and areas adjacent to the Project site.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment, the completion or correction of which will not interrupt, disrupt or interfere with the occupancy or utilization of the Project for its intended use. Failure to include an item on such list does not alter the responsibility of the Contractor to complete or correct all Work in accordance with the Contract Documents. Contractor shall also submit along with the list all required documents neatly bound and indexed.

**§ 9.8.3** Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete.

**§ 9.8.3.1** If the Architect's inspection discloses any item, whether or not included on the Contractor's list, so that the Work is not yet substantially complete, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item or items upon notification by the Architect and within the timeframe established by Architect, or, if no timeframe is established, then not greater than thirty (30) days. The Contractor shall then submit to the Architect a revised list of items to be completed or corrected along with a request for another inspection by the Architect to determine Substantial Completion. If the Contractor fails to timely complete or correct such items so as to render the Work ready for the additional substantial completion inspection, the Owner, in its discretion, may perform the Work and the cost thereof shall be charged against the Contractor or the Contractor's surety.

**§ 9.8.3.2** The Contractor shall pay all costs incurred by the Architect, Owner and separate contractors for attendant delay, interference, hindrance or disruption of the Project due to excessive substantial completion inspections without fault of the Architect or Owner. Unless otherwise provided in the Contract Documents, substantial completion inspections in excess of one (1) without the fault of the Architect or Owner shall be deemed excessive.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items to be completed or corrected on the list accompanying the Certificate, or, if no timeframe is established, then not greater than thirty (30) days. Failure to include an item on such list does not alter the responsibility of the Contractor to complete or correct all Work in accordance with the Contract Documents. If the Contractor then fails to timely complete or correct the items, the Owner in its discretion may perform the Work by itself or others and the cost thereof shall be charged against the Contractor or the Contractor's surety. The Contractor shall pay all costs incurred by the Architect, Owner and separate contractors due to excessive inspections without fault of the Architect or Owner for the purpose of evaluating completed or corrected Work. Unless otherwise provided in the Contract Documents, inspections in excess of one (1) without the fault of the Architect or Owner shall be deemed excessive. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Contractor's warranties under the Contract Documents shall remain in full force and effect and cover any remedial work.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents. For items of Work that are not completed or corrected, an amount equal to one hundred fifty percent (150%) of the cost to hire another contractor to complete the Work as estimated by Architect shall be withheld until said items are finally complete in accordance with section 9.10 herein.

## **§ 9.9 PARTIAL OCCUPANCY OR USE**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.4 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. In the event of such partial occupancy or use, the Architect shall assign responsibilities to the Owner and the Contractor with respect to payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work, insurance, and the commencement of warranties required by the Contract Documents. In the event of a disagreement about such responsibilities, the Architect will resolve the disagreement, and the Architect's decision will be final.

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

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents. Any Agreement as to the acceptance of the Work not complying with the requirements of the Contract Documents shall be in writing.

#### **§ 9.10 FINAL COMPLETION AND FINAL PAYMENT**

**§ 9.10.1** Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Final completion shall mean all Work is complete in accordance with the Contract Documents and the Contractor has submitted all documents required for final payment, including final lien waivers from subcontractors and/or suppliers, and Contractor understands that this may require payment in full to its subcontractors and/or suppliers prior to receipt by Contractor of final payment.

**§ 9.10.1.1** The Contractor shall pay all costs incurred by separate contractors, the Architect and the Owner due to excessive additional inspections without the fault of the Architect or Owner.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the insurance will be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) all documents and items required to be submitted by Contractor, including but not limited to those items set forth in Section 3.11 that have not previously been delivered to Owner, (6) AIA Document G-706, Contractors Affidavit of Payment of Debts and Claims, (7) AIA Document G-706A, Contractors Affidavit of Release of Liens, and (8) 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 provided that such expenses are not the result of a default by Owner in making timely payment to Contractor.

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

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

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of warranties and guarantees required by the Contract Documents;
- .4 any claims, damages, losses or expenses for indemnification; or
- .5 latent defects.

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

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor's safety program shall be written and a copy maintained at the Project site for inspection, upon request. Neither the Owner nor the Architect accept any responsibility or liability for the safety of the Contractor's employees or for enforcing the Contractor's safety program. Additionally, Contractor shall comply with the Owner's rules, regulations, and policies including, but not limited to, the Owner's safety, health, and infection control policies and programs.

### § 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take all reasonable precautions for safety and health 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/or the Work of the Owner or any separate contractor and the materials and equipment to be incorporated in such Work;
- .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;
- .4 construction or operations by the Owner or other Contractors; and
- .5 benchmarks, monuments, and other reference points affected by the Work. If benchmarks, monuments, or other reference points are displaced or destroyed, the benchmarks, monuments, and/or reference points shall be re-established and markers reset under the supervision of a licensed surveyor, who shall furnish certificates of its work.

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

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

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss to property referred to in Section 10.2.1 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 Section 10.2.1, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition. Contractor shall provide shoring and bracing required for safety and for the proper execution of the Work and have same removed when the Work is completed.

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## § 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

§ 10.2.8.1 If Contractor suffers injury or damage to person or property because of an act or omission for which the Owner is legally responsible, prompt written notice of such injury or damage, whether or not insured, shall be given to the Owner not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the Owner to investigate the matter.

§ 10.2.8.2 If a separate contractor incurs damages resulting from the Contractor's performance of its Work, and the Contractor fails to remedy the damage or to reimburse the separate contractor for its damages, then the Owner reserves the right to pay the separate contractor suffering the damage and deduct such amounts from the amount due the Contractor responsible for the damages.

§ 10.2.9 The Contractor acknowledges that the safety of the public and of the employees, invitees and guests of the Owner is of the utmost importance. While the Contractor is at the Project site, the Contractor will take no action that would jeopardize the safety of the public and of the Owner's employees, invitees or guests and, without the Owner's written approval, shall take no action that would interfere with the Owner's activities. The Owner reserves the right to require the Contractor and its employees to wear identification (subject to applicable safety standards), to stay in designated work areas at all times while on the Owner's property and to record on a log the Contractor's presence immediately upon entering the Owner's property. The Owner shall have the right to effect through the Contractor the immediate removal of a person from the Project site for failure to wear identification, for being outside a designated work area, for fraternizing with or engaging in any inappropriate behavior directed toward or in the vicinity of employees, invitees or guests of the Owner or for other good cause shown.

§ 10.2.9.1 The Contractor shall make a good faith effort so that no employee of the Contractor or any consultant or Subcontractor will purchase, use, transfer or possess, or be under the influence of alcohol or illegal drugs or abuse legally obtained drugs while on or about the Project or use tobacco or bring firearms, or other dangerous materials on to the property of the Owner.

§ 10.2.10 When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and fully protect the Work, as necessary, from injury or damage by any cause.

§ 10.2.11 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.

## § 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a concealed and undisclosed hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from the hazardous material or substance, such as asbestos, polychlorinated biphenyl (PCB), mold, mildew, yeast and mushrooms 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. Hazardous materials to be used at the Project site shall be identified by a Material Safety Data Sheet (MSDS). The Contractor shall assemble all of its applicable MSDS in a notebook and submit it to the Architect for its information prior to a hazardous material being brought to the Project site. The Contractor shall maintain all MSDS notebooks at the Project site for the duration of the Project.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. The Work in the affected area shall be resumed immediately following the occurrence of any one of the following events: (i) the Owner causes remedial work to be performed that results in the absence of materials or substances such as asbestos, polychlorinated biphenyl (PCB) mold, mildew, yeast and mushrooms, or (ii) the Owner and the Contractor, by written agreement, decide to resume performance of the Work, or (iii) the Work may safely and lawfully proceed, as determined by an appropriate governmental authority or as evidenced by a written report to both the Owner and the Contractor, which is prepared by an environmental engineer reasonably satisfactory to the Owner. By Change Order, the Contract Time shall be

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extended appropriately and the Contract Sum shall be equitably adjusted based on the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

**§ 10.3.3** [Intentionally Deleted]

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

**§ 10.3.5** In addition to the Contractor's obligations in Section 3.18 and elsewhere in the Contract Documents, 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 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

**§ 10.3.6** [Intentionally Deleted]

**§ 10.4 EMERGENCIES**

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, and without special instructions or authorization, to prevent threatened damage, injury or loss. Work performed by the Contractor on account of an emergency shall be treated as a Construction Change Directive issued as of the date of the occurrence of the emergency, and Contractor shall proceed as of that date as set forth in Article 7 herein, including but not limited to Section 7.3.5. Nothing in this Section shall be construed as relieving the Contractor from the cost and responsibility for emergencies covered hereby, which with normal diligence, planning, and the close supervision of the Work as required under the Contract, could have been foreseen or prevented.

**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 rated A- or higher by Best Insurance Reports and lawfully authorized to do business in the State of Ohio 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;
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

**§ 11.1.2** The insurance required by Section 11.1.1 shall be written for not less than the following, or as required by law, whichever coverage is greater.

- .1 Workers' Compensation: Statutory
- .2 Employer's Liability: (1) an each-accident limit of not less than \$1,000,000, (2) a disease each-employee limit of not less than \$1,000,000, and (3) a disease policy limit of not less than \$1,000,000;
- .3 Commercial General Liability ("CGL"): (1) an each-occurrence limit of not less than \$2,000,000, (2) a general-aggregate limit of not less than \$2,000,000, and (3) a products and completed-operations aggregate

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limit of not less than \$2,000,000. The CGL insurance shall provide at least equivalent coverage for liability arising from premises, operations, independent contractors, products/completed-operations (shall not exclude coverage to the additional insured(s) for bodily injury or property damage), personal and advertising injury, and liability assumed under an insured contract. The CGL policy shall be endorsed providing equivalent coverage to provide that the general aggregate limit applies separately to each of the insured's projects;

- .4 Automobile Liability: covering all owned, non-owned, and hired vehicles used in connection with the Work: Bodily injury (including death and emotional distress) and property damage with a combined single limit of \$1,000,000 each accident;
- .5 Umbrella/Excess Liability: Such policies shall be supplemented by an umbrella policy of additional protection in the amount of \$5,000,000 aggregate; and
- .6 Pollution Liability: If the Work includes environmentally sensitive, hazardous types of activities (such as demolition, exterior insulation finish systems, asbestos abatement, storage-tank removal, or similar activities), or involves hazardous materials, the Contractor shall maintain a contractor's pollution liability policy with (1) a per-claim limit of not less than \$1,000,000 and (2) an annual-aggregate limit of not less than \$1,000,000, covering the acts, errors and/or omissions of the Contractor for damages (including from mold) sustained by the Owner by reason of the Contractor's performance of the Work. The policy shall have an effective date, which is on or before the date of commencement of the Work.

Upon submission of the associated certificate of insurance and at each policy renewal, the Contractor shall advise the Owner in writing of any actual or alleged claims which may erode the policy's limits.

The Contractor shall maintain required coverages without interruption from the date of commencement of the Work and for not less than five years following Substantial Completion for Completed Operations coverage and for the duration of any guaranty or warranty period. The Contractor shall pay all deductibles contained in the policies of insurance. The Contractor shall continue to provide evidence of coverage to the Owner on an annual basis during the aforementioned period.

**§ 11.1.3** The Contractor shall submit to the Architect and the Owner a copy of certificates of insurance prior to commencement of the Work. Certificates shall include each and every type of coverage specified. Such certificates shall name the Owner, the Owner Board members and employees and Architect as additional insureds and shall contain a statement that the Owner will be notified 30 days prior to the cancellation of, expiration of, material alteration of, and/or the election not to renew any insurance policy evidenced by this certificate. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

**§ 11.1.3.4** When any required insurance, due to the attainment of a normal expiration date or renewal date, shall expire, the Contractor shall supply the Owner with Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy. In the event any renewal or replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differs in any way from the previous policy, the Contractor shall also furnish the Owner with a copy of the renewal or replacement policy unless the Owner provides the Contractor with prior written consent to submit only a Certificate of Insurance for any such policy. All renewal and replacement policies shall be in form and substance satisfactory to the Owner and written by carriers acceptable to the Owner.

**§ 11.1.4** The Contractor shall cause all Subcontractors to provide Workers' Compensation, Comprehensive General Liability, and Automobile Liability Insurance with commercially reasonable limits and certificates of insurance related thereto. Such certificates shall name the Owner, the Owner Board members and employees and Architect as additional insureds.

**§ 11.1.5** The Contractor shall not commence Work under the Contract until the Contractor has obtained all insurance required under this heading and such insurance has been filed with the Architect and approved by the Owner. Should any coverage approach expiration during the contract period, it shall be renewed prior to its expiration date and

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certificates again filed with the Architect. Failure to renew and file new certificates with the Architect shall be just cause to withhold progress payments until these requirements are met.

**§ 11.1.6** All liability policies required in this Section 11.1 shall be primary and non-contributory with respect to any other self-insurance programs that cover the Owner or an additional insured.

**§ 11.1.7** If Contractor fails to purchase and/or maintain any insurance required under Section 11.1, the Owner may, but shall not be obligated to, upon five (5) days written notice to Contractor, purchase such insurance on behalf of the Contractor and shall be entitled to be reimbursed by the Contractor upon demand.

## **§ 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 specified in the Agreement between the Owner and the Contractor, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall name the Owner, the Contractor, Subcontractors and Sub-subcontractors as named insureds 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, tornado, flood, windstorm, explosion, breakage of glass, falsework, testing and startup, temporary buildings and structures, materials used in the construction process, hot and cold testing, 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. Coverage shall include: a provision to pay the reasonable extra costs of acceleration and expediting temporary and permanent repairs to, or permanent replacement of, damaged property (including overtime wages and the extra cost of "express" or other means for rapidly transporting materials and supplies necessary to the repair or replacement); "soft cost endorsement" including, but not limited to, the reasonable extra costs of the Architect and reasonable Contractor extension or acceleration costs; appropriate sub-limits for installation coverage; and provisions for mechanical or electrical breakdown, or boiler system testing. Coverage shall be primary to all other applicable insurance.

**§ 11.3.1.2** If the property insurance requires minimum deductibles, the Contractor shall pay costs not covered because of such deductibles.

**§ 11.3.1.3** This property insurance shall cover portions of the Work stored off the site after written approval of the Owner at the value established in the approval, and also portions of the Work in transit.

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

**§ 11.3.1.5** The insurance required by this Section 11.3 is not intended to cover machinery, tools, apparatus, scaffolding, hoists, forms, staging, shoring or other equipment owned or rented by the Contractor which are utilized in the performance of the Work but not incorporated into the permanent improvements. The Contractor shall, at the Contractor's own expense, provide insurance coverage for owned or rented machinery, tools or equipment.

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### § 11.3.2 BOILER AND MACHINERY INSURANCE

The Owner shall purchase and maintain boiler and machinery insurance required by law.

### § 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.

§ 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 [Intentionally Deleted]

§ 11.3.6 [Intentionally Deleted]

§ 11.3.7 WAIVERS OF SUBROGATION [Intentionally Deleted]

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner in good faith and made payable to the Owner 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 Unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner in good faith shall have power to adjust and settle a loss with insurers.

### § 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Contractor shall furnish bonds as required in the Agreement between Owner and Contractor.

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

§ 11.4.3 If at any time any surety providing bonds for the Project (1) is adjudged bankrupt or has made a general assignment for the benefit of its creditors; (2) has liquidated all assets or has made a general assignment for the benefit of its creditors; (3) is placed in receivership; (4) otherwise petitions a state or federal court for protection from its creditors; or (5) allows its license to do business in Ohio to lapse or to be revoked, then the Contractor shall immediately, but no later than 21 days of any such action listed above, provide the Owner with new Bonds in the form and amount required under the Contract.

## ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

### § 12.1 UNCOVERING OF WORK

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

§ 12.1.2 If a portion of the Work has been covered that the Architect, Owner or any governmental authority has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition

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was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

## § 12.2 CORRECTION OF WORK

### § 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

### § 12.2.2 AFTER SUBSTANTIAL COMPLETION

**§ 12.2.2.1** For a period of one (1) year from the date of Substantial Completion of the Work, the Contractor shall correct all Work defective in workmanship or materials except that with respect to items of work that are corrected or completed after Substantial Completion but prior to final completion, the one-year period shall commence upon final completion of these items of Work. One month prior to the end of the one (1) year period, the Contractor shall attend a walk-through of the Project scheduled by the Architect.

If defective Work becomes apparent within the one-year period, the Owner shall notify the Contractor in writing. Within five (5) days of receipt of said notice, the Contractor shall visit the project in the company of one or more representatives of the Owner to determine the extent of the defective Work. The Contractor shall promptly repair or replace the defective Work, including all adjacent Work damaged as a result of such defective Work or as a result of remedying the defective Work. If the defective Work is considered by the Owner to be an emergency, the Owner may require the Contractor to visit the project within one (1) calendar day or less of receipt of said notice. The Contractor shall be fully responsible for the cost of temporary materials, facilities, utilities or equipment required during the repair or replacement of the defective Work.

If the Contractor does not promptly repair or replace defective Work, the Owner may repair or replace such defective Work and charge the cost thereof to the Contractor or the Contractor's surety. Work which is repaired or replaced by the Contractor shall be subject to the Owner's inspection and acceptance and shall be guaranteed by the Contractor for one (1) year from the date of acceptance of the corrective work by the Owner.

*(Paragraphs deleted)*

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

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

**§ 12.2.5** The guarantee provided in this Section 12.2 does not establish a period of limitation with respect to any of the Contractor's other obligations under the Contract, has no relationship to the time within which the Owner may seek to enforce the Contract, and shall be in addition to, and not in limitation of, any other guarantee, warranty or remedy provided by law, a manufacturer or the Contract.

## § 12.3 ACCEPTANCE OF NONCONFORMING WORK

The Owner, in its sole discretion, may accept Work that is not in accordance with the requirements of the Contract Documents, 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. The acceptance of nonconforming Work by the Owner shall be by written Change Order, signed by the Owner's authorized representative. No person has authority to accept non-conforming work except pursuant to such written Change Order.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

The Contract shall be governed by the laws of the State of Ohio. Any suit, which may be brought to enforce any provision of this Agreement or any remedy with respect hereto, shall be brought in the Common Pleas Court of the County where the Project is located and each party hereby expressly consents to the jurisdiction of such court.

### § 13.2 SUCCESSORS AND ASSIGNS

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

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

### § 13.3 WRITTEN NOTICE

§ 13.3.1 Where notice is required to be given under the Contract Documents, such notice shall be validly given if:

§ 13.3.1.1 delivered personally to a member of the organization for whom the notice is intended;

§ 13.3.1.2 delivered, or sent by registered or certified mail, to the last known business address of the organization; or

§ 13.3.1.3 sent by facsimile, email, or web-based project management software, provided the original, signed document is delivered within 3 business days after the date of the electronic transmission.

§ 13.3.2 When the Owner, the Architect or the Contractor gives notice to one of the other, it shall also simultaneously send a copy of that notice to the others.

### § 13.4 RIGHTS AND REMEDIES

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

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

### § 13.5 TESTS AND INSPECTIONS

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

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and

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where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

**§ 13.5.3** If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense. The Contractor also agrees the cost of testing services required for the convenience of the Contractor in the scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work, shall be borne by the Contractor.

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

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

**§ 13.5.6** The Contractor will participate in training sessions for the Owner in cooperation with the Architect, Owner, Owner's personnel and consultants and the Contractor will participate in tests in cooperation with the Architect, Owner, Owner's personnel and consultants to the extent applicable to the Contractor's Work.

**§ 13.5.7** Any reports or documents resulting from tests, inspections and approvals required under this Section 13.5 shall be submitted to the Architect.

#### **§ 13.6 TIME LIMITS ON CLAIMS**

The applicable statutes of limitations under Ohio law shall apply to all causes of action between the Owner and Contractor pertaining to acts or failures to act arising out of the Contract.

*(Paragraphs deleted)*

#### **§ 13.8 PARTIAL INVALIDITY**

**§ 13.8.1** If any term or provision of the Contract is found to be illegal, unenforceable or in violation of any laws, statutes, ordinances, or regulations of any public authority having jurisdiction, then, notwithstanding such term or provision, the Agreement will remain in full force and effect and such term will be deemed stricken; provided this Agreement will be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision.

#### **§ 13.9 ENTIRE AGREEMENT**

**§ 13.9.1** The Agreement and the other Contract Documents constitute the entire agreement among the parties with respect to their subject matter and supersede all prior and contemporaneous, oral or written, agreements, negotiations, communications, representations, and understandings with respect to such subject matter, and no person is justified in relying on such agreements, negotiations, communications, representations, or understandings.

#### **§ 13.10 EQUAL OPPORTUNITY**

**§ 13.10.1** The Contractor shall comply with Applicable Law regarding equal employment opportunity, including Ohio Revised Code Section 153.59. The Contractor shall cooperate fully with the State's Equal Opportunity Coordinator, with any other official or agency of the state or federal government that seeks to eliminate unlawful employment discrimination, and with all other state and federal efforts to assure equal employment practices under the Contract.

**§ 13.10.1.1** As required under ORC Section 153.59, the Contractor agrees to both of the following:

**§ 13.10.1.1.1** "in the hiring of employees for the performance of work under the contract or any subcontract, no contractor, subcontractor, or any person acting on a contractor's or subcontractor's behalf, by reason of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color, shall discriminate against any citizen of the state in the employment of labor or workers who is qualified and available to perform the work to which the employment relates; and"

§ 13.10.1.1.2 "no contractor, subcontractor, or any person on a contractor's or subcontractor's behalf, in any manner, shall discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color."

§ 13.10.1.2 In the event the Contractor fails to comply with these nondiscrimination clauses, the Contractor shall be subject to the forfeiture requirements of Revised Code Section 153.60.

§ 13.10.2 Hiring Under State Public Improvement Contracts. Any provision of a hiring hall contract or agreement which obligates the Contractor to hire, if available, only employees referred to the Contractor by a labor organization shall be void as against public policy and unenforceable with respect to employment under any public improvement contract unless at the date of execution of the hiring hall contract or agreement, or within thirty (30) days thereafter, the labor organization has procedures in effect for referring qualified employees for hire without regard to race, color, religion, national origin, military status as defined in Revised Code Section 4112.01, or ancestry and unless the labor organization includes in its apprentice and journeyman's membership, or otherwise has available for job referral without discrimination, qualified employees, both whites and non-whites (including African-Americans).

§ 13.11 All personal pronouns used in this Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, sections, and subsections are for convenience only and neither limit nor amplify the provisions of this Contract.

§ 13.12 The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a writing signed by Owner. No person is authorized on behalf of Owner to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Contractor's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Contractor shall be limited to the specific matters stated in the writing signed by Owner, and shall not relieve Contractor of any other of the duties and obligations under the Contract Documents. No "constructive" changes shall be allowed.

§ 13.13 The table of contents, titles, headings, running headlines and marginal notes contained herein and in said documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect, limit or describe or limit the interpretation of the provisions to which they refer.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 DEFAULT OF THE OWNER

#### § 14.1.1

*(Paragraphs deleted)*

This Agreement may be terminated by Contractor upon not less than fifteen days' written notice should the Owner fail substantially to perform in accordance with the terms of the Contract Document through no fault of the Contractor and such failure to perform is not cured within sixty (60) days following a notice of default (however, if such default cannot reasonably be cured within the applicable time period, then Owner shall not be deemed in default so long as it commences to cure the same within such period and diligently pursues such cure) provided that Contractor shall not terminate or suspend performance under this Agreement for non-payment if the nonpayment is the subject of a bona-fide dispute and Owner initiates the payment process by preparing and submitting a purchase order for all undisputed amounts due to the Contractor. In the event of such termination, the Contractor shall be compensated for services satisfactorily performed prior to termination but not to exceed the Contract Sum.

*(Paragraphs deleted)*

### § 14.2 TERMINATION BY THE OWNER FOR CAUSE

#### § 14.2.1

*(Paragraphs deleted)*

Events of Default of the Contractor: each of the following constitutes an Event of Default of the Contractor:

- .1 The failure of the Contractor: i) to perform its obligation under the Contract Documents or under the Contract Documents pertaining to other agreements which the Contractor may have with the Owner, ii) to proceed to commence to correct such default within two business days after written notice of default from the Owner or the Architect and to thereafter to use its best efforts to correct such default to the satisfaction of the Owner, and, iii) except where an extension of time is granted in writing by the Owner, to correct such default within five business days after the written notice of default;

- .2 The failure of the Contractor to pay its obligations as they become due; or
- .3 The insolvency of the Contractor.

§ 14.2.2 Owner's Remedies: upon the occurrence of an Event of Default of the Contractor, the Owner will, upon notice to Contractor, have the following non-exclusive remedies, which will be cumulative:

- .1 To terminate this Agreement;
- .2 Exclude the Contractor from the Project site, and take possession, for the purpose of completing the Work or part of it, materials, equipment, scaffolds, tools, appliances, and other items belonging to or possessed by the Contractor, of which the Contractor hereby transfers and assigns to the Owner for such purpose;
- .3 Accept assignment of subcontracts pursuant to Section 5.4;
- .4 To order the Contractor to stop the Work or part of it, in which case the Contractor will do so immediately;
- .5 To perform through others all or part of the Work remaining to be done and to deduct the cost thereof from the unpaid balance of the Contract Sum; and
- .6 Employ a person or persons to complete the Work, including the Contractor's Subcontractors and/or employees.

§ 14.2.3 If the cost of finishing the Work exceeds the unpaid balance of the Contract Sum, including compensation of the Architect's additional services and costs, expenses, or damages incurred by the Owner as a result of the Event of Default of the Contractor (including attorney's fees and the administrative expenses of the Owner's staff), the Contractor and the Contractor's surety will pay the difference to the Owner. The amounts to be paid by the Contractor will be certified by the Architect, and such certification will be the final determination of the amount owed, except for sums coming due thereafter. The obligations under this Section 14.2 will survive the termination of this Agreement.

§ 14.2.4 The Owner's remedies as set forth in this Section 14.2 is without prejudice to any other rights and remedies of the Owner, including but not limited to the Owner's rights and remedies under the Contract Documents and at law or in equity, all of which shall survive termination.

§ 14.2.5 Should the Owner terminate this Agreement for cause under this Section 14.2, but that cause be subsequently found insufficient to support termination, the termination shall be deemed one of convenience under Section 14.4.

#### § 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

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

#### § 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract in whole or in part for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall with respect to the Work that is terminated:

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



**§ 14.4.3** If the Contract is terminated without cause and for the Owner's convenience and there exists no Event of Default of the Contractor, the Owner will pay the Contractor, i) for Work performed under the Contract up to the date the notice of termination is received by the Contractor at the rates for Work performed under the Contract, including overhead and profit up to the date of termination but not for overhead or lost profit on unperformed Work, ii) for Work performed at the direction of the Owner on and after the date on which the notice of termination is received by the Contractor, as determined by the procedures applicable to Construction Change Directives under paragraph 7.3.3, and iii) for Work necessary to protect and preserve the Work, as determined by the procedures applicable to Construction Change Directives under Subparagraph 7.3.3. The Owner shall be credited for (i) payments previously made to the Contractor for the terminated portion of the Work, (ii) claims that the Owner has against the Contractor, and (iii) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum.

**§ 14.4.4** If the Contract is terminated without cause and for the Owner's convenience and there exists an Event of Default of the Contractor, the Contractor will be entitled to receive only such sums as it would be entitled to receive following the occurrence of an Event of Default of the Contractor.

**§ 14.4.5** The termination of the Contract shall be with or without prejudice to rights or remedies which exist at the time of termination.

## **ARTICLE 15 CLAIMS AND DISPUTES**

### **§ 15.1 CLAIMS**

#### **§ 15.1.1 DEFINITION**

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

#### **§ 15.1.2 NOTICE, SUBSTANTIATION AND CERTIFICATION OF CLAIMS**

**§ 15.1.2.1 Initiation of Claim.** Claims by the Contractor must be initiated by written notice to the Owner, the Architect, and to the Initial Decision Maker with a copy sent to the Architect if the Architect is not serving as the Initial Decision Maker within ten (10) days after the occurrence of the events giving rise to the Claim. Said ten (10) day period is a contractual limitation of action and a material term of the Contract Documents as it provides the Owner with timely notice and information so that Owner can attempt to mitigate any damages, exercise remedies available to it, and investigate the Claim during a near contemporaneous time period. The Contractor's failure to initiate a Claim as and when required under this Section shall constitute the Contractor's irrevocable waiver of the Claim.

**§ 15.1.2.2 Substantiation of Claim.** Within fifteen (15) days after the initiation of a Claim under Section 15.1.2.1, the Contractor shall substantiate its Claim by providing the following minimum written information to Owner: (i) a narrative of the circumstances which gave rise to the Claim, including, without limitation, the start date of the event or events and the actual, or anticipated, finish date; (ii) detailed identification of the Work affected by the event giving rise to the Claim; (iii) copies of the Contractor's daily log for each day of impact; (iv) copies of relevant correspondence and other information regarding or supporting Contractor's entitlement; (v) copies of the Contractor's most recent income statement, including segregated general and administrative expenses for the most recent reporting period, and for the period of the Contract, if available, and similar information for any Subcontractor claim included; (vi) if the Claim is for Additional Cost, the amount of the Claim and the information specified in Section 15.1.4 herein; (vii) if the Claim is for Additional Time, the information specified in Section 15.1.5 herein. Contractor shall also provide to Owner such additional information as requested by Owner to substantiate the Contractor's Claim within ten (10) days following the Owner's request. The Contractor shall provide the required information in the formats requested, which include both paper and electronic copies. The Contractor's failure to comply with the requirements of this Section shall constitute an irrevocable waiver of any related Claim.

**§ 15.1.2.3 Certification of Claim.** Within fifteen (15) days after the initiation of the Claim under Section 15.1.2.1, the Contractor shall certify its Claim by providing the notarized certification, signed and dated by the Contractor, as follows: "The undersigned Contractor certifies that the Claim is made in good faith; that the supporting data is accurate and complete to the best of the Contractor's knowledge and belief; that the amount requested is a fair, reasonable, and necessary adjustment for which the Contractor believes the Owner is liable; and that the undersigned is duly

authorized to certify the Claim on behalf of the Contractor." The Contractor's failure to comply with the requirements of this Section shall constitute an irrevocable waiver of any related Claim.

### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

### § 15.1.4 CLAIMS FOR ADDITIONAL COST

The Contractor's Claim for additional cost shall include an estimate of cost and of probable effect of delay on progress of the Work. The Contractor shall specifically identify those items set forth in Section 7.3.3 along with such additional supporting documentation as requested by the Owner, Architect, and Initial Decision Maker.

### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

**§ 15.1.5.1** Claims for increase in the Contract Time shall set forth in detail the circumstances that form the basis for the Claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the Work and the number of days' increase in the Contract Time claimed as a consequence of each such cause of delay. The Contractor shall provide such supporting documentation as the Architect and Owner may require including, where appropriate, a revised construction schedule indicating all the activities affected by the circumstances forming the basis of the Claim. 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. The Contractor shall also specifically identify those items set forth in Section 7.3.5.1 herein. In the case of a continuing delay, only one Claim is necessary.

**§ 15.1.5.2** The Contractor shall not be entitled to a separate increase in the Contract Time for each one of the number of causes of delay which may have concurrent or interrelated effects on the progress of the Work, or for concurrent delays due to the fault of the Contractor.

### § 15.1.6

*(Paragraphs deleted)*

The Contractor acknowledges and agrees that the Owner and/or parties in privity of contract with Owner may cause delay, interference with and/or disruption of the Contractor's Work. Such actions shall not constitute an Event of Default by the Owner because Contractor is entitled to remedies by submitting a Claim.

**§ 15.1.7 Settlement Offers.** If the Contractor initiates a Claim, the Owner may make settlement offers to settle the Claim at any time up to the date of the trial. Such settlement offers shall be subject to Rule 408 (Compromise and Offers of Compromise) of the Ohio Rules of Evidence.

**§ 15.1.8** If the Contractor makes a Claim on account of the acts or neglect of a separate contractor, the Owner may pursue the Claim against the separate contractor.

### § 15.2 INITIAL DECISION

**§ 15.2.1** Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, a decision by the Initial Decision Maker shall be required as a condition precedent to the dispute resolution process in Section 15.3 herein, unless sixty (60) days have passed after the Claim has been substantiated and certified with no decision having been rendered in which case, the Claim shall be deemed denied in its entirety. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and take one or more of the following actions: (1) request additional supporting data from the Contractor or a response with supporting data from the other party, (2) reject and/or approve the Claim, in whole or in part, (3) suggest a compromise, (4) notify the parties of the date by which the decision will be made, which date may be extended by Architect in its reasonable discretion, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information

Init.

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. 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.

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

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten (10) 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.

**§ 15.2.5** The Initial Decision Maker's decision shall be subject to Owner's concurrence. If the Contractor disagrees with the decision regarding the Claim, the unresolved Claim shall be subject to the dispute resolution provisions in Section 15.3 herein provided that the Contractor initiates the dispute resolution process by giving written notice to the Owner within ten (10) days following the decision.

**§ 15.2.6** [Intentionally Deleted]

*(Paragraph deleted)*

**§ 15.2.7** If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

**§ 15.2.8** 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.

### **§ 15.3 DISPUTE RESOLUTION**

**§ 15.3.1** The parties shall endeavor to resolve Claims and disputes not resolved in accordance with Section 15.2 herein in an amicable manner before having recourse to a judicial forum provided that the Contractor initiates the dispute resolution process in accordance with Section 15.2.5. The Contractor and Owner, following the Contractor's initiation of the dispute resolution process, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after the dispute resolution process is initiated, to attempt to resolve such dispute or disagreement. If after meeting the Contractor and Owner determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, or in any event, if the dispute is not resolved within thirty (30) days after the initial meeting, the parties may follow the process set forth in Section 15.3.2.

**§ 15.3.2** Any Claim not resolved in accordance with Section 15.3.1 herein shall be settled by litigation as the method of binding dispute resolution.

**§ 15.3.3** The parties may, but are not obligated, to submit any Claim not resolved in accordance with Section 15.3.1 herein to non-binding mediation upon such terms as shall be mutually agreeable and such mediation shall take place at an agreed-upon location in the county where the Project is located. The mediation may occur concurrently with or prior to litigation as set forth in Section 15.3.2.

**§ 15.3.4** This Section 15.3 shall not prevent either party from bringing a third party claim in pending litigation for indemnity and/or contribution.

### **§ 15.4 ARBITRATION**

Arbitration is not applicable to this Project; any references elsewhere in the General Conditions to Arbitration are also likewise deleted.

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### Self-Provisioned Fiber Project and Services Provided over Third Party Networks

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*(Name, legal status and address)*

Board of Education of the Centerville City School District

111 Virginia Avenue

Centerville, Ohio 45458

...

Levin Porter Architects

3011 Newmark Drive

Miamisburg, Ohio 45342

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2.1.2, 2.2, 2.4, 3.2.2, 3.10, 3.11, 3.12.5, 3.15.1, 4.2, ~~4.4~~, ~~4.5~~, 5.2, 5.3, 5.4, 6.2.4, 7.3, 7.4, 8.2, 9.2, 9.3.1, 9.3.3, 9.4.1, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 11.1.3, 11.4.1.5, 11.4.6, 11.4.10, 12.2, 13.5, 13.7, 14, 15.1.2, 15.4

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9.10.5, 11.4.7, 13.4.2, 15.1.6

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9.9.3, 9.10.3, 9.10.4, 11.4.3, 11.4.5, 11.4.7, 12.2.2.1, 13.4.2, 14.2.4, 15.1.6

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6.1.1, 11.4.5, **11.3.7**

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3.5, 4.2.9, 9.3.3, 9.8.4, 9.9.1, 9.10.4, 12.2.2, ~~13.7~~ 13.7.1

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2.3, 2.4, 3.3.1, 3.9, 3.12.9, 3.12.10, 5.2.1, 8.2.2, 9.7, 9.10, 10.2.2, 10.3, 11.1.3, 11.4.6, 12.2.2, 12.2.4, **13.3**, 14, 15.4.1

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1.1.1, 2.3, 3.9, 7, 8.2.2, 11.4.9, 12.1, 12.2, 13.5.2, 14.3.1, 15.1.2

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

...

The Contract Documents form the ~~Contract for Construction~~ Contract. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a ~~Sub-subcontractor~~, (3) ~~between the Owner and the Architect or the Architect's consultants or~~ (4) Sub-subcontractor except as set forth in Sections 5.3 and

5.4 or (3) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of Contractor's obligations under the Contract intended to facilitate performance of the Architect's duties.

...

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. The Contractor acknowledges and agrees that the Contract Documents are sufficient to provide for the completion of the Work and include Work, whether or not shown or described, which reasonably may be inferred to be required or useful for the completion of the Work in accordance with applicable laws, codes, and customary standards of the construction industry.

The Contractor shall familiarize itself with the Contract Documents and complete the Work intended to be described and shall not avail itself of any manifest error or omission should such exist.

...

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service ~~may include, without limitation, studies, surveys, models, sketches, drawings, specifications,~~ include, but are not limited to, studies, surveys, models, sketches drawings, specifications (including the Drawings and Specifications as defined herein), and other similar materials.

...

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

#### **§ 1.1.9 PROJECT MANUAL**

The term "Project Manual" means a volume assembled for the Work which may include sample forms, Conditions of the Contract and Specifications.

#### **§ 1.1.10 ARCHITECT**

The term "Architect" means the person providing professional design services for the Project, including that person's authorized representative. Professional design services include services within the scope of practice of an architect or landscape architect registered under Ohio Revised Code Chapter 4703 or a professional engineer or surveyor registered under Ohio Revised Code Chapter 4733.

#### **§ 1.1.11 MISCELLANEOUS DEFINITIONS**

- .1 Where "complete" is used, it shall mean complete with connections, supports, attachments, and incidental items necessary for a finished and properly operating assembly or installation.
- .2 The term "connect" means to bring utility service(s) to point of installation and make final connections to the service(s) to the installed equipment, and to provide miscellaneous auxiliary appurtenances necessary to make operable for its intended use.
- .3 The term "furnish" means to supply (only) to another party for their use of installation, including cost of delivery and unloading at the job site.
- .4 The term "install" means to distribute, uncrate, assemble and fix into the intended final positions, complete and ready for intended service or use, the Contractor to provide all operations connected with installation including all reasonably inferable and necessary miscellaneous hardware, accessories, rigs, testing, supports and supplies required to anchor and support securely, place in operation, clean up, and dispose of rubbish.
- .5 The terms "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall mean that which the Contractor knows (or should know), recognizes (or should recognize) and discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the

expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor exercising the care, skill, and diligence required of the Contractor by the Contract Documents.

- .6 The term "or equal" means an equal approved in writing by the Architect.
- .7 The term "product" as used herein includes materials, systems, and equipment.
- .8 The term "provide" means to furnish, install, connect, complete, test, place in operation and service, including, as applicable, all connections to utilities or service, complete anchorage and suspension, fastening or anchor devices, controls, trim, supports, operation and other related items, unless specified otherwise.
- .9 The terms "remove and reinstall" shall mean remove existing, store to prevent damage, clean, prepare surfaces, and reinstall within Work.
- .10 The term "replace" unless otherwise specifically noted, shall mean remove existing and provide new.
- .11 Where "request", "approval", "satisfactory", "adequate", "proper", "as directed" and similar words appear, it is the request, approval, or satisfaction of the Architect that is intended.
- .12 The term "supplier" as used herein, includes a firm or organization furnishing or delivering products directly to the job site, and because of such direct delivery, could be construed under the lien laws of the State of Ohio as having lien rights with respect to the Project.

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**§ 1.2.1** The intent of the Contract Documents is to include all items necessary and reasonably inferable for the proper execution and completion of the Work by the Contractor, whether or not expressly shown or described. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Architect in dividing the Work on the Project among separate Contractors, nor shall it control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**§ 1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Whenever a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other standards, the Contractor shall present such documents and information from the manufacturer when requested by the Architect or required in the Specifications, certifying the product complies with its particular Standard or Specification. When requested by the Architect or specified, support test data shall be submitted to substantiate compliance.

**§ 1.2.4** When a duplication of material or equipment occurs in the Drawings or the Specifications by assignment of Work to a separate contract add "or" to end of "contract", each Contractor shall be deemed to have bid or to have submitted a proposal on the basis of each furnishing such material or equipment. The Architect will decide which Contractor(s) shall furnish the same and which contract amount shall be adjusted for not incorporating such material or equipment into the Project.

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In the interest of brevity, the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The use of the word "including," when following any general statement, term, or matter, shall not be construed to limit such statement, term, or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term, or matter.

...

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

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

~~§ 1.5.3 The Owner alone owns all Project-related documents, including those in electronic form, prepared by the Contractor and Subcontractors, and every right, title, and interest therein from the moment of creation. The Contractor must execute and deliver and cause its employees and agents and all Subcontractors to execute and deliver, to the Owner any transfers, assignments, documents, or other instruments (if any) necessary to vest in the Owner complete right, title, interest in and ownership of the Contractor's documents. The Contractor may retain copies, including reproducible copies, of the Contractor's documents for information, reference, and performance of the Work. The submission or distribution of the Contractor's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not a waiver of the Owner's reserved rights in the Contractor's documents. Any unauthorized use of the Contractor's documents shall be at the sole risk of the entity making the unauthorized use.~~

...

~~If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents. The Owner, at its option, may elect at its sole discretion to provide or cause to be provided to Contractor electronic files, including, but not limited to, Revit, Computer-Aided Design ("CAD") or Building Information Modeling ("BIM") files (collectively "Electronic Files"). It is understood that Electronic Files are provided solely for the Contractor's convenience and use related to the Project, and any use of the Electronic Files shall be at the sole risk of the Contractor. The Electronic Files are not products, and the Contractor shall not use the Electronic Files for any purpose other than as a convenience for preparing Shop Drawings, as-built drawings, or fabrication data for components, systems, and assemblies intended solely for use on the Project. The Contractor shall indemnify and hold harmless the Owner and Architect from and against all claims, damages, losses, and expenses (including, but not limited to, the fees and charges of engineers, architects, attorneys, and other professionals) arising out of, or related to the Contractor's or Subcontractor's use of the Electronic Files. The Owner and the Architect make no warranties, either express or implied, of the merchantability or fitness of the Electronic Files for any particular purpose. The Contractor understands and accepts that the Electronic Files may deteriorate or be inadvertently or otherwise modified without authorization of the Owner or the Architect, and the Owner and the Architect make no representations as to compatibility, usability, or readability of the Electronic Files resulting from the use of software, application packages, operating systems, or computer hardware differing from those used to create the Electronic Files. The Contractor alone is responsible to check, verify, and otherwise confirm the accuracy of data on the Electronic Files. In the event of a conflict between the Contract Documents and the Electronic Files, the Contract Documents shall control, take precedence over, and govern the Electronic Files. Contractor shall additionally follow any other protocols governing the Electronic Files as may be established by the Owner and Architect.~~

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~~§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. representative. The Owner's representative shall only have such authority as is expressly authorized by the Owner's governing board~~

and as is permitted under the laws of the State of Ohio. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

~~§ 2.1.2~~ The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

~~§ 2.2.1~~ Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor. At the time of the execution of the Agreement, the Owner will provide the Contractor with a certificate, required by law, certifying as to the availability of funds to pay the Contract Sum, and the Owner's total liability under the Contract will be limited to the amount certified. Under no circumstances will the officers, employees, board members, or agents of the Owner be personally liable for any obligations or claims arising out of or related to the Contract.

...

~~§ 2.2.3~~ The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. not be responsible for furnishing surveys (unless required for the execution of the Work, requested by the Contractor in writing, and not otherwise required of the Contractor) or other information as to the physical characteristics of, legal limitations of, or utility locations for the Project site, but as necessary for the Work, shall furnish or cause to be furnished to the Contractor a legal description of the Project site, which shall not constitute one of the Contract Documents. The Contractor shall confirm the location of each utility, shall relocate or dispose of each on-site utility and shall cap each utility as required by the Work or the Specifications. The Contractor shall not be entitled to additional compensation resulting from its failure to confirm the location of the site utilities or existing structures.

...

~~§ 2.2.5~~ Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy Contractor may purchase copies of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

...

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section ~~4.2.2 or repeatedly 12.2~~, fails or refuses to provide a sufficient workforce, fails to follow the directives of the Architect and/or Owner, or otherwise fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3-entity. The rights of the Owner under this Section 2.3 are in addition to Owner's rights and remedies contained elsewhere in the Contract Documents.

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If the Contractor defaults or neglects to carry out the Work in any respect in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to to correct such default

or neglect within three (3) business days after written notice thereof from the Architect or the Owner (or such additional time as granted in writing by Owner) following such notice to the satisfaction of the Architect and the Owner, then the Owner may, upon written notice to the Contractor and without prejudice to the 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 If such default or neglect is an emergency and/or results in a threat to the safety of persons or property, the Contractor shall immediately commence to correct such default or neglect upon receipt of written or oral notice thereof, and if Contractor does not immediately commence correction of such default or neglect, or if Contractor is not available to correct such default or neglect, then Owner may correct the deficiencies. The Contractor shall bear the costs of correcting such deficiencies including 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. neglect, or failure and the Owner's administrative and legal expense, including the time of the Owner's personnel and consultants in dealing with such deficiencies. A Change Order shall be issued deducting from the payments then or thereafter due the Contractor the costs of correcting such deficiencies. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, amount, the Contractor shall pay the difference to the Owner, the Owner and the Contractor's surety shall be responsible for the deficiency if the Contractor should fail to pay the deficiency. The rights of Owner under this Section 2.4 are in addition to the rights of Owner as set forth in Articles 12 and 14 herein.

...

**§ 3.1.4** The Contractor shall attend preconstruction meetings with representatives of the Architect and Owner. The Contractor shall have any of its Subcontractors and suppliers at the meeting as necessary or as requested by the Architect. The preconstruction meetings will serve to acquaint the participants with the general plan of the construction operation and all other requirements of the Project. The date, time, and place of the meetings will be designated by the Owner.

**§ 3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally and carefully and diligently investigated the site and surrounding area, become thoroughly familiar with local conditions under which the Work is to be performed-performed, including generally occurring climatic conditions, and correlated personal observations with requirements of the Contract Documents. By executing the Agreement, the Contractor certifies that it has evaluated and satisfied itself as to the conditions and limitations under which the Work is to be performed, including, without limitation, (i) the location, condition, layout, and nature of the Project site and surrounding areas, including but not limited to utilities, access restraints to the Project site and access restraints to neighboring facilities, (ii) generally prevailing climatic conditions, (iii) anticipated labor supply and costs, (iv) availability and cost of materials, tools, and equipment, and (v) other similar issues. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section 3.2.1.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. The Contractor shall satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, Contractor shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner. These obligations are for the purpose of facilitating coordination and construction by the Contractor, for determining that the Work is constructible, for determining if the Work of the Contractor is coordinated in the Contract Documents with the Work of separate contractors under a separate contract with the Owner, and for verifying that field conditions, including the Work of other Contractors, are consistent with the information in the Contract Documents and ready for Work and are not for the purpose of discovering errors, omissions, or inconsistencies in the design information contained in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. for information. The Owner

assumes no responsibility for any conclusions or interpretations made by the Contractor based on the information made available to the Contractor, nor does the Owner assume responsibility for any understanding reached or representation made concerning conditions which can affect the Work by any of its officers or agents before the execution the Contract, unless that understanding or representation is expressly stated in this Contract.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. Proceeding without providing such request shall make the Contractor responsible for any costs and expenses incurred by the Contractor related to the claimed deficiencies.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities. Contractor, within seven (7) business days after the Architect issues its response, shall give the Owner written notice of the Contractor's position, and not proceed with the subject Work without first receiving a Construction Change Directive or Change Order related to it. The Contractor waives its right to an adjustment of the Contract Sum or Contract Times on account of such clarifications or instructions by: starting the Work which is the subject of the such clarifications or instructions; or failing to give the notice within seven (7) business days after receiving such clarifications or instructions.

**§ 3.2.5** The Owner is entitled to reimbursement from the Contractor for amounts paid to the Architect for evaluating and responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents and/or where the requested information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation.

**§ 3.2.6** If the Architect does not specify a form for Contractor to submit a request for information, then Contractor shall utilize the AIA Document G-716.

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

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, ~~Subcontractors~~ Subcontractors, Sub-subcontractors and material suppliers of any tier 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. The Contractor shall be responsible for scheduling and coordinating the work of its Subcontractors and material suppliers. This section shall apply with equal force and effect regardless of whether any Subcontractors are selected by the Contractor or assigned by the Owner.



§ 3.3.3 If any of the Work is required to be inspected or approved by any public authority, then the Contractor shall cause such inspection or approval to be performed. No inspection performed or failed to be performed by the Owner hereunder shall be a waiver of any of the Contractor's obligations hereunder nor shall it be construed as an approval or acceptance of the Work or any part thereof.

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, enclosed storage and other facilities and services necessary for proper execution and completion of the Work, including but not limited to field offices, toilets, other trailers, or buildings, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Responsibility for ensuring that materials are fabricated accurately to field measurements shall be that of the Contractor, who shall pay all costs involved in replacing or correcting any such improperly fitting materials. The Contractor shall use best efforts to conserve any utilities furnished by Owner.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, which the Owner may withhold in its sole discretion, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. The Contractor shall provide all data, information, regulations and certifications required by Architect and Owner in evaluating the proposed substitution. The Owner shall be entitled to reimbursement from the Contractor for amounts paid for reviewing the Contractor's proposed substitutions and making agreed-upon changes in the Drawings and Specifications resulting from such substitutions.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them and shall promptly remove and replace such persons with a competent employee. Informational picketing shall not justify any work stoppage.

§ 3.4.4 Contractor shall perform or cause to be performed an Ohio Bureau of Criminal Investigation and Identification and Federal Bureau of Investigation criminal background check of any person whether an employee of Contractor or of any Subcontractor, that will perform Work or services or otherwise be present at the Project site and within the proximity of minors. Prior to the performance of any services by such employees, the criminal background check shall be performed and completed at Contractor's sole cost and expense. No person shall be employed on site by Contractor or by any Subcontractor who has been found guilty of any of the criminal offenses enumerated in Ohio Revised Code Section 3319.39 or any equivalent provisions under Federal law or the laws of any of the other states. Contractor shall remove (and shall cause its subcontractor to remove) any person from the Project site found (during the criminal background check or otherwise) to have violated any of the offenses listed in Section 3319.39 of the Ohio Revised Code or equivalent provisions thereof under Federal law or the laws of any of the other states. The foregoing shall not (i) be cause for any claim against the Owner for any reason, including without limitation, interference or delay, and (ii) excuse Contractor or any Subcontractor from meeting the construction schedule.

...

The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract § 3.5.1 In addition to any other warranties, guarantees, or obligations set forth in the Contract Documents or applicable as a matter of law and not in limitation of the terms of the Contract Documents, the Contractor warrants that:

- .1 The Work and materials and equipment incorporated into the Work will be new except for such materials that the Architect authorizes in writing that may be removed and reinstalled.
- .2 The Work and materials and equipment incorporated into the Work will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. free from defects, including defects in the workmanship or materials.
- .3 The Work and equipment incorporated into the Work will be fit for the purpose for which they are intended.
- .4 The Work and materials and equipment incorporated into the Work will be merchantable.

.5 The Work and materials and equipment incorporated into the Work will conform in all respects to the Contract Documents.

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 shall be considered defective.~~

**§ 3.5.2** In addition to the warranties set forth above, Contractor shall assign to Owner any and all manufacturer's or installer's warranties for equipment or materials not manufactured by Contractor and provided as part of the Work, to require all warranties to be executed in writing for the benefit of the Owner, and to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

**§ 3.5.3** The Contractor's warranty excludes remedy for damage or defect caused by abuse, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage.

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The Contractor shall pay sales, consumer, ~~use-use, commercial activity,~~ 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. Owner will provide to Contractor, upon request, a completed State of Ohio Sales and Use Tax Construction Contract Exemption Certificate.

**§ 3.7**

**PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS**

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the ~~Contractor~~ Owner through the Architect shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by required plan approvals from the building department having jurisdiction over the Project. Contractor shall secure and pay for all other permits, fees, charges, assessments, licenses, and inspections by utilities or government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations ~~concluded~~ concluded, provided that Owner shall bear the costs where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

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

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

**§ 3.7.4 Subsurface, Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist-exist, not reasonably contemplated, and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than ~~21~~ seven (7) calendar days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor in writing, stating the reasons. If ~~either party~~ Contractor disputes the Architect's determination or recommendation, ~~that party~~ the Contractor may proceed as provided in Article ~~15-15~~, and the time limit for initiating a Claim as set forth in Section 15.1.2 herein related to subsurface, concealed or unknown conditions begins to run on the date the Architect issues its determination or recommendation.

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- .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~~ shall not be chargeable against the allowances; and
- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2. The Contractor shall obtain a Change Order before incurring any costs in excess of an allowance.

...

~~§ 3.9.2 The Contractor, as soon as practicable after award~~ If not already approved in advance by Owner, the Contractor, upon execution of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a the proposed superintendent. The Architect may reply within 14 seven (7) 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 seven (7) day period shall constitute notice of no reasonable objection. The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection.

~~§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed. Architect and Owner shall have the right to require the Contractor to remove a superintendent from the Project whose performance is not satisfactory, and to replace the superintendent with a superintendent who is satisfactory to the Architect and Owner. The Contractor shall not replace the superintendent without the consent of the Architect and the Owner, except with another superintendent who is satisfactory to the Architect and Owner. The Contractor shall promptly provide any information requested by Owner and Architect related to the replacement superintendent.~~

### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

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

~~§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.~~

~~§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.~~

§ 3.10.1 The Contractor is responsible for scheduling the Work, and coordinating the Subcontractors. If not already provided to Owner, the Contractor, not later than three (3) days following commencement of the Work, shall prepare and submit for the Owner's and Architect's approval a Contractor's construction schedule for the Work. The schedule shall be in such detail satisfactory to the Owner and the Architect and shall (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction, milestone dates and occupancy; (iii) identify activities and durations for review and approval of Shop Drawings and other action submittals, fabrication and review of mock-up Work, coordination drawings, product review and procurement, fabrication, shop inspection and delivery, including, but not limited to, lead time, coordination drawing delivery, substantial completion inspection, completion or correction of deficient items of Work, Project close-out requirements, final completion and occupancy requirements; (iv) identify disruptions and shutdowns due to other operations; (v) identify the critical path of the Work; (vi) identify the crew size and total resource hours for each activity in the schedule; and (vii) set forth dates that are critical in ensuring the timely and orderly commencement and

completion of the Work in accordance with the requirements of the Contract Documents. The Contractor shall sign the schedule indicating the Contractor's approval. If the schedule is not accepted by the Owner and Architect, the Contractor shall promptly revise the schedule in accordance with the recommendations of the Owner and Architect and resubmit to Owner and Architect for acceptance. The schedule shall not exceed time limits established under the Contract Documents, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.1.1 In certain occupied buildings, tasks might be of such a nature that noise and vibration cannot be tolerated. In such spaces, Work shall be scheduled for other than normal working hours. The Contractor is cautioned that weekend or overtime work, if required to avoid such noise and vibration, shall be performed at no additional cost. Permission to work other than standard hours shall be received from the Owner prior to the occurrence. Weekend and overtime Work shall be reflected in the Construction Progress Schedule.

§ 3.10.2 The Contractor shall provide weekly progress reports to the Owner and Architect which shall include recommendations for adjusting the construction schedule to meet milestone completion, Substantial Completion and final completion dates, provided that Contractor may provide the reports at different intervals if approved in writing by Owner. In the event that critical path activities, schedule milestone completion dates, Substantial Completion or final completion dates will not be met, Contractor shall devise an affirmative time recovery plan acceptable to the Owner and Architect to avoid or minimize any delay. Such a plan may include, without limitation, increasing the Contractor's workforce in such quantities as will eliminate the backlog of Work, increasing the number of working hours per shift, shifts per workday, workdays per week, the amount of construction equipment, or any combination thereof, rescheduling of activities to achieve maximum practical concurrency of Work efforts and, if appropriate, time extensions.

§ 3.10.3 The Contractor shall update on a weekly basis the construction schedule consistent with time limits established under the Contract Document and shall obtain the Owner's and Architect's approval, provided that Contractor may provide the updates at different intervals if approved in writing by Owner. The updated construction schedule shall show all changes to the previous schedule. The updated construction schedule shall be signed by the Contractor and shall serve as an affirmation that the Contractor agrees to and can meet the requirements of the updated construction schedule.

§ 3.10.4 Free float and total float are resources of the Project, and the use of float associated with an activity is not permitted without the concurrence of the Owner and the Architect. The Contractor shall exhaust existing float before claiming additional time for a Change Order, or show that it is not possible to use float to cover the requirements of the Change Order.

§ 3.10.5 The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules and the Contractor shall coordinate its Work with the activities of the Owner's own forces and of separate Contractors. The Contractor shall make any revisions to the construction schedule in order to coordinate its Work as required by this Section.

§ 3.10.6 The Contractor shall lay out and install its Work at such time or times and in such manner as not to delay or interfere with the carrying forward of the Work of separate contractors, and 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. The Contractor shall connect and coordinate the Contractor's construction and operations with that of the Owner and other contractors as required by the Contract Documents and construction schedule.

§ 3.10.7 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.

§ 3.10.8 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor retained by the Owner and not under the Contractor's control because of the Contractor's delays, improperly timed

activities or defective construction including acceleration costs provided that Owner notifies Contractor of the need to coordinate its work with that of the separate contractor. If such other separate contractors initiate legal or other proceedings against the Owner on account of damage alleged to have been caused by the Contractor, and if judgment or award against the Owner arises therefrom, the Contractor shall pay or satisfy it and shall reimburse the Owner for attorneys' fees and court or other costs which the Owner has incurred over and above those paid for directly by the Contractor.

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, Drawings; Specifications; Addenda; accurate, current and reproducible as-built drawings (showing Work as actually performed, variations from the original Contract Documents and the location of any concealed and/or buried items, utilities, mechanical or electrical systems and components); Change Orders and other Modifications and all back up data; a record of changes made to the Specifications; and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. Contractor shall also maintain at the site: a daily log in which it has recorded Project related information, including but not limited to, weather, number of workers on site, identification of equipment, Work accomplished, problems encountered and other similar relevant Project data; manufacturers' installation, operating and/or maintenance instructions or requirements, certificates and warranties; any special guarantees or warranties required by the Contract Documents; all the Contractor's communications, including but not limited to letters, memoranda, e-mails, invoices and bills of lading, arising out of or related to the Project with the Architect, Owner, and/or its subcontractors, materialmen and/or employees; assignment of all guarantees or warranties from Subcontractors, vendors, suppliers or manufacturers; a list of the names, addresses and telephone numbers of all Subcontractors and any other persons providing guarantees and warranties; quality control procedures and documents related thereto; and the payroll reports for its employees and the employees of its Subcontractors working on the Project. These shall be available to the Architect and Owner at all times and shall also be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.11.1 If the Project is designed and constructed under the LEED® ("Leadership in Energy and Environmental Design") program developed by the U.S. Green Building Council or another rigorous rating system used to facilitate achievement of sustainability goals for the Project, the Contractor shall provide submittals certifying achievement of sustainable design rating system criteria for verification by a third party, and the submittals shall be provided in accordance with any deadlines set forth in the schedule and Contract Documents. In the absence of schedules or deadlines, the Contractor will submit the documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or separate contractors. The Contractor grants to the Architect and Owner the right to submit the Contractor's submittals to the rating system as required in order to achieve or maintain the sustainability goal.

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

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. The Contractor shall pay all costs incurred by the Architect and Owner for attendant delay, interference, hindrance or disruption of the Project due to (i) review of submittals out of sequence from the agreed-upon schedule and/or (ii) due to excessive re-submittals without fault of the Architect. Unless otherwise provided in the Contract Documents, re-submittals in excess of one (1) without fault of the Architect or Owner shall be deemed excessive. If the Shop Drawings or other submittals show variations from the requirements of the Contract

Documents, the Contractor shall specify such variations in the Contractor's letter of submittal to the Architect accompanying the submittal. Variations must be approved in writing.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, ~~or will do so and~~ (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The Architect's review shall not extend to means, methods, manners, techniques, field measurements, sequences or procedures of construction, or to safety precautions or incident programs.

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

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

**§ 3.12.11** Unless otherwise expressly provided in the Contract Documents, the Contractor shall provide typed or printed instructions covering the operation, maintenance and cleaning of each item of equipment furnished in a notebook submitted to Architect for review and for transmittal to Owner.

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~~The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.~~ **§ 3.13.1** The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. Loitering or wandering outside the limits of the Work area will not be permitted.

§ 3.13.2 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

§ 3.13.3 Without limitation of any other provision of the Contract Documents, the Contractor shall use best efforts to minimize any interference with the occupancy or beneficial use of (i) any areas and buildings adjacent to the site of the Work and (ii) the Project site and any buildings located thereon in the event of partial occupancy, as more specifically described in Section 9.9. Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Owner.

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§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials, materials, dirt, dust 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. The Contractor shall give to the Owner any surplus materials that are required by the Contract Documents, but not incorporated into the Project, for future maintenance or repairs. The Contractor shall be responsible for compliance with all requirements regarding notification and disposal of construction demolition debris.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor. The Architect's determination of the costs to be charged to the Contractor shall be final.

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

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§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, fines, penalties, punitive 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 and consultants' fees and the cost of their staff, arising out of or related to the Contractor's performance of the Work and its obligations under the Contract, including but not limited to claims for 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 or loss of use of real or personal property, claims due to delays in or acceleration of the work of separate contractors, claims for loss of productivity, claims for additional storage and handling charges, claims for escalation of the cost of labor and materials, claims for home office overhead, liens, attested accounts, and claims related to the removal, handling or use of hazardous materials to the proportional amount of fault attributable to the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18, compared to the proportional amount of fault, if any, attributable to all parties indemnified hereunder. The Owner may set off an amount equal to the sums

for which it is entitled to be indemnified from the amounts otherwise due the Contractor under the Contract Documents.

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### **§ 3.19 UNDERGROUND UTILITY FACILITIES**

**§ 3.19.1** The Contractor, at least two (2) working days prior to commencing construction in an area which may involve underground utility facilities, shall give notice to the Architect, the registered underground utility protection services, and the owners of underground utility facilities shown in the Contract Documents who are not registered members of the registered underground utility protection services. The Contractor shall alert immediately the occupants of any premises near the Work and the Architect as to any emergency that it may create or discover. The Contractor shall notify the operator of the underground facility and the Architect of any break or leak in the utility lines or any dent, gouge, groove, or other damage to such lines made or discovered in the course of excavation. In the event that any underground utility owner fails to timely perform, the Contractor shall notify the Owner and shall contact the owner of the underground utility.

### **§ 3.20 LIEN WAIVERS AND NOTICES OF FURNISHING**

**§ 3.20.1** The Contractor will provide Subcontractors and suppliers a copy of the Contractors bond. By entering into an agreement to provide labor, materials, equipment and/or supplies for the Project, such Subcontractors and suppliers agree to provide lien waivers to the Contractor as may be required by Owner from time to time. Upon receipt of notices of furnishing, the Contractor will deliver copies of the notices of furnishing to the Architect.

**§ 3.20.2** The Contractor shall provide a copy of any notice of commencement prepared by Owner to its Subcontractor and any known Sub-subcontractors and the Contractor shall further require its Subcontractor to provide a copy of the notice to any of the Sub-subcontractors.

**§ 3.21** All Work shall be maintained and repaired by Contractor prior to Substantial Completion, and Contractor shall keep records of all maintenance and repairs performed prior to Substantial Completion and shall turn these records over to Owner upon final completion of the Work.

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**§ 4.1.1** The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located, shall, if required, retain an architect as defined in Section 1.1.10 herein. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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

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

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**§ 4.2.1** The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. Documents, and will be a representative of Owner (1) during construction, (2) until final payment is due and (3) from time to time during the one-year period for correction of Work described in Section 12.2 and for such additional periods as Owner and Architect may agree. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents. Documents and as authorized by the Owner.

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, to endeavor to guard the Owner against defects and deficiencies in the Work, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with



the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1. The Contractor shall reimburse the Owner for amounts paid to the Architect for site visits that are in addition to what is required of the Architect as described in this Section and that are made necessary by the fault of the Contractor or by defects and deficiencies in the Work.

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

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

**§ 4.2.6** The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the ~~Work in accordance with Sections 13.5.2 and 13.5.3, Work, including those tests and inspections as provided in~~ Section 13.5, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

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**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and ~~issue~~ execute and distribute a final Certificate for Payment pursuant to Section 9.10.

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

...

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

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

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information. If no agreement is made concerning the time within which such interpretations shall be furnished, then delay shall not be recognized on account of Architect's failure to furnish such interpretations until 15 days after written request is made for them and the Contractor establishes the Architect's delay in responding.

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§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work ~~at the site, and which may include the furnishing of supplies, materials, equipment or services.~~ The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work ~~at the site, and which may include the furnishing of supplies, materials, equipment or services.~~ The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor of any tier or an authorized representative of the Sub-subcontractor.

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§ 5.2.1 ~~Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection. Retention of Subcontractors shall be as set forth in the Agreement between Owner and Contractor.~~

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

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

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

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

§ 5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. Contractor shall promptly provide to Owner copies of any agreement between the Contractor and a Subcontractor along with copies of all bids or other proposals from Subcontractors. The subcontract form between the Contractor and a Subcontractor shall meet the applicable requirements of Ohio Administrative Code 153:1-3-01 and 153:1-3-02.

§ 5.3.2 Notwithstanding the provisions of Section 5.3.1, any part of the Work performed for the Contractor by a Subcontractor or its Sub-subcontractor shall be pursuant to a written Subcontract between the Contractor and such Subcontractor (or the Subcontractor and its Sub-subcontractor at any tier) which provides that the Owner is an intended third-party beneficiary of such subcontract, and Contractor shall provide copies of such Subcontracts to Owner upon request. The Architect will assume no responsibility for reviewing, monitoring, or verifying activities or relationships involving a Subcontractor or its Sub-subcontractor.

§ 5.3.3 If the Architect fails to approve and issue a Certificate for Payment at the fault of the Contractor, the Contractor shall pay its Subcontractors on demand, at any time after the Certificate for Payment should otherwise have been issued, provided the Architect's failure to approve is not the fault of a particular Subcontractor and provided the Contractor is not in a bona fide dispute with that Subcontractor affecting payment. Nothing within this Section or in the Contract shall be construed as limiting the Contractor's obligations under Revised Code 4113.61.

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- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 pursuant to Article 14 herein and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

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When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the ~~subcontract~~ subcontract except for any prior default of the Contractor.

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

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

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

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§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, ~~and~~and/or to award separate contracts in connection with other portions of the Project or other construction or operations on the site under ~~Conditions~~conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation.~~If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.~~

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

§ 6.1.3 ~~The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.~~may provide materials for incorporation into the Project, and the Contractor, if specified within the Contract Documents, shall incorporate such materials as part of its Work for the Project. The Contractor shall be fully responsible for and the Contract Sum shall cover, all matters relating to the receipt of materials provided by Owner as if the Contractor were the original purchaser, including but not limited to verifying correct quantities; coordinating purchases; providing, obtaining and managing all warranties and guarantees required by the Contract Documents; inspection and acceptance of the materials; and loss or damage to the materials following acceptance of the materials by the Owner due to the negligence of the Contractor. The Contractor shall coordinate delivery schedules, sequence of delivery, loading orientation, and other arrangements normally required by the Contractor for the particular material furnished. The Contractor shall provide all services required for the unloading, handling and storage of materials through installation. The Contractor shall ensure that Owner-provided materials conform to the Contract Documents and shall determine prior to incorporation into the Work if such materials are patently defective. If the Contractor discovers defects or non-conformities upon such visual inspection, the Contractor shall not utilize such materials in the Contractor's Work and instead shall properly notify the Owner of the defective or nonconforming condition so that repair or replacement of those materials can occur without undue delay or interruption to the Project. If the Contractor fails to perform such inspection and incorporates such defective or non-conforming materials into the Contractor's Work, Contractor shall be responsible for all damages to the Owner resulting from Contractor's incorporation of such materials into the Work. The Contractor shall maintain records of all Owner-provided materials it incorporates into the Work and shall account to the Owner for all Owner-provided materials delivered into the Contractor's or Subcontractor's possession.

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

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

the Contractor causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

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

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

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

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

...

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. The Owner shall also issue a Change Order to reconcile the difference between the scheduled and actual quantities of Work performed and materials furnished. The Contractor shall proportionately increase the amount of its bond whenever the Contract Sum is increased. If notice of any change affecting the Contract is required by a provision of the bond, giving the notice shall be the Contractor's responsibility. A Change Order signed by the Contractor without any indication of change in the Contract Sum and/or Contract Time indicates the Contractor's agreement that there will be no change in the Contract Sum and/or Contract Time.

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§ 7.1.4 The Contractor shall not proceed with any Change in the Work without the appropriate written authorization. Except as otherwise provided herein, the Contractor's failure to obtain prior written authorization for a Change in the Work shall constitute a waiver by the Contractor of an adjustment to the Contract Sum and/or Contract Time for the related Work. No course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

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§ 7.2.2 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs and consequential damages associated with such change, the cumulative impact of the associated change in the Work in combination with one or more other changes in the Work, and any and all adjustments to the Contract Sum and the construction schedule. The Contractor is not entitled to reserve any rights or take other similar action with respect to a Change Order if the effect or intent of the reservation or action would be to accommodate a further adjustment of the Contract Sum or Contract Times, or both, after the Contractor signs the Change Order. Unless otherwise designated by the Architect, the Change Order form shall be the AIA Document G-701.

- ...
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon; upon (as may be adjusted in accordance with Section 7.3.4 herein);
- ...

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted. the actual quantity of a Unit Price item differs from the scheduled quantity by 20 percent or more, so that application of the Unit Price to the quantities of Work proposed would create an undue hardship on either the Owner or the Contractor, the Architect shall issue a Construction Change Directive to adjust the Unit Price. If the actual quantity of a Unit Price item exceeds the scheduled quantity by 20 percent or more, the Contractor shall immediately notify the Architect and Owner who shall issue a Construction Change Directive and subsequent Change Order to authorize an adjustment in the scheduled quantity.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved ~~and~~ and, within seven (7) days following receipt of the Construction Change Directive, advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.5.1 If the Contractor disagrees with the method for adjusting the Contract Time, the Contractor shall provide along with the notice in Section 7.3.5 herein a written description of the nature of the interference, disruption, hindrance or delay which shall include identification of persons and events responsible for the interference, disruption, hindrance or delay; the date, or anticipated date, of commencement of the interference, disruption, hindrance or delay; activities on the Construction Schedule which may be affected by the interference, disruption, hindrance or delay, or new activities created by the interference, disruption, hindrance or delay and the relationship with existing activities; anticipated duration of the interference, disruption, hindrance or delay and of any remobilization period; specific number of days of extension requested and specific number of days for remobilization requested; and recommended action to avoid or minimize any future interference, disruption, hindrance or delay.

§ 7.3.5.2 If the Contractor disagrees with the method for adjusting the Contract Sum, the Contractor shall provide in writing the items set forth in Section 7.3.3 herein.

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

- .a ~~Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;~~ Labor: All field labor shall be priced at the current base rate, excluding fringe benefits, paid by the Contractor. The payroll is to be based on the straight time only and is to include number of hours and rate of pay for each classification of work. If overtime is approved, list only the straight time portion of this term. Any Contractor performing time and materials or cost-plus basis Work shall submit certified payroll records for all employees performing that Work.;
- .b Fringes: All established payroll taxes, assessments and fringe benefits on the labor on item (a). This may include, but is not limited to FICA, Federal and State unemployment, Health and Welfare Pension Funds, Workers' Compensation, and Apprentice Fund. Each of the fringes is to be a separate item.

- .c Equipment Rentals: All charges for certain non-owned heavy or specialized equipment at up to 100 percent of the documented rental cost attributable to the Project. No rental charges will be allowed for hand tools, minor equipment, simple scaffolds, etc. Downtime due to repairs, maintenance and weather delays will not be allowed.
- .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  
d Owned Equipment: All charges for certain owned, heavy or specialized equipment at up to 100 percent of the cost listed by the Associated Equipment Dealers Blue Book. No recovery will be allowed for hand tools, minor equipment, simple scaffolds, etc. The longest period of time that the equipment is to be required for the Work will be the basis for pricing. Downtime due to repairs, maintenance and weather delays will not be allowed.
- .e Trucking: A reasonable delivery charge or per mile trucking charge for delivery of required materials or equipment. Charges for use of a pickup truck will not be allowed.
- .f Materials: (i) all materials purchased by the Contractor and incorporated into the changed Work, showing costs, quantities, or unit prices or all items, as appropriate. Reimbursement or material costs shall only be allowed in the amount of the Contractor's actual cost including any and all discounts, rebates, or related credits; and (ii) one-third of the cost of reusable materials for each use, such as formwork lumber, shoring, or temporary enclosures.;
- .g Overhead: Includes telephone, telephone charges, facsimile, telegrams, postage, photos, photocopying, hand tools, simple scaffolds (one level high), tool breakage, tool repairs, tool replacement, tools blades, tool bits, home office estimating and expediting, home office clerical and accounting support, home office labor, legal services, travel and parking expenses.;
- .h Miscellaneous: The following items are allowable at the cost of the Work, with no overhead or profit: (i) the cost of extending the bond and the cost of extending liability, property damage, builder's risk or specialty coverage insurance; (ii) the premium portion only for approved overtime (labor and fringes) (the straight time portion is included in items (.a) and (.b)); and (iii) fees for permits, licenses, inspections, tests, etc.; and
- .i Costs that will NOT be reimbursed for Change Order work include the following: (i) employee profit sharing plans (regardless of how defined or described, the Contractor will pay these charges from Contractor profit and will not be reimbursed); (ii) voluntary employee deductions (examples are United Way and U.S. Savings Bonds, etc.).
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

**§ 7.3.7.1** Overhead and profit on any add Change Order shall not exceed: (a) For work completed by the Contractor with its own labor, fifteen (15) percent shall be added to the items noted in clauses .a, .b, .c, .d, .e, and .f of Subparagraph 7.3.7; (b) For work completed by Subcontractors of the Contractor, ten (10) percent shall be added to the items noted in clauses .a, .b, .c, .d, .e, and .f of Subparagraph 7.3.7. However, the percentage for profit and overhead may be less depending on the nature, extent, or complexity of the change where the percentage is not commensurate with the responsibility and administration involved. The Contractor shall not assign any portion of the work to another person or entity whereby the Contractor would benefit directly or indirectly from the double application of charges for overhead or profit.

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the ~~Architect~~ Architect plus credit for overhead and profit equal to the percentages for overhead and profit for add change orders as set for in Section 7.3.7.1. 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, increase or decrease~~, if any, with respect to that change.

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

**§ 7.3.10** When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive. Disagreements with the Architect's final determination shall be resolved in accordance with Article 15, and the timeline for initiating a Claim as set forth in Section 15.1.2 herein related to the Architect's final determination on a Construction Change Directive begins to run on the date the Architect issues its final determination.

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~~The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.~~ **§7.4.1** The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order conspicuously marked as a minor change in the Work and signed by the Architect and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly. Unless otherwise designated by the Architect, the form to be utilized by Architect in authorizing minor changes in the Work shall be the AIA Document G-710, Architect's Supplemental Instructions.

**§7.4.2** If the Contractor reasonably believes that it would be entitled to an adjustment of the Contract Sum or Contract Times, or both, on account of an order for a minor change in the Work, the Contractor, within seven (7) business days after receiving the order, shall give the Owner written notice of the Contractor's position, and not proceed with the subject Work without first receiving a Construction Change Directive or Change Order related to it. The Contractor waives its right to an adjustment of the Contract Sum or Contract Times on account of an order for a minor change in the Work by: starting the Work which is the subject of the order for a minor change in the Work; or failing to give the notice within seven (7) business days after receiving the order for a minor change in the Work.

## **§7.5 PROPOSAL REQUESTS**

**§7.5.1** The Architect may issue to Contractor at any time a proposal request for a Change in the Work, including a change in the Contract Sum and Contract Time (a "Proposal Request"). A Proposal Request is not a Change Order, a Construction Change Directive, an order for a minor change in the Work, or authorization to proceed with the change in the work described in the Proposal Request. Unless otherwise designated by the Architect, the form to be utilized by Architect for a Proposal Request shall be the AIA Document G709, Work Changes Proposal Request.

**§7.5.2** In any Proposal for an adjustment of the Contract Sum, the Contractor shall specifically identify the items set forth in Section 7.3.3 herein. In any Proposal for an adjustment of the Contract Time, the Contractor shall specifically identify the items set forth in Section 7.3.5.1 herein.

**§7.5.3** The Contractor shall respond with a Proposal to the Architect within seven (7) days after receiving the Proposal Request. The allowable time for the Contractor's response may be extended by written agreement of the Contractor, the Owner and the Architect. Failure to respond within the allowed time frame may result in the Owner proceeding with the work through any other means. It is also understood that Owner may at any time issue a Construction Change Directive for the Change in Work described in the Proposal Request.

**§7.5.4** The Contractor shall hold the Proposal valid and open for acceptance for at least thirty (30) days. The acceptance period may be adjusted by mutual written consent of the Contractor and the Owner.

**§7.5.5** The Owner may accept the Proposal in writing at which point the Contractor's obligations to perform the work as outlined in the Proposal shall become binding. The parties promptly thereafter shall memorialize the Owner's acceptance of the Proposal through a Change Order, provided, however, that the Contractor's refusal to execute the Change Order memorializing the acceptance of the Proposal shall not affect the Contractor's binding obligation to perform the work as outlined in the Proposal as accepted by the Owner.

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**§ 8.1.4** The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined. Except when a consecutive calendar day is specified, when the Contract Documents refer to a period of time



by a number of days, it excludes the first day and includes the last day of the period. If the last day of the period falls on a Saturday, Sunday, or a legal holiday, that day shall be omitted and the period shall end on the next day which is not a Saturday, Sunday, or legal holiday. It is understood that for purposes of the Contract, a legal holiday shall be a legal holiday as observed by the State of Ohio.

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**§ 8.2.2** The Contractor shall ~~not knowingly, not,~~ 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.

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**§ 8.2.4** The Contractor, i) will cooperate with the Architect and all separate contractors by freely providing timely information for the scheduling of the times and sequence of the operations required for the Work to be substantially complete as required by the Contract Documents, ii) will continuously monitor the current progress schedule so as to be fully familiar with the timing, phasing, and sequence of the operations of the Work and to the other Work on the Project, and iii) will execute the Work in accordance with the requirements of the current progress schedule.

**§ 8.3.1** ~~If the Contractor is delayed at any time Subject to other provisions of the Contract, the Contractor will be entitled to an extension of the Contract Time on account of delay 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. Work on the critical path of the construction schedule caused by acts of nature or the public enemy, acts of the government not arising from the Contractor's failure to comply with applicable law, fires, floods, epidemics, weather, and labor disputes beyond the Contractor's control. The Contractor shall not be permitted to make a Claim for an increase in the Contract Sum for acceleration, either constructive or actual, in the performance of the Work unless the Contractor has first made a Claim for an extension of the Contract Time as permitted by this Section 8.3.1 and the Claim for an extension of the Contract Time is denied.~~

**§8.3.1.1** Notwithstanding any other provision of the Contract Documents to the contrary, the Contractor shall not be entitled to an increase in the Contract Sum, or an extension of the Contract Time, or both: (i) on account of the impact of any normal adverse weather on any of the Work or on account of the impact of any abnormal adverse weather on Work not on the critical path; (ii) to the extent that a delay occurs concurrently with a delay attributable to the Contractor; or (iii) on account of the delay of any Work not on the critical path.

**§8.3.1.2** Notwithstanding any other provision of the Contract Documents to the contrary, the Contractor shall not be entitled to an increase in the Contract Sum or any type of damages on account of a delay in the commencement or progress of Work on the critical path unless (i) the delay is caused by the Owner or (ii) the delay was not authorized or permitted under the Contract.

**§8.3.1.3** Derivative Claims. Notwithstanding any other provision of the Contract to the contrary, if the Owner prosecutes a claim, suit, or appeal against a separate contractor to recover damages the Contractor suffers on account of the acts or neglects of a separate contractor or a person or entity for whom the separate contractor is legally responsible, the Owner's liability to the Contractor shall not exceed the amount the Owner actually recovers from the separate contractor on account of those damages less the costs the Owner incurs recovering them. The Owner is not obligated to prosecute any such claim, suit, or appeal.

**§ 8.3.2** Claims relating to time under Section 8.3 shall be made in accordance with applicable provisions of Article 15.

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

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Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, Unless a different timeline is specified in the Contract Documents, the Contractor shall submit to the Architect within ten (10) days following the date of commencement 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. The Contractor shall utilize AIA Document G-703 in submitting its schedule of values unless a different form is designated. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. By submitting such schedule of values, the Contractor represents for the reliance of the Architect and the Owner that the allocation of the values to the portions of the Work is a fair and reasonable estimate of such allocation. Once approved, the Contractor will not change the allocations in the Schedule of Values without the Architect's and Owner's further written approval. The Architect may from time to time require the Contractor to adjust such schedule if the Architect determines it to be in any way unreasonable or inaccurate. The Contractor then shall adjust the schedule of values as required by the Architect within ten (10) days. This schedule, with any adjustments approved by the Architect shall be used as a basis for reviewing the Contractor's Applications for Payment. The Contractor shall include a separate line item in its schedule of values for staffing and general conditions costs.

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**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment Applications for Payment shall be made in accordance with the dates established in the Agreement, and Applications for Payment shall be prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, if required, and values and shall be 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 Contract Documents.the Architect may require. Contractor shall submit with EACH Application for Payment, including the final Application for Payment, (i) an Affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the previous Application for Payment was submitted have been paid or otherwise satisfied; (ii) a current list of the Subcontractors and suppliers showing their respective contract sums, amounts paid, and amounts due; (iii) releases or waivers of liens arising out of the Contract from the Contractor and from each Subcontractor, material supplier, and/or laborer of the Contractor as the Owner may require; (iv) schedule of all materials and equipment stored on-site; (v) documentation required for materials and equipment stored off-site; and (vi) such other supplemental information the Architect or Owner may require. The form of the Application for Payment shall be designated by the Architect, or if the Architect does not designate a form, the Contractor shall use AIA Documents G-702, Application and Certificate for Payment, and G-703, Continuation Sheet.

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**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. ~~If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.~~Materials stored off site is permitted. The Contractor may erect temporary storage facilities but only with the approval of the Owner, and such temporary facilities shall be removed by not later than Substantial Completion. Where circumstances indicate that the Owner's best interest is served by off-site storage, the Contractor shall make written request to the Architect for approval to include such material costs in its next Application for Payment. The Contractor's request shall include the following information:

.1 A list of the fabricated materials consigned to the Project (which shall be clearly identified), giving the

- place of storage, together with copies of invoices and reasons why materials cannot be delivered to the site.
- .2 Certification that items have been tagged for delivery to the Project and that they will not be used for another purpose.
  - .3 A letter from the Contractor's surety indicating agreement to the arrangements and that payment to the Contractor shall not relieve the Contractor of its responsibility to complete the Work.
  - .4 Evidence of adequate insurance covering the material in storage, which shall name the Owner as an additional insured.
  - .5 Information pertaining to the Contractor's place of storage, the layout and security of the place of storage, and such information that verifies that the materials are securely stored at the place of storage.
  - .6 Subsequent Applications for Payment shall itemize the materials and their cost which were approved on previous Applications for Payment and remain in off-site storage.
  - .7 When a partial payment is allowed on account of material delivered on the site of the Work or in the vicinity thereof or under possession and control of the Contractor but not yet incorporated therein, such material shall become the property of the Owner, but if such material is stolen, destroyed or damaged by casualty before being used, the Contractor will be required to replace it at its own expense.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for ~~Payment~~ 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, shall~~ 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. Contractor shall indemnify Owner from any expenses incurred by Owner, including legal fees, in connection with any liens, claims and attested accounts by any Subcontractor or Sub-subcontractors provided such expenses are not the result of a default by Owner in making timely payment to Contractor.

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

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

- .1 defective Work not remedied; The Contractor is in default of the performance of any of its obligations under the Contract Documents, including, but not limited to: failure to provide sufficient skilled workers; Work, including equipment or materials, which is defective or otherwise does not conform to the Contract Documents; failure to conform to the Project schedule or scheduling requirements; or failure to follow the directions of or instructions from the Architect or Owner.
- .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; The Contractor is in default in the performance of any of its obligations under another Contract which it has with the Owner.
- .3 The filing of third party claims or reasonable evidence that third party claims have been or will be filed.
- .4 Work has not proceeded to the extent set forth in the Application for Payment.
- .5 Representations made by the Contractor are untrue.
- ~~.3~~ .6 The failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment; to its Subcontractors, material persons, or laborers.

- ~~.4~~ — reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- ~~.5~~ — damage to the Owner or a separate contractor;
- ~~.7~~ Damage to the Owner's property or the property of a separate Contractor or person.
- ~~.6~~ — reasonable ~~.8~~ Reasonable evidence that the Work will not be completed within the Contract Time, and ~~Time~~ and/or that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated ~~delay~~; or ~~delay~~ and/or the completion of the Work.
- ~~.7~~ — repeated failure to carry out the Work in accordance with the Contract Documents. ~~.9~~ Costs and expenses that the Contractor is required to reimburse the Owner.

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~~§ 9.5.3~~ If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. 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. ~~Contractor disputes a determination by the Architect with regard to a Certificate of Payment, and during any related dispute resolution, litigation, or other proceeding, the Contractor nevertheless shall continue to prosecute the Work.~~

~~§ 9.5.4~~ In the event that the Owner receives a claim affidavit in accordance with Ohio Revised Code Chapter 1311 relating to amounts due and unpaid for labor and work performed and material furnished for the Work, the Owner shall detain the amount due and owing from the Contractor unless and until the claim is released and/or discharged as more particularly set forth in said Chapter 1311.

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~~§ 9.6.2~~ The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. ~~Neither the Contractor nor its Subcontractors shall withhold retainage beyond the retainage withheld by the Owner from the Contractor.~~

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

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

...

~~If the Architect does not issue a Certificate for Payment, Owner, 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 fourteen days after the date established in the Contract Documents Agreement the amount certified by the Architect or awarded by binding dispute resolution, Architect, then the Contractor may, upon seven fourteen additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents received provided that Contractor shall not stop Work for non-payment if the Owner initiates the payment process for any undisputed amounts due the Contractor.~~

...

~~§ 9.8.1~~ Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that ~~Documents~~, including all necessary testing

and/or startup, and when all required occupancy permits and any other necessary permits and approvals, if any, have been issued, so the Owner can occupy or utilize the Work for its intended use, subject only to the completion or correction of minor items of Work that will not interfere with or hinder the Owner's use of the Work and areas adjacent to the Project site.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment, the completion or correction of which will not interrupt, disrupt or interfere with the occupancy or utilization of the Project for its intended use. Failure to include an item on such list does not alter the responsibility of the Contractor to complete or correct all Work in accordance with the Contract Documents. Contractor shall also submit along with the list all required documents neatly bound and indexed.

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

**§ 9.8.3.1** If the Architect's inspection discloses any item, whether or not included on the Contractor's list, so that the Work is not yet substantially complete, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item or items upon notification by the Architect and within the timeframe established by Architect, or, if no timeframe is established, then not greater than thirty (30) days. The Contractor shall then submit to the Architect a revised list of items to be completed or corrected along with a request for another inspection by the Architect to determine Substantial Completion. If the Contractor fails to timely complete or correct such items so as to render the Work ready for the additional substantial completion inspection, the Owner, in its discretion, may perform the Work and the cost thereof shall be charged against the Contractor or the Contractor's surety.

**§ 9.8.3.2** The Contractor shall pay all costs incurred by the Architect, Owner and separate contractors for attendant delay, interference, hindrance or disruption of the Project due to excessive substantial completion inspections without fault of the Architect or Owner. Unless otherwise provided in the Contract Documents, substantial completion inspections in excess of one (1) without the fault of the Architect or Owner shall be deemed excessive.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate, to be completed or corrected on the list accompanying the Certificate, or, if no timeframe is established, then not greater than thirty (30) days. Failure to include an item on such list does not alter the responsibility of the Contractor to complete or correct all Work in accordance with the Contract Documents. If the Contractor then fails to timely complete or correct the items, the Owner in its discretion may perform the Work by itself or others and the cost thereof shall be charged against the Contractor or the Contractor's surety. The Contractor shall pay all costs incurred by the Architect, Owner and separate contractors due to excessive inspections without fault of the Architect or Owner for the purpose of evaluating completed or corrected Work. Unless otherwise provided in the Contract Documents, inspections in excess of one (1) without the fault of the Architect or Owner shall be deemed excessive. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Contractor's warranties under the Contract Documents shall remain in full force and effect and cover any remedial work.

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

reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents. For items of Work that are not completed or corrected, an amount equal to one hundred fifty percent (150%) of the cost to hire another contractor to complete the Work as estimated by Architect shall be withheld until said items are finally complete in accordance with section 9.10 herein.

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**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section ~~11.3.1.5~~ 11.3.1.4 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 complete. In the event of such partial occupancy or use, the Architect shall assign responsibilities to the Owner and the Contractor with respect to 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 Work, insurance, and the commencement of warranties required by the Contract Documents. ~~When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.~~ In the event of a disagreement about such responsibilities, the Architect will resolve the disagreement, and the Architect's decision will be final.

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**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents. Any Agreement as to the acceptance of the Work not complying with the requirements of the Contract Documents shall be in writing.

...

**§ 9.10.1** Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Final completion shall mean all Work is complete in accordance with the Contract Documents and the Contractor has submitted all documents required for final payment, including final lien waivers from subcontractors and/or suppliers, and Contractor understands that this may require payment in full to its subcontractors and/or suppliers prior to receipt by Contractor of final payment.

**§ 9.10.1.1** The Contractor shall pay all costs incurred by separate contractors, the Architect and the Owner due to excessive additional inspections without the fault of the Architect or Owner.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor ~~knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents,~~ (4) consent of surety, if any, to final payment and ~~(5), payment,~~ (5) all documents and items required to be submitted by Contractor, including but not limited to those items set forth in Section 3.11 that have not previously been delivered to Owner, (6) AIA Document G-706, Contractors Affidavit of Payment of Debts and Claims, (7) AIA Document G-706A, Contractors Affidavit of Release of Liens, and (8) 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. fees provided that such expenses are not the result of a default by Owner in making timely payment to Contractor.

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

...

- .2 failure of the Work to comply with the requirements of the Contract Documents; ~~or~~
- .3 terms of ~~special warranties required by the Contract Documents~~ warranties and guarantees required by the Contract Documents;
- .4 any claims, damages, losses or expenses for indemnification; or
- .5 latent defects.

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The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor's safety program shall be written and a copy maintained at the Project site for inspection, upon request. Neither the Owner nor the Architect accept any responsibility or liability for the safety of the Contractor's employees or for enforcing the Contractor's safety program. Additionally, Contractor shall comply with the Owner's rules, regulations, and policies including, but not limited to, the Owner's safety, health, and infection control policies and programs.

...

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

...

- .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~~ Sub-subcontractors and/or the Work of the Owner or any separate contractor and the materials and equipment to be incorporated in such Work;
- .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~~ of construction;
- .4 construction or operations by the Owner or other Contractors; and
- .5 benchmarks, monuments, and other reference points affected by the Work. If benchmarks, monuments, or other reference points are displaced or destroyed, the benchmarks, monuments, and/or reference points shall be re-established and markers reset under the supervision of a licensed surveyor, who shall furnish certificates of its work.

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (~~other than damage or loss insured under property insurance required by the Contract Documents~~) to property referred to in Sections 10.2.1.2 and 10.2.1.3 to property referred to in Section 10.2.1 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which

the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, Section 10.2.1, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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**§ 10.2.7** The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition. Contractor shall provide shoring and bracing required for safety and for the proper execution of the Work and have same removed when the Work is completed.

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~~If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.~~ **§ 10.2.8.1** If Contractor suffers injury or damage to person or property because of an act or omission for which the Owner is legally responsible, prompt written notice of such injury or damage, whether or not insured, shall be given to the Owner not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the Owner to investigate the matter.

**§ 10.2.8.2** If a separate contractor incurs damages resulting from the Contractor's performance of its Work, and the Contractor fails to remedy the damage or to reimburse the separate contractor for its damages, then the Owner reserves the right to pay the separate contractor suffering the damage and deduct such amounts from the amount due the Contractor responsible for the damages.

**§ 10.2.9** The Contractor acknowledges that the safety of the public and of the employees, invitees and guests of the Owner is of the utmost importance. While the Contractor is at the Project site, the Contractor will take no action that would jeopardize the safety of the public and of the Owner's employees, invitees or guests and, without the Owner's written approval, shall take no action that would interfere with the Owner's activities. The Owner reserves the right to require the Contractor and its employees to wear identification (subject to applicable safety standards), to stay in designated work areas at all times while on the Owner's property and to record on a log the Contractor's presence immediately upon entering the Owner's property. The Owner shall have the right to effect through the Contractor the immediate removal of a person from the Project site for failure to wear identification, for being outside a designated work area, for fraternizing with or engaging in any inappropriate behavior directed toward or in the vicinity of employees, invitees or guests of the Owner or for other good cause shown.

**§ 10.2.9.1** The Contractor shall make a good faith effort so that no employee of the Contractor or any consultant or Subcontractor will purchase, use, transfer or possess, or be under the influence of alcohol or illegal drugs or abuse legally obtained drugs while on or about the Project or use tobacco or bring firearms, or other dangerous materials on to the property of the Owner.

**§ 10.2.10** When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and fully protect the Work, as necessary, from injury or damage by any cause.

**§ 10.2.11** The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect.

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**§ 10.3.1** The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a concealed and undisclosed hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), the hazardous material or substance, such as asbestos, polychlorinated biphenyl (PCB), mold, mildew, yeast and mushrooms 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. Hazardous materials to be used at the Project site shall be identified by a Material Safety Data Sheet (MSDS). The Contractor shall assemble all of its applicable MSDS in a notebook and submit it to the Architect for its information prior to a hazardous material being brought to the Project site. The Contractor shall maintain all MSDS notebooks at the Project site for the duration of the Project.

**§ 10.3.2** Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. ~~Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. The Work in the affected area shall be resumed immediately following the occurrence of any one of the following events: (i) the Owner causes remedial work to be performed that results in the absence of materials or substances such as asbestos, polychlorinated biphenyl (PCB) mold, mildew, yeast and mushrooms, or (ii) the Owner and the Contractor, by written agreement, decide to resume performance of the Work, or (iii) the Work may safely and lawfully proceed, as determined by an appropriate governmental authority or as evidenced by a written report to both the Owner and the Contractor, which is prepared by an environmental engineer reasonably satisfactory to the Owner. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in equitably adjusted based on the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.~~

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

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**§ 10.3.5** ~~The~~ In addition to the Contractor's obligations in Section 3.18 and elsewhere in the Contract Documents, 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 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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

...

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, and without special instructions or authorization, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed Work performed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7. treated as a Construction Change Directive issued as of the date of the occurrence of the emergency, and Contractor shall proceed as of that date as set forth in Article 7 herein, including but not limited to Section 7.3.5. Nothing in this Section shall be construed as relieving the Contractor from the cost and responsibility for emergencies covered hereby, which with normal diligence, planning, and the close supervision of the Work as required under the Contract, could have been foreseen or prevented.

...

**§ 11.1.1** The Contractor shall purchase from and maintain in a company or companies rated A- or higher by Best Insurance Reports and lawfully authorized to do business in the jurisdiction in which the Project is located State of Ohio 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:

...

.7 Claims for bodily injury or property damage arising out of completed operations;~~and~~

...

**§ 11.1.2** The insurance required by Section 11.1.1 shall be written for not less than ~~limits of liability specified in the Contract Documents or the following, or as required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from~~

- .1 Workers' Compensation: Statutory
- .2 Employer's Liability: (1) an each-accident limit of not less than \$1,000,000, (2) a disease each-employee limit of not less than \$1,000,000, and (3) a disease policy limit of not less than \$1,000,000;
- .3 Commercial General Liability ("CGL"): (1) an each-occurrence limit of not less than \$2,000,000, (2) a general-aggregate limit of not less than \$2,000,000, and (3) a products and completed-operations aggregate limit of not less than \$2,000,000. The CGL insurance shall provide at least equivalent coverage for liability arising from premises, operations, independent contractors, products/completed-operations (shall not exclude coverage to the additional insured(s) for bodily injury or property damage), personal and advertising injury, and liability assumed under an insured contract. The CGL policy shall be endorsed providing equivalent coverage to provide that the general aggregate limit applies separately to each of the insured's projects;
- .4 Automobile Liability: covering all owned, non-owned, and hired vehicles used in connection with the Work: Bodily injury (including death and emotional distress) and property damage with a combined single limit of \$1,000,000 each accident;
- .5 Umbrella/Excess Liability: Such policies shall be supplemented by an umbrella policy of additional protection in the amount of \$5,000,000 aggregate; and
- .6 Pollution Liability: If the Work includes environmentally sensitive, hazardous types of activities (such as demolition, exterior insulation finish systems, asbestos abatement, storage-tank removal, or similar activities), or involves hazardous materials, the Contractor shall maintain a contractor's pollution liability policy with (1) a per-claim limit of not less than \$1,000,000 and (2) an annual-aggregate limit of not less than \$1,000,000, covering the acts, errors and/or omissions of the Contractor for damages (including from mold) sustained by the Owner by reason of the Contractor's performance of the Work. The policy shall have an effective date, which is on or before 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 Contract Documents.Work.

Upon submission of the associated certificate of insurance and at each policy renewal, the Contractor shall advise the Owner in writing of any actual or alleged claims which may erode the policy's limits.

The Contractor shall maintain required coverages without interruption from the date of commencement of the Work and for not less than five years following Substantial Completion for Completed Operations coverage and for the duration of any guaranty or warranty period. The Contractor shall pay all deductibles contained in the policies of insurance. The Contractor shall continue to provide evidence of coverage to the Owner on an annual basis during the aforementioned period.

§ 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. The Contractor shall submit to the Architect and the Owner a copy of certificates of insurance prior to commencement of the Work. Certificates shall include each and every type of coverage specified. Such certificates shall name the Owner, the Owner Board members and employees and Architect as additional insureds and shall contain a statement that the Owner will be notified 30 days prior to the cancellation of, expiration of, material alteration of, and/or the election not to renew any insurance policy evidenced by this certificate. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.3.4 When any required insurance, due to the attainment of a normal expiration date or renewal date, shall expire, the Contractor shall supply the Owner with Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy. In the event any renewal or replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differs in any way from the previous policy, the Contractor shall also furnish the Owner with a copy of the renewal or replacement policy unless the Owner provides the Contractor with prior written consent to submit only a Certificate of Insurance for any such policy. All renewal and replacement policies shall be in form and substance satisfactory to the Owner and written by carriers acceptable to the Owner.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the 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. All Subcontractors to provide Workers' Compensation, Comprehensive General Liability, and Automobile Liability Insurance with commercially reasonable limits and certificates of insurance related thereto. Such certificates shall name the Owner, the Owner Board members and employees and Architect as additional insureds.

§ 11.1.5 The Contractor shall not commence Work under the Contract until the Contractor has obtained all insurance required under this heading and such insurance has been filed with the Architect and approved by the Owner. Should any coverage approach expiration during the contract period, it shall be renewed prior to its expiration date and certificates again filed with the Architect. Failure to renew and file new certificates with the Architect shall be just cause to withhold progress payments until these requirements are met.

§ 11.1.6 All liability policies required in this Section 11.1 shall be primary and non-contributory with respect to any other self-insurance programs that cover the Owner or an additional insured.

§ 11.1.7 If Contractor fails to purchase and/or maintain any insurance required under Section 11.1, the Owner may, but shall not be obligated to, upon five (5) days written notice to Contractor, purchase such insurance on behalf of the Contractor and shall be entitled to be reimbursed by the Contractor upon demand.

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§ 11.3.1 Unless otherwise provided, the Owner specified in the Agreement between the Owner and the Contractor, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall

~~include interests of name~~ the Owner, the Contractor, Subcontractors and Sub-subcontractors as named insureds 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, tornado, flood, windstorm, explosion, breakage of glass, falsework, testing and startup, temporary buildings and structures, materials used in the construction process, hot and cold testing, 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. Coverage shall include: a provision to pay the reasonable extra costs of acceleration and expediting temporary and permanent repairs to, or permanent replacement of, damaged property (including overtime wages and the extra cost of "express" or other means for rapidly transporting materials and supplies necessary to the repair or replacement); "soft cost endorsement" including, but not limited to, the reasonable extra costs of the Architect and reasonable Contractor extension or acceleration costs; appropriate sub-limits for installation coverage; and provisions for mechanical or electrical breakdown, or boiler system testing. Coverage shall be primary to all other applicable insurance.

**§ 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.~~ property insurance requires minimum deductibles, the Contractor shall pay costs not covered because of such deductibles.

**§ 11.3.1.3** ~~If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.~~ This property insurance shall cover portions of the Work stored off the site after written approval of the Owner at the value established in the approval, and also portions of the Work in transit.

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

**§ 11.3.1.5** ~~Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.~~ The insurance required by this Section 11.3 is not intended to cover machinery, tools, apparatus, scaffolding, hoists, forms, staging, shoring or other equipment owned or rented by the Contractor which are utilized in the performance of the Work but not incorporated into the permanent improvements. The Contractor shall, at the Contractor's own expense, provide insurance coverage for owned or rented machinery, tools or equipment.

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

...

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.

...

**§ 11.3.5** 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. [Intentionally Deleted]

**§ 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. [Intentionally Deleted]

### **§ 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 Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. [Intentionally Deleted]

**§ 11.3.8** A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary in good faith 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 Unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

**§ 11.3.10** The Owner as fiduciary in good faith 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. insurers.

...

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

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

~~§ 11.4.3 If at any time any surety providing bonds for the Project (1) is adjudged bankrupt or has made a general assignment for the benefit of its creditors; (2) has liquidated all assets or has made a general assignment for the benefit of its creditors; (3) is placed in receivership; (4) otherwise petitions a state or federal court for protection from its creditors; or (5) allows its license to do business in Ohio to lapse or to be revoked, then the Contractor shall immediately, but no later than 21 days of any such action listed above, provide the Owner with new Bonds in the form and amount required under the Contract.~~

...

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

~~§ 12.1.2 If a portion of the Work has been covered that the ~~Architect~~ Architect, Owner or any governmental authority has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.~~

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

...

~~§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after For a period of one (1) year from the date of Substantial Completion of the ~~Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable~~~~

~~time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.~~ Work, the Contractor shall correct all Work defective in workmanship or materials except that with respect to items of work that are corrected or completed after Substantial Completion but prior to final completion, the one-year period shall commence upon final completion of these items of Work. One month prior to the end of the one (1) year period, the Contractor shall attend a walk-through of the Project scheduled by the Architect.

If defective Work becomes apparent within the one-year period, the Owner shall notify the Contractor in writing. Within five (5) days of receipt of said notice, the Contractor shall visit the project in the company of one or more representatives of the Owner to determine the extent of the defective Work. The Contractor shall promptly repair or replace the defective Work, including all adjacent Work damaged as a result of such defective Work or as a result of remedying the defective Work. If the defective Work is considered by the Owner to be an emergency, the Owner may require the Contractor to visit the project within one (1) calendar day or less of receipt of said notice. The Contractor shall be fully responsible for the cost of temporary materials, facilities, utilities or equipment required during the repair or replacement of the defective Work.

If the Contractor does not promptly repair or replace defective Work, the Owner may repair or replace such defective Work and charge the cost thereof to the Contractor or the Contractor's surety. Work which is repaired or replaced by the Contractor shall be subject to the Owner's inspection and acceptance and shall be guaranteed by the Contractor for one (1) year from the date of acceptance of the corrective work by the Owner.

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

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

...

~~§ 12.2.5 Nothing contained The guarantee provided in this Section 12.2 shall be construed to does not establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and any of the Contractor's other obligations under the Contract, has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work. Owner may seek to enforce the Contract, and shall be in addition to, and not in limitation of, any other guarantee, warranty or remedy provided by law, a manufacturer or the Contract.~~

...

~~If the Owner prefers to~~ The Owner, in its sole discretion, may accept Work that is not in accordance with the requirements of the Contract Documents, ~~the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made. The acceptance of nonconforming Work by the Owner shall be by written Change Order, signed by the Owner's authorized representative. No person has authority to accept non-conforming work except pursuant to such written Change Order.~~

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The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4, laws of the State of Ohio. Any suit, which may be brought to enforce any provision of this Agreement or any remedy with respect hereto, shall be brought in the Common Pleas Court of the County where the Project is located and each party hereby expressly consents to the jurisdiction of such court.

...

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. § 13.3.1 Where notice is required to be given under the Contract Documents, such notice shall be validly given if:

§ 13.3.1.1 delivered personally to a member of the organization for whom the notice is intended;

§ 13.3.1.2 delivered, or sent by registered or certified mail, to the last known business address of the organization; or

§ 13.3.1.3 sent by facsimile, email, or web-based project management software, provided the original, signed document is delivered within 3 business days after the date of the electronic transmission.

§ 13.3.2 When the Owner, the Architect or the Contractor gives notice to one of the other, it shall also simultaneously send a copy of that notice to the others.

...

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

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

...

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The independent testing laboratory or entity shall prepare and deliver to the Architect and Owner a report of such 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.

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§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense. The Contractor also agrees the cost of testing services required for the convenience of the Contractor in the scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work, shall be borne by the Contractor.

...

§ 13.5.6 ~~Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the~~ The Contractor will participate in training sessions for the Owner in cooperation with the Architect, Owner, Owner's personnel and consultants and the Contractor will participate in tests in cooperation with the Architect, Owner, Owner's personnel and consultants to the extent applicable to the Contractor's Work.



§ 13.5.7 Any reports or documents resulting from tests, inspections and approvals required under this Section 13.5 shall be submitted to the Architect.

#### § 13.6 INTEREST/TIME LIMITS ON CLAIMS

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. The applicable statutes of limitations under Ohio law shall apply to all causes of action between the Owner and Contractor pertaining to acts or failures to act arising out of the Contract.

#### § 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

#### § 13.8 PARTIAL INVALIDITY

§ 13.8.1 If any term or provision of the Contract is found to be illegal, unenforceable or in violation of any laws, statutes, ordinances, or regulations of any public authority having jurisdiction, then, notwithstanding such term or provision, the Agreement will remain in full force and effect and such term will be deemed stricken; provided this Agreement will be interpreted, when possible, so as to reflect the intentions of the parties as indicated by any such stricken term or provision.

#### § 13.9 ENTIRE AGREEMENT

§ 13.9.1 The Agreement and the other Contract Documents constitute the entire agreement among the parties with respect to their subject matter and supersede all prior and contemporaneous, oral or written, agreements, negotiations, communications, representations, and understandings with respect to such subject matter, and no person is justified in relying on such agreements, negotiations, communications, representations, or understandings.

#### § 13.10 EQUAL OPPORTUNITY

§ 13.10.1 The Contractor shall comply with Applicable Law regarding equal employment opportunity, including Ohio Revised Code Section 153.59. The Contractor shall cooperate fully with the State's Equal Opportunity Coordinator, with any other official or agency of the state or federal government that seeks to eliminate unlawful employment discrimination, and with all other state and federal efforts to assure equal employment practices under the Contract.

§ 13.10.1.1 As required under ORC Section 153.59, the Contractor agrees to both of the following:

§ 13.10.1.1.1 "in the hiring of employees for the performance of work under the contract or any subcontract, no contractor, subcontractor, or any person acting on a contractor's or subcontractor's behalf, by reason of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color, shall discriminate against any citizen of the state in the employment of labor or workers who is qualified and available to perform the work to which the employment relates; and"

§ 13.10.1.1.2 "no contractor, subcontractor, or any person on a contractor's or subcontractor's behalf, in any manner, shall discriminate against or intimidate any employee hired for the performance of work under the contract on account of race, creed, sex, disability or military status as defined in section 4112.01 of the Revised Code, or color."

§ 13.10.1.2 In the event the Contractor fails to comply with these nondiscrimination clauses, the Contractor shall be subject to the forfeiture requirements of Revised Code Section 153.60.

§ 13.10.2 Hiring Under State Public Improvement Contracts. Any provision of a hiring hall contract or agreement which obligates the Contractor to hire, if available, only employees referred to the Contractor by a labor organization shall be void as against public policy and unenforceable with respect to employment under any public improvement contract unless at the date of execution of the hiring hall contract or agreement, or within thirty (30) days thereafter,

the labor organization has procedures in effect for referring qualified employees for hire without regard to race, color, religion, national origin, military status as defined in Revised Code Section 4112.01, or ancestry and unless the labor organization includes in its apprenticeship and journey person's membership, or otherwise has available for job referral without discrimination, qualified employees, both whites and non-whites (including African-Americans).

§ 13.11 All personal pronouns used in this Contract, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, sections, and subsections are for convenience only and neither limit nor amplify the provisions of this Contract.

§ 13.12 The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a writing signed by Owner. No person is authorized on behalf of Owner to orally change, amend, waive, or otherwise modify the terms of the Contract Documents or any of the Contractor's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Contractor shall be limited to the specific matters stated in the writing signed by Owner, and shall not relieve Contractor of any other of the duties and obligations under the Contract Documents. No "constructive" changes shall be allowed.

§ 13.13 The table of contents, titles, headings, running headlines and marginal notes contained herein and in said documents are solely to facilitate reference to various provisions of the Contract Documents and in no way affect, limit or describe or limit the interpretation of the provisions to which they refer.

#### **§ 14.1 TERMINATION BY THE CONTRACTOR DEFAULT OF THE OWNER**

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

- .1 — Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 — An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 — Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 — The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1. This Agreement may be terminated by Contractor upon not less than fifteen days' written notice should the Owner fail substantially to perform in accordance with the terms of the Contract Document through no fault of the Contractor and such failure to perform is not cured within sixty (60) days following a notice of default (however, if such default cannot reasonably be cured within the applicable time period, then Owner shall not be deemed in default so long as it commences to cure the same within such period and diligently pursues such cure) provided that Contractor shall not terminate or suspend performance under this Agreement for non-payment if the nonpayment is the subject of a bona-fide dispute and Owner initiates the payment process by preparing and submitting a purchase order for all undisputed amounts due to the Contractor. In the event of such termination, the Contractor shall be compensated for services satisfactorily performed prior to termination but not to exceed the Contract Sum.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional

days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

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

.1 — repeatedly refuses or fails to supply enough properly skilled workers or proper materials;  
.2 — fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;  
Events of Default of the Contractor: each of the following constitutes an Event of Default of the Contractor:

- .1 The failure of the Contractor: i) to perform its obligation under the Contract Documents or under the Contract Documents pertaining to other agreements which the Contractor may have with the Owner, ii) to proceed to commence to correct such default within two business days after written notice of default from the Owner or the Architect and to thereafter to use its best efforts to correct such default to the satisfaction of the Owner, and, iii) except where an extension of time is granted in writing by the Owner, to correct such default within five business days after the written notice of default;
- .3 — repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .2 The failure of the Contractor to pay its obligations as they become due; or
- .4 — otherwise is guilty of substantial breach of a provision of the Contract Documents.
- .3 The insolvency of the Contractor.

**§ 14.2.2** When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:  
Owner's Remedies: upon the occurrence of an Event of Default of the Contractor, the Owner will, upon notice to Contractor, have the following non-exclusive remedies, which will be cumulative:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 To terminate this Agreement;
- .2 Exclude the Contractor from the Project site, and take possession, for the purpose of completing the Work or part of it, materials, equipment, scaffolds, tools, appliances, and other items belonging to or possessed by the Contractor, of which the Contractor hereby transfers and assigns to the Owner for such purpose;
- .3 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.
- .4 To order the Contractor to stop the Work or part of it, in which case the Contractor will do so immediately;
- .5 To perform through others all or part of the Work remaining to be done and to deduct the cost thereof from the unpaid balance of the Contract Sum; and
- .6 Employ a person or persons to complete the Work, including the Contractor's Subcontractors and/or employees.

**§ 14.2.3** When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.  
If the cost of finishing the Work exceeds the unpaid balance of the Contract Sum, including compensation of the Architect's additional services and costs, expenses, or damages incurred by the Owner as a result of the Event of Default of the Contractor (including attorney's fees and the administrative expenses of the Owner's staff), the Contractor and the Contractor's surety will pay the difference to the Owner. The amounts to be paid by the Contractor will be certified by the Architect, and such certification will be the final determination of the amount owed, except for sums coming due thereafter. The obligations under this Section 14.2 will survive the termination of this Agreement.

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

~~survive termination of the Contract.~~ The Owner's remedies as set forth in this Section 14.2 is without prejudice to any other rights and remedies of the Owner, including but not limited to the Owner's rights and remedies under the Contract Documents and at law or in equity, all of which shall survive termination.

§ 14.2.5 Should the Owner terminate this Agreement for cause under this Section 14.2, but that cause be subsequently found insufficient to support termination, the termination shall be deemed one of convenience under Section 14.4.

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

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§ 14.4.1 The Owner may, at any time, terminate the Contract in whole or in part for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall with respect to the Work that is terminated:

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§ 14.4.3 ~~In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.~~ If the Contract is terminated without cause and for the Owner's convenience and there exists no Event of Default of the Contractor, the Owner will pay the Contractor, i) for Work performed under the Contract up to the date the notice of termination is received by the Contractor at the rates for Work performed under the Contract, including overhead and profit up to the date of termination but not for overhead or lost profit on unperformed Work, ii) for Work performed at the direction of the Owner on and after the date on which the notice of termination is received by the Contractor, as determined by the procedures applicable to Construction Change Directives under paragraph 7.3.3, and iii) for Work necessary to protect and preserve the Work, as determined by the procedures applicable to Construction Change Directives under Subparagraph 7.3.3. The Owner shall be credited for (i) payments previously made to the Contractor for the terminated portion of the Work, (ii) claims that the Owner has against the Contractor, and (iii) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum.

§ 14.4.4 If the Contract is terminated without cause and for the Owner's convenience and there exists an Event of Default of the Contractor, the Contractor will be entitled to receive only such sums as it would be entitled to receive following the occurrence of an Event of Default of the Contractor.

§ 14.4.5 The termination of the Contract shall be with or without prejudice to rights or remedies which exist at the time of termination.

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

## § 15.1.2 NOTICE OF CLAIMS NOTICE, SUBSTANTIATION AND CERTIFICATION OF CLAIMS

§ 15.1.2.1 **Initiation of Claim.** Claims by the Contractor must be initiated by written notice to the Owner, the Architect, and to the Initial Decision Maker with a copy sent to the Architect if the Architect is not serving as the Initial Decision Maker within ten (10) days after the occurrence of the events giving rise to the Claim. Said ten (10) day period is a contractual limitation of action and a material term of the Contract Documents as it provides the Owner with timely notice and information so that Owner can attempt to mitigate any damages, exercise remedies available to it, and investigate the Claim during a near contemporaneous time period. The Contractor's failure to initiate a Claim as and when required under this Section shall constitute the Contractor's irrevocable waiver of the Claim.

**§ 15.1.2.2 Substantiation of Claim.** Within fifteen (15) days after the initiation of a Claim under Section 15.1.2.1, the Contractor shall substantiate its Claim by providing the following minimum written information to Owner: (i) a narrative of the circumstances which gave rise to the Claim, including, without limitation, the start date of the event or events and the actual, or anticipated, finish date; (ii) detailed identification of the Work affected by the event giving rise to the Claim; (iii) copies of the Contractor's daily log for each day of impact; (iv) copies of relevant correspondence and other information regarding or supporting Contractor's entitlement; (v) copies of the Contractor's most recent income statement, including segregated general and administrative expenses for the most recent reporting period, and for the period of the Contract, if available, and similar information for any Subcontractor claim included; (vi) if the Claim is for Additional Cost, the amount of the Claim and the information specified in Section 15.1.4 herein; (vii) if the Claim is for Additional Time, the information specified in Section 15.1.5 herein. Contractor shall also provide to Owner such additional information as requested by Owner to substantiate the Contractor's Claim within ten (10) days following the Owner's request. The Contractor shall provide the required information in the formats requested, which include both paper and electronic copies. The Contractor's failure to comply with the requirements of this Section shall constitute an irrevocable waiver of any related Claim.

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

**§ 15.1.2.3 Certification of Claim.** Within fifteen (15) days after the initiation of the Claim under Section 15.1.2.1, the Contractor shall certify its Claim by providing the notarized certification, signed and dated by the Contractor, as follows: "The undersigned Contractor certifies that the Claim is made in good faith; that the supporting data is accurate and complete to the best of the Contractor's knowledge and belief; that the amount requested is a fair, reasonable, and necessary adjustment for which the Contractor believes the Owner is liable; and that the undersigned is duly authorized to certify the Claim on behalf of the Contractor." The Contractor's failure to comply with the requirements of this Section shall constitute an irrevocable waiver of any related Claim.

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If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4. The Contractor's Claim for additional cost shall include an estimate of cost and of probable effect of delay on progress of the Work. The Contractor shall specifically identify those items set forth in Section 7.3.3 along with such additional supporting documentation as requested by the Owner, Architect, and Initial Decision Maker.

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~~**§ 15.1.5.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. Claims for increase in the Contract Time shall set forth in detail the circumstances that form the basis for the Claim, the date upon which each cause of delay began to affect the progress of the Work, the date upon which each cause of delay ceased to affect the progress of the Work and the number of days' increase in the Contract Time claimed as a consequence of each such cause of delay. The Contractor shall provide such supporting documentation as the Architect and Owner may require including, where appropriate, a revised construction schedule indicating all the activities affected by the circumstances forming the basis of the Claim. 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. The Contractor shall also specifically identify those items set forth in Section 7.3.5.1 herein. In the case of a continuing delay, only one Claim is necessary.~~

~~**§ 15.1.5.2** If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. The Contractor shall not be entitled to a separate increase in the Contract Time for each one of the number of causes of delay which may have concurrent or interrelated effects on the progress of the Work, or for concurrent delays due to the fault of the Contractor.~~

### § 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

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

- .1 — damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 — damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work. The Contractor acknowledges and agrees that the Owner and/or parties in privity of contract with Owner may cause delay, interference with and/or disruption of the Contractor's Work. Such actions shall not constitute an Event of Default by the Owner because Contractor is entitled to remedies by submitting a Claim.

**§ 15.1.7 Settlement Offers.** If the Contractor initiates a Claim, the Owner may make settlement offers to settle the Claim at any time up to the date of the trial. Such settlement offers shall be subject to Rule 408 (Compromise and Offers of Compromise) of the Ohio Rules of Evidence.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. ~~Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.~~ **§ 15.1.8** If the Contractor makes a Claim on account of the acts or neglect of a separate contractor, the Owner may pursue the Claim against the separate contractor.

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**§ 15.2.1** Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, ~~an initial decision a decision by the Initial Decision Maker shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 the dispute resolution process in Section 15.3 herein, unless sixty (60) days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. substantiated and certified with no decision having been rendered in which case, the Claim shall be deemed denied in its entirety.~~ Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and ~~within ten days of the receipt of a Claim~~ take one or more of the following actions: (1) request additional supporting data from the ~~claimant Contractor~~ or a response with supporting data from the other party, (2) reject ~~the Claim and/or approve the Claim~~, in whole or in part, (3) ~~approve the Claim~~, (4) ~~suggest a compromise~~, suggest a compromise, (4) notify the parties of the date by which the decision will be made, which date may be extended by Architect in its reasonable discretion, 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. 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.

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**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten (10) 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.~~

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any 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. Maker's decision shall be subject to Owner's concurrence. If the Contractor disagrees with the decision regarding the Claim, the unresolved Claim shall be subject to the dispute resolution provisions in Section 15.3 herein provided that the Contractor initiates the dispute resolution process by giving written notice to the Owner within ten (10) days following the decision.~~

**§ 15.2.6** Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1. [~~Intentionally Deleted~~]

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

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

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### **§ 15.3 MEDIATION/ DISPUTE RESOLUTION**

**§ 15.3.1** ~~Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution. The parties shall endeavor to resolve Claims and disputes not resolved in accordance with Section 15.2 herein in an amicable manner before having recourse to a judicial forum provided that the Contractor initiates the dispute resolution process in accordance with Section 15.2.5. The Contractor and Owner, following the Contractor's initiation of the dispute resolution process, shall meet as soon as conveniently possible, but in no case later than thirty (30) days after the dispute resolution process is initiated, to attempt to resolve such dispute or disagreement. If after meeting the Contractor and Owner determine that the dispute or disagreement cannot be resolved on terms satisfactory to both parties, or in any event, if the dispute is not resolved within thirty (30) days after the initial meeting, the parties may follow the process set forth in Section 15.3.2.~~

**§ 15.3.2** ~~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 Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. Any Claim not resolved in accordance with Section 15.3.1 herein shall be settled by litigation as the method of binding dispute resolution.~~

**§ 15.3.3** ~~The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof. may, but are not obligated, to submit any Claim not resolved in accordance with Section 15.3.1 herein to non-binding mediation upon such terms as shall be mutually agreeable and such mediation shall take place at an agreed-upon location in the county where the Project is located. The mediation may occur concurrently with or prior to litigation as set forth in Section 15.3.2.~~

**§ 15.3.4** ~~This Section 15.3 shall not prevent either party from bringing a third party claim in pending litigation for indemnity and/or contribution.~~

~~Arbitration is not applicable to this Project; any references elsewhere in the General Conditions to Arbitration are also likewise deleted.~~  
**§ 15.4.1** ~~If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties 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 Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

**§ 15.4.1.1** 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.

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

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

#### **§ 15.4.4 CONSOLIDATION OR JOINDER**

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

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

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



## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:36:44 on 07/20/2018 under Order No. 2694747181 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
*(Signed)*

\_\_\_\_\_  
*(Title)*

\_\_\_\_\_  
*(Dated)*