

AIA® Document A201® – 2017

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

<<[insert] >>

<< >>

THE OWNER:

(Name, legal status and address)

<<[insert] >>

THE ENGINEER:

(Name, legal status and address)

<<[insert] >>

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in the Agreement between the Owner and CM/GC (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. 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 CM/GC's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

§ 1.1.2 The Contract

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

§ 1.1.4 The Project

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

§ 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 Engineer and the Engineer's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Owner Related Parties

The entities set forth in **Exhibit J**, Owner-Related Parties, and their members, affiliates, subsidiaries, and lenders shall be Owner-Related Parties.

§ 1.2 Correlation and Intent of the Contract Documents

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

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

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

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

§ 1.3 Capitalization

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

§ 1.4 Interpretation

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

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

§ 1.5.1 The ownership of the Instruments of Service is set forth in the agreement between Owner and Engineer. The CM/GC, Subcontractors, Sub-Subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Owner's, Engineer's, or Engineer's consultants' reserved rights.

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

§ 1.5.3 The Owner, through the Engineer, may from time to time make certain base documents available in conventional or electronic media form to the CM/GC and its Subcontractors and consultants for use in preparing shop drawings and submittals or in providing professional design services, delegated design services, or certifications required under the Contract Documents. These base documents may include building information modeling software. Base documents shall be issued for recipient's convenience only. Such base documents are not Contract Documents, are not intended for use in construction, and may be used only at the user's risk subject to the Engineer's reasonable restrictions, waivers, releases, and disclaimers.

§ 1.6 Notice

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

§ 1.6.2 Notice of Claims as provided in Section 15.1 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery. In order to be effective, notice to Owner of any Notice of Claim shall be provided to Owner, the representative of Owner, Owner's Representative (if any), and to [insert]. The date of actual receipt by Owner of any Claim by certified or registered mail, or by courier, shall be date such Notice of Claims was received.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form and establish the protocols for the development, use, transmission, and exchange of digital data. If CM/GC requests electronic formats for the Instruments of Services, it shall execute any releases or documentation requested by the Engineer or its consultants associated with any such use.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in a subsequent agreement, shall be at the using or relying party's sole risk and without liability to the other party and its CM/GCs or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Engineer 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 CM/GC, within fifteen days after receipt of a written request, information necessary and relevant for the CM/GC 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 Not Used

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 Except for permits and fees that are the responsibility of the CM/GC under the Contract Documents, including those required under Section 3.7.1, the Owner shall pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities and shall provide such reasonable assistance as the CM/GC may request in securing such documents. Should any re-testing or re-inspection of work be required due to the fault of the CM/GC, the cost of such work, or costs of any schedule delay resulting therefrom, shall be reimbursed by the CM/GC and shall not be considered as part of the Cost of the Work.

§ 2.3.2 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 if requested by CM/GC. The CM/GC shall be entitled to reasonably rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work, and CM/GC shall notify the Owner promptly if the CM/GC knows or has reason to know any documents furnished by the Owner contain errors. Notwithstanding the foregoing sentence, the CM/GC shall be fully responsible for confirming the Owner's investigations of utilities locations and verifying utilities locations prior to commencing the Work. The CM/GC shall assume that the locations of any hidden utilities, plumbing or electrical runs indicated in the surveys or Contract Documents are shown in approximate locations only, and the CM/GC is responsible for making all utility location checks. The CM/GC shall exercise the greatest care possible not to damage or interrupt utilities or utility services of any and every kind or nature.

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

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

§ 2.4 Owner's Right to Stop the Work

If the CM/GC fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents or fails to release, discharge or post a surety bond with the time period required in the Contract Documents if a lien is filed upon the property by anyone claiming by, through, or under CM/GC, then the Owner may issue a written order to the CM/GC 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 CM/GC or any other person or entity, except to the extent required by Section 6.1.3 and provided further that any such order to stop the Work shall not cause a compensable extension in the Contract Time.

§ 2.5 Owner's Right to Carry Out the Work

§ 2.5.1 If the CM/GC defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. The Owner Engineer, pursuant to Section 9.5.1, may withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the costs of correcting such deficiencies, including all costs and expenses (personnel, labor, materials, supplies, compensation for the Engineer's additional services, and the like) incurred by Owner as a result of such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the CM/GC shall pay the difference to the Owner. If the CM/GC disagrees with the actions of the Owner Engineer, or the amounts claimed as costs to the Owner, the CM/GC may file a Claim pursuant to Article 15.

§ 2.5.2 If the CM/GC fails to supply sufficient skilled workers to the Project or fails to progress the Work in a manner reasonably anticipated to achieve Substantial Completion by the date required in this Agreement, the Owner may, after ten (10) days' notice to the CM/GC and without prejudice to any other rights or remedies Owner may have, supply and provide, or utilize supplementing CM/GC(s) chosen by the Owner to supply and provide, the labor, materials, equipment, or services necessary or required to rectify or correct any breach(es) of the Contract by the CM/GC and recover the costs of such supplemental work, plus markup by Owner for general overhead and supervision expenses. The Owner may deduct all damages, costs, and expenses from the CM/GC from any amounts that may be due or become due from the Owner to the CM/GC.

ARTICLE 3 CM/GC

§ 3.1 General

§ 3.1.1 The CM/GC 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 CM/GC shall be lawfully licensed, if required in the jurisdiction where the Project is located. The CM/GC shall designate in writing a representative who shall have express authority to bind the CM/GC with respect to all matters under this Contract. The term "CM/GC" means the CM/GC or the CM/GC's authorized representative.

§ 3.1.2 The CM/GC shall perform the Work in accordance with the Contract Documents.

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

§ 3.2 Review of Contract Documents and Field Conditions by CM/GC

§ 3.2.1 Execution of the Contract by the CM/GC is a representation that the CM/GC has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents. No adjustment to the Contract Sum or Contract Time shall be made on account of CM/GC's failure to acquaint itself with conditions of the Site and the sources of supplies, labor, or materials which are evident or discoverable through normal preconstruction diligence [ADD if CM/GC provided Precon: and through its role in providing preconstruction services on the Project to the Owner, Engineer, and the design team].

§ 3.2.1.1 Execution of the Contract, or GMP Amendment a the case may be, by the CM/GC is a representation that the CM/GC believes the Contract Documents are sufficient to have enabled the CM/GC to determine the Cost of the Work therein, to enter into the Contract, and to accomplish the Work for an amount not in excess of the Guaranteed Maximum Price or Stipulated Contract Sum within the Contract Time provided for in the Contract Documents. The

CM/GC further represents and warrants that prior to execution of the Contract it has visited and examined the Project site, examined all readily ascertainable physical, legal, and other conditions affecting the Work and is fully familiar with all of the conditions thereon affecting the same, including (1) the nature, location and character of the Project site, including all readily visible structures and obstructions thereon, both natural and man-made; (2) the nature, location, and character of the general area in which the Project is located, including without limitation, its climatic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; and (3) the quality and quantity of all materials, supplies, tools, equipment, labor, and professional services necessary to complete the Work in the manner and within the cost and time frame required by the Contract Documents. THE FAILURE OF THE CM/GC FULLY TO ACQUAINT ITSELF WITH ANY PROVISION OF THE CONTRACT DOCUMENTS OR OTHER MATTER SHALL NOT IN ANY WAY RELIEVE IT FROM THE RESPONSIBILITY FOR PERFORMING THE WORK IN ACCORDANCE WITH THE CONTRACT DOCUMENTS, AND WITHIN THE CONTRACT SUM AND THE CONTRACT TIME AS PROVIDED FOR IN THE CONTRACT DOCUMENTS.

§ 3.2.2 Because the Contract Documents are complementary, the CM/GC 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 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the CM/GC and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents, except for any systems which are designed (design-build, deferred submittal, delegated design, or other) by the CM/GC and or its Subcontractors; however, the CM/GC shall promptly report to the Engineer and Owner in writing any errors, inconsistencies or omissions, or variances from applicable laws, codes or regulations, discovered by or made known to the CM/GC as a request for information in such form as the Engineer and Owner may require and sufficiently in advance of the planned work to allow for a response prior to the day the work is to be performed, except for any systems which are designed (design-build, deferred submittal, delegated design, or other) by the CM/GC and or its Subcontractors which shall be directed to such Subcontractors. It is recognized that the CM/GC's review is made in the CM/GC's capacity as a CM/GC and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Should a conflict be discovered within the Contract Documents, the CM/GC shall be deemed to have agreed to perform the most stringent or highest quality way of performing the Work unless it shall have asked and received, in writing, a decision from Engineer or Owner before performing the Work. Incorporation of any design work performed or prepared by CM/GC or its Subcontractors (including delegated design, design-build, or deferred submittals) into the Construction Documents by the Engineer for the purpose of permitting or providing the CM/GC with a bid set or issued for construction set of Construction Documents for the Project shall not relieve the CM/GC of its responsibility for such design services.

§ 3.2.2.1 The CM/GC shall not scale the Drawings to determine any dimensions, grades or elevations. If the CM/GC chooses to measure distance by scaling from the Drawings, it is completely at its risk and is not considered by Owner to be an accurate measurement. The CM/GC shall do field work necessary to lay out and maintain the Work.

§ 3.2.2.2 In all cases of interconnection of Work with existing or other work, the CM/GC shall verify at the site all dimensions relating to such existing or other work.

§ 3.2.3 Except for any delegated design, deferred submittals or design-build services or as part of its obligations during preconstruction services, the CM/GC 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 CM/GC shall promptly report to the Engineer any nonconformity discovered by or made known to the CM/GC as a request for information in such form as the Engineer may require.

§ 3.2.4 If the CM/GC believes that additional cost or time is involved because of clarifications or instructions the Engineer issues in response to the CM/GC's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the CM/GC shall submit Claims as provided in Article 15. If the CM/GC fails to perform the obligations of Sections 3.2.2 or 3.2.3, the CM/GC shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the CM/GC had performed such obligations. If the CM/GC performs those obligations, the CM/GC shall not be liable to the Owner or Engineer 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. If the CM/GC performs any construction activity and knows

or, using due care, should have known, that the Contract Documents contained an error, inconsistency or omission, the CM/GC shall be responsible for the performance and shall bear the cost and time for its correction.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The CM/GC shall supervise and direct the Work, using the CM/GC's best skill and attention. The CM/GC 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 CM/GC shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the CM/GC determines that such means, methods, techniques, sequences or procedures may not be safe, the CM/GC shall give timely notice to the Owner and Engineer, and shall propose alternative means, methods, techniques, sequences, or procedures. The Engineer shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Engineer objects to the CM/GC's proposed alternative, the CM/GC shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

§ 3.3.2 The CM/GC shall be responsible to the Owner for acts and omissions of the CM/GC's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the CM/GC or any of its Subcontractors. CM/GC has the responsibility to ensure that all material suppliers and Subcontractors, their agents, and employees adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions and that they provide materials on time. CM/GC shall coordinate its Work with that of all others on the Project including deliveries, storage, installations, and construction utilities.

§ 3.3.2.1 CM/GC shall be responsible for the space requirements, locations, and routing of its equipment. In areas and locations where the proper and most effective space requirements, locations and routing cannot be made as indicated. CM/GC shall meet with Engineer and all others involved, before installation, to plan the most effective and efficient method of overall installation. The CM/GC shall exercise its best care to not damage or interrupt utilities or utilities services of any and every kind or nature, unless the interruption is required to perform a portion of the Work. Subject to Section 3.2, unforeseen utilities that are encountered will be addressed with the Owner as Changes in the Work. The CM/GC shall have the responsibility to coordinate the CM/GC's work with the utility service providers, municipal and/or off-site CM/GCs related to the Project and in the absence of other special provision of Contract Documents to the contrary, shall be required to coordinate, to the extent reasonably possible, with said entities the physical street/ROW work and connection to the structures and/or extensions from the structures to the off-site and/or on-site utilities provided so that the work constructed by the CM/GC is properly sequenced, and functional for the intended use and purpose thereof. Such coordination and supervision costs incidental thereto, are incidental to the Work and part of the Contract Sum.

§ 3.3.2.2 The CM/GC shall create and submit to the Owner a utility shut-down schedule, which provides anticipated dates when utilities will need to be shut-down to allow for tie-in to existing services. These dates should be incorporated into the Construction Schedule and CM/GC shall provide at least three weeks (21 days) prior written notice to Owner of such shut-downs. CM/GC shall create and submit to the Owner a schedule for any planned impacts to areas of the campus adjacent to the Project. Such impacts shall include, but are not limited to, physical street/ROW work, re-routing and/or shutdown of sidewalks, pathways, stairways, and/or tunnels, impacts to adjacent buildings (including utility shut-downs, or excessive or abnormal vibration or excessive noise. CM/GC shall provide at least three weeks (21 days) advance notice to the Owner of any such impacts.

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

§ 3.3.4 If any of the Work is required to be inspected or approved by any local, county or state authority, the CM/GC shall cause such inspection or approval to be performed. No inspection performed or failed to be performed by the Owner or Engineer hereunder shall be a waiver of any of the CM/GC's obligations hereunder or be construed as an approval or acceptance of the Work or any part hereof.

§ 3.3.5 The CM/GC shall comply with and shall be responsible for ensuring that CM/GC's employees and Subcontractors, and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the CM/GC or any of its Subcontractors comply with all applicable building efficiency standards,

recycling, and/or other similar sustainability standards required by the Contract Documents and all applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 3.4 Labor and Materials

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

§ 3.4.1.1 The CM/GC's obligations under Section 3.4.1 shall include without limitation the obligation to pay all Subcontractors and any other person or entity having construction lien rights regarding the Project due to their performance of the CM/GC's obligations under the Contract. The CM/GC agrees to keep the Project and the Project site free and clear of any and all such lien claims filed by any person or entity at any tier performing the Work or the CM/GC's obligations under the Contract, excluding any lien filed by CM/GC. The foregoing obligation to keep the Project free of liens shall also apply when CM/GC has a dispute with a Subcontractor where CM/GC has not included payment for the Subcontractor in an Application for Payment.

§ 3.4.1.2 In the event a claim of lien referenced in Clause 3.4.1.1 is filed, whether due to nonpayment of the claimant or otherwise, and whether contested or not, the CM/GC within ten (10) days after receipt of the Owner's demand and at the CM/GC's expense shall cause the lien to be removed from the Project property by payment, compromise or the furnishing and perfection of a release bond or deposit pursuant to applicable law. If the CM/GC fails to perform its obligation under the prior sentence, the Owner, without waiving or limiting its rights or remedies or those of any interested persons or entities, and at the Owner's sole discretion, may cause the lien to be removed by paying the claimant directly, by paying the CM/GC and claimant with a multiple-payee check, or by furnishing and perfecting a lien release bond or deposit pursuant to applicable law; provided that in such instance the Owner shall be entitled to retain from any payments then due or which otherwise will become due to the CM/GC, whether under the Contract or otherwise, an amount sufficient to hold the Owner harmless considering such payment or such furnishing and perfecting a release bond or deposit and any and all related costs and expenses incurred by the Owner, including without limitation attorneys' fees.

§ 3.4.1.3 The CM/GC agrees to indemnify, hold harmless, reimburse, and defend (with counsel approved by the Owner) the Owner and any other person or entity with an interest in the Project or Project site from, for, and against any and all liens referenced in Clause 3.4.1.1, actions, suits, or proceedings relating to such liens, and any and all related costs and expenses incurred by the Owner, including without limitation attorneys' fees.

§ 3.4.1.4 Nothing in this Section 3.4.1 shall limit the Owner's rights or the CM/GC's obligations under other provisions of this Agreement.

§ 3.4.1.5 CM/GC's obligation to indemnify and hold harmless Owner from liens created under ORS 87-010 and perfected under ORS 87-035 shall not be altered, amended, eliminated or otherwise conditioned by ORS 87.021(4).

§ 3.4.2 Except in the case of minor changes in the Work approved by the Engineer in accordance with Section 3.12.8 or ordered by the Engineer in accordance with Section 7.4, the CM/GC may make substitutions only with the written consent of the Owner, after evaluation by the Engineer and in accordance with a Change Order or Construction Change Directive. After the GMP Amendment has been executed, the Owner and Engineer will consider a formal request for the substitution of products in place of those specified. By making requests for substitution without prior written consent of the Owner that specifically identifies that it is a substitution and how the substituted product or material deviates from the specification in terms of cost, quality, warranty, durability, impact on schedule, and availability such that Owner can make an informed decision regarding the cost and benefits of each substitution, the CM/GC:

- .1 represents that the CM/GC has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- .2 represents that the CM/GC will provide the same warranty for the substitution that the CM/GC would for that specified;
- .3 certifies that the cost data presented is complete and includes all related costs under this Contract except the Engineer's redesign costs (which will be paid for by CM/GC), if any, and waives all claims for additional costs related to the substitution which subsequently become apparent; and

- 4 will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects, will assume all responsibility for the failure of the substitute product to perform as well as or better than the originally specified product and shall bear the risk of any delay in performance caused by submitting substitutions.

§ 3.4.2.5 Inclusion of any item in either CM/GC's Qualification and Assumption or a Subcontractor's proposal, regardless of whether Owner has approved of such Qualification and Assumption or proposal, shall not satisfy the "prior written consent" obligation of this Section 3.4.2. Any proposed substitutions shall be included as Alternates. CM/GC shall be fully responsible for any product or material installed at the Project that is not specified or has not been approved as set forth in this Section 3.4.2 and such product or material shall be subject to removal as set forth in Section 12.3.

§ 3.4.2.6 This provision shall not apply to value engineering options identified by the CM/GC for review and approval of the Owner, if such value engineering options have been approved by the Owner in writing.

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

§ 3.5 Warranty

§ 3.5.1 The CM/GC warrants to the Owner and Engineer that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The CM/GC further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements shall be deemed defective. The CM/GC's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the CM/GC, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Engineer, the CM/GC shall furnish satisfactory evidence as to the kind and quality of materials and equipment. CM/GC shall pay, defend, indemnify, and hold harmless Engineer, Owner, Owner's Representative (if any), and Owner-Related Parties for, from, and against any claims, demands, actions, damages, or costs and expenses, including attorneys' fees and costs, arising from or in any way connected with breach of warranty. Warranties provided herein are in addition to rights and remedies provided by law and nothing in this Section 3.5 shall be construed to vitiate, void, limit or adversely affect any rights or remedies otherwise available to Owner by law.

§ 3.5.2 CM/GC shall secure and furnish directly to Owner written warranties first executed by each Subcontractor and those material suppliers identified by Owner after CM/GC furnishes Owner with a written list of all material suppliers, which shall extend to Owner all rights, claims, benefits, and interests the CM/GC may have under express or implied warranties against Subcontractors or material suppliers for defective or non-conforming Work. CM/GC shall secure, assign, and furnish directly to Owner, subject to approval by Engineer before acceptance by Owner, all written guarantees and warranties which apply to any product which is part of or incorporated into the Work, or which is otherwise called for in the Contract Documents. Prior to final acceptance of the Project by the Owner, the CM/GC shall deliver to the Owner three (3) bound volumes of all guarantees and warranties on material furnished by all manufacturers and suppliers to the CM/GC and all its Subcontractors, with duly executed instruments properly assigning the guarantees and warranties to the Owner. The guarantees and warranties in each bound volume shall be grouped together by trade and properly indexed. The CM/GC shall obtain from manufacturers and suppliers guarantees and warranties according to the Contract terms. The documentation must also clearly describe proper operational and maintenance activities required to sustain said warranties.

§ 3.5.3 The CM/GC warrants that all portions of the Work that will be covered by a manufacturer's or supplier's warranty shall be performed in such a manner so as to preserve all rights under such warranties. The CM/GC hereby assigns to the Owner, effective upon the termination of the Agreement or upon Substantial Completion of the Work, all manufacturer's and supplier's warranties related to the Work, and the CM/GC shall, upon request of the Owner, execute any document reasonably requested by Owner to effectuate such assignment. If the Owner attempts to enforce a claim based upon a manufacturer's or supplier's warranty and such manufacturer or supplier refuses to honor such warranty based, in whole or in part, on a claim of defective installation by the CM/GC, the CM/GC shall be responsible for any resulting loss or damage incurred by the Owner as a result of the manufacturer's or suppliers' refusal to honor such warranty. The CM/GC's obligations under this Section shall survive the expiration or earlier termination of the Contract. Notwithstanding any assignment, CM/GC shall remain responsible for administering

warranties. If, after the warranty period, CM/GC's Subcontractors are non-responsive to a warranty request from the Owner, the CM/GC shall make good faith efforts to assist the Owner in obtaining such Subcontractor to respond to the Owner's warranty request.

§ 3.5.4 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner and to any future purchaser of the Project, and shall commence in accordance with Section 9.8.4. CM/GC shall secure, assign and furnish directly to Owner, subject to approval by Engineer before acceptance by Owner, all written guarantees and warranties which apply to any product which is part of or incorporated into the Work, or which is otherwise called for in the Contract Documents. Notwithstanding any assignment, CM/GC shall remain responsible for administering warranties.

§ 3.6 Taxes

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

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Owner shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. The costs of licenses, permits, and fees for any Subcontractors are included in the pricing for such Work.

§ 3.7.2 The CM/GC shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work, including but not limited to FHA, ADA, and other accessibility regulations. CM/GC shall include reasonable tolerances in construction with regard to any applicable or announced accessibility regulations to ensure that as-built conditions comply with all such accessibility codes and regulations. The CM/GC shall require its Subcontractors and Design-Build Subcontractors, such as mechanical, electrical, and plumbing (MEP), and Subcontractors responsible for delegated design and/or deferred submittals, to coordinate with Engineer to ensure that their design and work meet all accessibility requirements and take into account framing tolerances, acoustical considerations, and obstructions, such as countertops, backboard, tile, etc.). If applicable, the CM/GC shall further coordinate with the design build steel stud Subcontractor, and require it to coordinate with the Engineer, to ensure that its design and work meet all accessibility requirements and take into account framing tolerances, acoustical considerations, wall backing and obstructions.

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

§ 3.7.4 Concealed or Unknown Conditions

If the CM/GC encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents that could not reasonably have been discovered by the CM/GC, the CM/GC shall promptly provide notice to the Owner and the Engineer before conditions are disturbed and in no event later than 24 hours after first observance of the conditions. The Engineer will promptly investigate such conditions and, if the Engineer determines that they differ materially and cause an increase or decrease in the CM/GC's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Engineer 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 Engineer shall promptly notify the Owner and CM/GC, stating the reasons. If either party disputes the Engineer's determination or recommendation, that party may submit a Claim as provided in Article 15. No adjustment in the Contract Time or Contract Sum shall be submitted or allowed, however, in connection with concealed or unknown conditions which do not differ materially from those conditions disclosed or which reasonably should have been disclosed by the CM/GC's prior inspections, tests, reviews and preconstruction services for the Project.

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

§ 3.8 Allowances

§ 3.8.1 The CM/GC shall include in the Contract Sum all allowances stated in the Contract Documents. Allowances amounts shall be a reasonable estimate by the CM/GC of the actual cost of each allowance item based upon the information known as of the date of the GMP Amendment and through CM/GC's preconstruction services. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the CM/GC shall not be required to employ persons or entities to whom the CM/GC has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1** allowances shall cover the cost to the CM/GC of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2** CM/GC's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;
- .3** whenever costs are more than or less than allowances and such changes are due to changes in scope by the Owner, the Contract Sum shall be adjusted accordingly by Change Order. Otherwise, the Guaranteed Maximum Price will not be increased due to the cost of an allowance item being more than the allowance. CM/GC, however, may use savings generated by Subcontractor buy-out, contingency, or with the prior written approval of the Owner, savings from other allowance line items; and
- .4** weekly, during the course of construction, representatives of the CM/GC shall advise the Owner of the cost status of each Allowance. The CM/GC shall provide this information in a timely manner, but always prior to the termination of the allowance Work. The intent of this subparagraph is to identify possible cost overrun exposure and bring same to the attention of the Owner as soon as possible.

§ 3.8.3 If Work covered by an allowance is on-going over the course of the Project, the CM/GC shall provide the Owner a monthly update of all Allowance expenditures and forecast of projected savings or over-run in the allowance sum. In order to increase an allowance, An allowance may not be transferred or aggregated with other allowances without prior written consent of Owner.

§ 3.8.4 CM/GC shall provide deadlines for Owner decisions related to each allowance selection. Once so informed, materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 Superintendent

§ 3.9.1 The CM/GC shall employ a competent superintendent approved by Owner and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the CM/GC, and communications given to the superintendent shall be as binding as if given to the CM/GC. The superintendent and project personnel identified in the RFP shall not be substituted with other personnel without Owner's prior written consent. CM/GC warrants project staff shall devote sufficient time to complete the Work in a timely manner. The Superintendent shall devote total and full-time attention to the requirements of the Construction Documents until Final Completion of the last phase of the Project. The CM/GC's superintendent shall be responsible for the Work at all times and shall have authority to furnish estimates and to approve on behalf of CM/GC changes in the Work. Owner and CM/GC may rely upon the signature of the superintendent as binding as to any matter requiring the signature of CM/GC. Communications given to the superintendent in writing shall be as binding as if given to the CM/GC. In all instances, the CM/GC's project manager, superintendent, and other project representatives shall be subject to the reasonable approval of Owner. The CM/GC shall replace the superintendent, project manager, or other project representatives assigned to the Project upon Owner's reasonable request. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

§ 3.9.1.1 The Superintendent shall keep an electronic daily journal describing in detail all construction activity, weather conditions, persons entering the job site, and all other information important to the construction process. The daily journal shall be available upon request to the Owner and Engineer, and upon request copied in its entirety and delivered to each. All photos/videos and all other records documenting progress, quality of work, concealed work, etc. shall be available for copy by Owner and Engineer upon request.

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

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

§ 3.10 CM/GC's Construction and Submittal Schedules

§ 3.10.1 The CM/GC, within ten (10) days after being awarded the Contract or with the GMP Amendment, shall prepare and submit for the Owner's and Engineer's information a CM/GC's construction schedule ("Schedule") for the Work in MS Project or similar. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates ("Milestone Dates"), duration, percentage complete, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; (3) the time required for completion of each portion of the Work; (4) logic / logic ties; and (5) float. The schedule shall provide for the orderly progression of the Work to completion, shall not exceed time limits current under the Contract Documents, and shall be submitted in updated form with CM/GC's monthly payment applications. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project to demonstrate the Project will be completed within the Contract Time, shall maintain the same logic as originally accepted by the Owner in the Schedule, shall resolve any conflict between actual work progress and schedule logic, 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. When out of sequence activities develop because of actual construction progress, CM/GC shall submit revisions to schedule logic to conform to current job status and directions, without changing the Construction Schedule activity identification or Contract Time. In no event shall CM/GC be entitled to an adjustment of the Contract Sum for non-realization of an anticipated early completion prior to the Contract Time. CM/GC shall provide Owner with an electronic version of the original Construction Schedule, including all subsequent electronic schedule revisions and updates (by disk or CD), created without any password protection, in a format approved by Owner. Such schedules shall be capable of being fully reviewed and inspected by the Owner and Owner's Representative. Upon review and approval by the Owner of the Milestone Dates, the Construction Schedule shall be deemed part of the Contract Documents. If not accepted for reasonable cause, the construction schedule shall be promptly revised by the CM/GC in accordance with the recommendations of the Owner and Engineer and resubmitted for acceptance.

§ 3.10.2 The Owner may authorize construction activities to commence prior to completion of the Drawings and Specifications. If the Drawings and Specifications require further development at the time an initial construction schedule is prepared, the CM/GC shall (1) allow time in the schedule for further development of the drawings and Specifications by the Engineer, including time for review by the Owner and the CM/GC and for the CM/GC's coordination of Subcontractor's Work, and (2) furnish to the Owner in a timely manner information regarding anticipated market conditions and construction costs; availability of labor, materials and equipment; and proposed methods, sequences and time schedules for construction of the Work.

§ 3.10.3 The CM/GC shall prepare a submittal schedule within the timeframe set forth by the Owner and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Engineer's and Owner's approval. Activities on the Construction Schedule that are dependent on submittal acceptance and/or material delivery shall not be scheduled to start earlier than the expected acceptance or delivery dates set forth in the submittal schedule. The submittal schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project. The Engineer's or Owner's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the CM/GC's construction schedule, (2) allow the Engineer or Owner reasonable time to review submittals, and (3) provide a date for when decisions of the Owner or Engineer need to be provided in order to maintain the proposed Project Schedule. If the CM/GC fails to submit a submittal

schedule, or fails to provide submittals in accordance with the approved submittal schedule, the CM/GC shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals and shall be responsible for any additional costs paid to the Engineer as a result of such failure to follow the submittal schedule.

§ 3.10.4 The CM/GC shall perform the Work in general accordance with the most recent schedules submitted to and approved by the Owner and Engineer.

§ 3.10.5 The Construction Schedule shall be in an appropriately detailed precedence-style critical path method (CPM), time-scaled network diagram type format which shall provide a graphic representation of activities and events that will occur during performance of the Work and shall establish interim dates that are critical in insuring the timely and orderly completion of the Work. No activity on the Construction Schedule shall have duration longer than fifteen (15) calendar days, except fabrication and procurement activities, which may have longer durations if acceptable to Owner. The Construction Schedule shall include, but not be limited to, separate work activities for each level, including roof(s). The CM/GC shall perform the Work in accordance with the construction schedule as well as within the dates specified in this Agreement.

§ 3.10.6 In addition to any other schedule required by the Contract Documents, the CM/GC shall provide the Owner the following:

- .1 At, or by the first meeting to review CM/GC's draft Application for Payment, provide for the Owner's overall monitoring purposes, a project CPM schedule, satisfactory to the Owner, on one page, showing the critical path activities and milestones for each phase of construction and occupancy of the entire Project. Such milestones shall include, but not be limited to, the start and substantial completion of: (i) mass excavation, (ii) foundation construction, (iii) slab/deck pours (iv) utility construction, (v) wood/metal framing, (vi) roofing and waterproofing installations, (vii) work on a floor-by floor basis for; (viii) M&E rough-ins, cover inspections, final cleaning of units, (ix) exteriors (erection of scaffold, envelope installation, and removal of scaffold), (x) permanent power energizing, (xi) pouring of sidewalks, (xii) installation and removal of sidewalk pedestrian barricade/cover, (xiii) inspections by the Authorities Having Jurisdiction; (xiv) if applicable, the possible start of tenant improvements by others at commercial areas (which shall not be less than 2 months before Substantial Completion), (XV) FF&E installation, (xvi) testing and inspection of fire/life safety systems; (xvii) anticipated permit sign-off; (xviii) commissioning; and (xix) Substantial and Final Completion.
- .2 Upon further Owner comment and Subcontractor input but not later than prior to the third Application for Payment, provide an updated Schedule with the information set forth in Section 3.10.7 below.

§ 3.10.7 Periodically, as required by the Engineer or Owner, the CM/GC shall report on the status of the Work on duplicate marked copies of the current Construction Schedule. The current Construction Schedule shall reflect (1) the as-built activities performed as of the effective date of the updated schedule; and (2) the CM/GC's plans for the continued prosecution of the remainder of the Work. The CM/GC shall indicate in the status report any Work that is not proceeding according to the current construction schedule and shall provide a written plan of action to bring the Work into compliance with the schedule or to modify the schedule. Any modifications to the CM/GC's schedule notwithstanding, the CM/GC shall remain responsible to complete the Work within the time specified in this Agreement and all requirements stated in this Section 3.10 shall equally apply to all updates to the CM/GC's Schedule.

§3.10.8 Recovery Plan. In the event that the Owner reasonably determines that CM/GC is two (2) weeks (or more) behind the approved Schedule, CM/GC shall promptly furnish to Owner at its own cost and expense, a Recovery Schedule, which depicts the CM/GC's plans and measures the CM/GC will take for achieving the completion of the Work in accordance with the Contract Time. Such measures may include an increase in: (a) the number of construction workers, equipment, materials, (b) in the number of shifts, (c) use of overtime operations, (d) supplement any lagging crew or sub-trade, or (e) re-sequencing Work. If the CM/GC desires to carry on Work at night or outside the normal working hours the CM/GC must obtain approval from the appropriate jurisdiction (refer to City rules governing this work). Owner has the right to direct CM/GC to take such measures, and other reasonable acceleration measures deemed necessary by Owner. Prior to accelerating its forces, the CM/GC shall submit to the Owner and Engineer such supplementary schedule or schedules to demonstrate the manner in which the agreed rate of progress will be regained and the anticipated costs of such acceleration. The CM/GC's Recovery Schedule shall be subject to reasonable approval of the Owner. CM/GC will be entitled to an extension of time, as provided elsewhere in this Agreement, only if Owner approves of the extension and adjustment through the Change Order

process. Providing a Recovery Schedule as set forth in this Paragraph shall not be deemed as notice of any delays. All notice of delays must comply with Article 15. For delays that are not excusable under the terms of this Agreement, any and all costs related to delays, or the costs of any acceleration, disruptions, or inefficiencies due to such delay(s) shall be borne by the CM/GC. CM/GC's refusal to make reasonable efforts to complete the Work within the Contract Time is a material breach of this Agreement and a basis for Owner terminating CM/GC for cause.

§3.10.9 The CM/GC shall manage savings realized in the performance of activities and events detailed in the Schedule for the overall benefit of the Project. In the event that CM/GC is ahead of schedule with respect to certain activities or events detailed in the Schedule, such time savings shall benefit Owner and shall not work to allow additional time for the completion of other activities or events without Owner's prior approval.

§3.10.10 Owner's and Engineer's review, comment, and/or approval of the CM/GC's Construction Schedules, milestone dates, updated schedules, or Recovery Schedule(s) shall not constitute a change of any portion of the Work or the Schedule or relieve CM/GC of any of its obligations. Failure of the CM/GC to include any element of the Work required by the Contract Documents in its construction schedules shall not relieve the CM/GC from completing the Work in full accordance or compliance with the Contract Documents. The CM/GC alone shall remain responsible for the workflow and schedule logic, how early to start activities, adjusting forces, equipment, and work schedules to ensure completion of the Work within the time(s) specified in the Contract.

§ 3.11 Documents and Samples at the Site

The CM/GC shall maintain at the Project site for the Owner one copy of the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Engineer and Owner, and delivered to the Engineer for submittal to the Owner upon completion of the Work as a record of the Work as constructed. CM/GC shall maintain and update as the Work progresses as-built drawings depicting the as-built elements and conditions of the Project. CM/GC shall provide the then-current version of the as-built drawings to the Owner upon request. Upon completion of the Work and before final payment is made, CM/GC shall furnish to the Owner a professional and legible copy of the Drawings and Specifications that depict the locations of the as-built elements of the Work to the extent the as-built conditions differ from the Contract Documents, as well as any and all field changes made to the Work.

§ 3.12 Shop Drawings, Product Data and Samples

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the CM/GC 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 CM/GC to illustrate materials or equipment for some portion of the Work.

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

§ 3.12.4 Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the CM/GC proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Engineer is subject to the limitations of Section 4.2.7. Informational submittals upon which the Engineer 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 Engineer without action.

§ 3.12.5 The CM/GC shall review for compliance with the Contract Documents, approve, and submit to the Engineer, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Engineer 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 CM/GCs.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the CM/GC represents to the Owner and Engineer that the CM/GC 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 CM/GC's submission of Shop Drawings, Product Data, Samples and similar submittals to Owner is a representation by CM/GC that it has coordinated the work addressed in the submittal with the work of others and that no known conflicts result other than those that may be specifically noted for the Engineers attention in the submittal. Where penetrations in the work occur from mechanical, electrical, or for other equipment, the CM/GC shall review shop drawings and verify size, location and sealant means of said penetrations.

§ 3.12.7 The CM/GC 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 in writing by the Engineer.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the CM/GC shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Engineer's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the CM/GC has specifically notified the Engineer of such deviation at the time of submittal and (1) the Engineer or Owner 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 CM/GC shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Engineer's approval thereof. The CM/GC shall be solely responsible for errors or omissions in its and its Subcontractors' submittals and Shop Drawings, whether or not the submittals and Shop Drawings have been reviewed or approved by the Engineer or Owner.

§ 3.12.9 The CM/GC 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 Engineer on previous submittals. In the absence of such written notice, the Engineer's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The CM/GC shall not be required to provide professional services that constitute the practice of Engineering unless such services are specifically required by the Contract Documents for a portion of the Work (such as design-build, delegated design, or deferred submittals) or unless the CM/GC needs to provide such services in order to carry out the CM/GC's responsibilities for construction means, methods, techniques, sequences, and procedures. The CM/GC shall not be required to provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services, design-build, deferred submittals, delegated design services, or certifications by a design professional related to systems, materials, or equipment are specifically required of the CM/GC by the Contract Documents, unless otherwise indicated the Owner and the Engineer will specify all performance and design criteria that such services must satisfy. CM/GC shall coordinate, and shall require its Subcontractors to coordinate, with the Engineer to review the delegated design, design-build, and deferred submittal services required by the Contract Documents. The CM/GC shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Engineer. CM/GC shall cause such portions of the Work to be designed, engineered, and permitted, and to construct such Work in accordance with all such criteria, in accordance with all applicable laws and codes, and in a manner such that these systems are functioning and properly integrated into the remainder of the Work. The CM/GC and CM/GC's design-build Subcontractors shall advise the Owner and Engineer of any discovered conflicts or potential conflicts in the Engineer's design criteria. Owner will be the owner of all design and engineering documents so generated for the Work. They are not to be used by CM/GC or its Subcontractors on any other project and shall be given to Owner or destroyed upon completion of the Work, at Owner's discretion. The Owner and the Engineer 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 Engineer have specified to the CM/GC the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Engineer will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

§ 3.13 Use of Site

§ 3.13.1 The CM/GC shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. CM/GC shall comply with all stormwater discharge and mitigation laws and ordinances, and as set forth in the civil engineering design documents and any applicable permits.

§ 3.13.2 The CM/GC shall send proper notices, make all necessary arrangements, and perform all other services required in order to protect and maintain all marked, identified, locatable, or known public entities such as fire lines and hydrants, electric, gas, water lines, sewer pipes, mechanical systems, public pedestrian and street easements, and all other items of this nature, and assume all responsibility and pay all costs and damages for which the Owner may be liable if said services are interrupted by actions of the CM/GC or Subcontractor. CM/GC shall provide three weeks' (21 days) prior notice of any impacts or interruptions to such systems, services, public areas. CM/GC shall test all utilities prior to performing work to ensure compliance with design and applicable laws, codes, ordinances and other requirements of the Project.

§ 3.13.3 The CM/GC shall bring and store on the Project site only materials and equipment which are to be used directly in the Work. After such equipment is no longer required for the Work, it should be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage and other similar occurrences are solely the responsibility of the CM/GC and the CM/GC shall mitigate any adverse impacts to the Project, including those caused by authorized changes, which may affect cost, schedule, or quality. Except for signs required by law, the CM/GC shall not erect or permit the erection of any sign on the Project site without the prior written consent of the Owner, which consent may be withheld or revoked in the Owner's sole direction. The CM/GC shall not, without the Owner's review and prior written approval, which approval may be withheld or revoked in the Owner's sole discretion, reference or identify any entity in any representation of the Project, photographs of the exterior or interior of the Project, or references to the fact that the CM/GC is constructing the Project in the CM/GC's promotional or advertising materials.

§ 3.13.4 Without limitation of any other provision of the Contract Documents, the CM/GC 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 building in the event of partial occupancy as more specifically described in Paragraph 9.9.

§ 3.13.5 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, and any building materials, or equipment likely to cause hazardous conditions. CM/GC shall, where practical, keep the main entry roadway open and accessible for public use. CM/GC shall protect the adjacent property and the public at all times from hazards from their work in a manner conforming to all agencies of jurisdiction.

§ 3.13.6 Without prior approval of the Owner, the CM/GC shall not permit any workers to use any newly constructed/existing facilities at the Project site including, without limitation, lavatories, toilets, and parking areas other than those designated by the Owner.

§ 3.13.7 The CM/GC's fence, scaffold and/or building signs on the Project shall be coordinated with and have the prior written consent of the Owner except as required for safe site operations.

§ 3.14 Cutting and Patching

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

§ 3.14.2 The CM/GC shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate CM/GCs by cutting, patching, or otherwise altering such construction, or by excavation. The CM/GC shall not cut or otherwise alter construction by the Owner or a Separate CM/GC except with written consent of the Owner and of the Separate CM/GC. Consent shall not be unreasonably withheld. The

CM/GC shall not unreasonably withhold, from the Owner or a Separate CM/GC, its consent to cutting or otherwise altering the Work. Fitting of all materials shall be done to preserve the strength and durability of the material and to present a clean, well-worked appearance.

§ 3.15 Cleaning Up

§ 3.15.1 The CM/GC shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the CM/GC shall remove waste materials, rubbish, the CM/GC's tools, construction equipment, machinery, and surplus materials from and about the Project. In addition to general broom cleaning, the CM/GC shall perform minimum final cleaning for all trades at completion of the Work in accordance with the specifications and the following:

- .1 remove temporary protections;
- .2 remove marks, fingerprints and other soil or dirt from painted, decorated and natural-finished woodwork and other Work;
- .3 remove spots, plaster, soil and paint from ceramic tile, marble and other finished materials, and wash or wipe clean;
- .4 clean fixtures, cabinet work and equipment, removing stains, paint, dirt and dust, and leave same in undamaged, new condition;
- .5 clean aluminum in accordance with recommendations of the manufacturer;
- .6 clean resilient floors thoroughly with a well rinsed mop containing only enough moisture to clean off any surface dirt or dust and buff dry by machine to bring the surfaces to a sheen;
- .7 remove spots and other foreign material from carpeted areas using cleaning methods in accordance with the carpet manufacturer's recommendations. Vacuum all areas, and mechanically clean any areas which have been subjected to high traffic during completion of construction activities; and
- .8 window cleaning (exterior and interior sides).

§ 3.15.2 The CM/GC shall maintain streets and sidewalks around the Project site in a clean condition and shall comply with all erosion control, storm water runoff, recycling and composting ordinances and regulations. The CM/GC shall remove all spillage and tracking arising from the performance of the Work from such areas and shall establish a regular maintenance program to minimize accumulation of dirt and dust upon such areas. If the CM/GC fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from or offset against the CM/GC.

§ 3.16 Access to Work

§ 3.16.1 The CM/GC shall provide the Owner and Engineer with access to the Work in preparation and progress wherever located.

§ 3.16.2 Owner shall have the right to access any part or parts of the Project in order to do whatever work is necessary to complete the interior of the building and to install fixtures and equipment provided Owner has given ample notice and Owner's work will not impact progress on the Work of this Contract. All work within the construction site shall be coordinated through the jobsite superintendent. The CM/GC shall cooperate with the Owner, Owner's property manager and employees, service providers, commercial tenants (if any), prospective tenants/residents, their designers and CM/GCs and other authorized users to prior to Substantial Completion in accordance with the accepted schedule. The CM/GC shall coordinate its efforts with Owner or Owner's tenant's/resident's occupancy of the premises under this Section in such a way as to minimize impact of all parties; however, the overall Project Schedule and CM/GC's Work shall always take precedence.

§ 3.17 Royalties, Patents and Copyrights

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

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law (including ORS 30.140) and in addition to any other indemnification obligations set forth in the Contract Documents, the CM/GC agrees to be responsible for and shall defend, indemnify and hold harmless the Owner, the Owner Related Parties, the Owner's lender, Owner's Representative, Owner's Project Managers, Engineer, Engineer's consultants, and agents, volunteers, members, affiliates, subsidiaries, employees, officers, principals, board members, and directors of any of them (collectively "Indemnified Party(ies)") from, for, and against every kind and character of claims, damages, losses, actions, causes of action, liabilities, costs, fines, and expenses, (including but not limited to actual attorneys' and expert fees and costs, and costs and expenses of consultation, preparation, and review of claims and related documents and in enforcing the defense and indemnity obligations hereunder) ("Loss"), in law or in equity, of every kind and nature whatsoever, arising out of, related to, or resulting from, or allegedly related to or arising from the Work including the work of all Subcontractors and their employees or anyone for whom they are legally liable, provided any such Loss is caused in whole or in part by (i) the negligent or wrongful acts or omissions of the CM/GC, a Subcontractor, and their employees or the agent of anyone directly or indirectly employed by them, or anyone for whose acts any of them may be liable, (ii) any determination by a court or agency that CM/GC is not an independent CM/GC or that Owner is the employer or joint employer of any of CM/GC's or any Subcontractor's employees or personnel, (iii) any claim, action, suit or proceeding by CM/GC or a Subcontractor's employees, including but not limited to worker's compensation, unemployment and wage-and-hour claims, (iv) any violation or infraction by CM/GC of any law, order, citation, rule, regulation, standard, ordinance or statute in any way relating to the occupational health or safety of employees, (v) any breach of this Agreement, including but not limited to breach of CM/GC's warranty obligations hereunder.

§ 3.18.2 The defense and indemnification obligations in this Section shall arise regardless of whether or not such Loss is caused in part by the concurrent or partial negligence of an Indemnified Party. The CM/GC shall defend all actions brought upon such matters to be indemnified hereunder and pay all costs and expenses incidental thereto, but the Owner shall have the right, at its option, to participate in the defense of any such action without relieving the CM/GC of any obligation hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other rights or obligations of indemnity which would otherwise exist as to any party or person under the Contract Documents.

§ 3.18.3 Notwithstanding anything to the contrary in this Agreement, CM/GC is not required to indemnify or insure an Indemnified Party for, from, and against liability for damage arising out of death or bodily injury to persons or damage to property to the extent caused by the negligence or willful misconduct of such Indemnified Party. In claims against any person or entity indemnified under this Section 3.18 by an employee of the CM/GC, 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 CM/GC or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

§ 3.18.4 It is agreed that with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification or defense obligations under this Section 3.18, such legal limitations are made a part of the indemnification or defense obligations to the minimum extent necessary to bring the provisions into conformity with the requirements of such limitations, and as so modified, the indemnification obligations shall continue in full force and effect.

§ 3.18.5 CM/GC shall not settle or compromise any third party claim without prior written consent of the Indemnified Party to the terms of the settlement, unless (i) the terms of such compromise or settlement require no more than the payment of money, (ii) the full amount of such monetary compromise or settlement is paid by CM/GC, and (iii) the Indemnified Party(ies) receive as part of such settlement a legal, binding, and enforceable unconditional satisfaction and/or release, in form and substance reasonably satisfactory to it, providing that such third party claim and any claimed liability of the Indemnified party with respect thereto is fully satisfied by reason of such compromise or settlement and that the Indemnified Party is being released from any and all obligations and liabilities it may have with respect thereto.

§ 3.18.6 OWNER AND CM/GC ACKNOWLEDGE THAT THE INDEMNIFICATION PROVISIONS OF THIS SECTION WERE SPECIFICALLY NEGOTIATED AND AGREED UPON BY THEM. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity

which would otherwise exist as to any party or person under the Contract Documents. The indemnification and defense provisions of this Agreement shall survive any termination of this Agreement.

ARTICLE 4 ENGINEER

§ 4.1 General

§ 4.1.1 The Engineer is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement. The Owner's Representative (who may also be assigned by the Owner as the Engineer), at Owner's discretion, may provide some of the obligations required by Engineer in this Agreement.

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

§ 4.2 Administration of the Contract

§ 4.2.1 The Owner will provide administration of the Contract as described in the Contract Documents. The Engineer will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Engineer or Owner's Representative will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Engineer 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 CM/GC's rights and responsibilities under the Contract Documents. The presence of the Engineer, Owner, or Owner's Representative (if any) at the Site shall not in any manner be construed as assurance that the Work is completed in compliance with the Contract Documents, nor as evidence that any requirement of the Contract documents of any kind, including Notice, has been met or waived.

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

§ 4.2.4 Communications

The Owner and CM/GC shall communicate directly with each other. The Owner and CM/GC shall include the Engineer and Owner's Representative in all communications that relate to or affect the Engineer's services or professional responsibilities and the Owner shall be copied on all communications and notices required to be provided to the Engineer. The Owner may promptly notify the Engineer of the substance of any direct communications between the Owner and the CM/GC otherwise relating to the Project. Communications by and with the Engineer's consultants shall be through the Engineer, with copies to Owner's Representative. Communications by and with Subcontractors and suppliers shall be through the CM/GC. Communications by and with Separate CM/GCs shall be through the Owner. The Contract Documents may specify other communication protocols.

§ 4.2.5 Based on the Engineer's and/or Owner's Representative's evaluations of the CM/GC's Applications for Payment, the Engineer's and/or Owner's Representative will review and certify the amounts due the CM/GC and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Engineer or Owner Representative has authority to reject Work that does not conform to the Contract Documents. Whenever the Engineer or Owner Representative considers it necessary or advisable, the Engineer and/or Owner's Representative will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Engineer and/or Owner's Representative 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 Engineer or Owner Representative to the

CM/GC, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work. The Owner has the same authority to reject Work, require inspection or testing, and reject Applications for Payment as does the Engineer.

§ 4.2.7 The Engineer or Owner Representative will review and approve, or take other appropriate action upon, the CM/GC'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 Engineer's or Owner Representative's action will be taken in accordance with the submittal schedule approved by the Engineer or Owner Representative or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Engineer's or Owner Representative'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 CM/GC as required by the Contract Documents (provided this sentence does not exonerate Engineer for responsibility to Owner for failing to report any such discrepancies observed by the Engineer). The Engineer's or Owner Representative's review of the CM/GC's submittals shall not relieve the CM/GC of the obligations under Article 3 or elsewhere in the Contract Documents. The Engineer's or Owner Representative's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Engineer's or Owner Representative's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The CM/GC will prepare Change Orders and the Engineer or Owner will prepare Construction Change Directives. The Engineer, Owner's Representative, or Owner may order minor changes in the Work as provided in Section 7.4. The Engineer or Owner Representative will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Engineer or Owner Representative 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 CM/GC pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

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

§ 4.2.11 The Engineer will make recommendations to the Owner concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or CM/GC.

§ 4.2.12 Recommendations of the Engineer will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings.

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

§ 4.2.14 No action, approval, omission to act, or failure to advise the CM/GC as to any matter by the Owner or the Engineer shall in any way relieve the CM/GC from its responsibility for the performance of the Work in accordance with the Contract Documents. In reviewing the quality and progress of the Work and submittals received from the CM/GC, the Engineer and/or Owner Representative is acting solely for the convenience of the Owner. Neither the Owner nor the Engineer nor Owner Representative has any responsibility, duty, or obligation to the CM/GC to assist the CM/GC in the supervision or performance of the Work.

§ 4.2.15 Any reference in the Contract Documents to the Engineer's or Owner's taking action or rendering a decision within any "reasonable promptness" is understood to mean no more than fifteen calendar days, unless a shorter review time is necessary to maintain the project Schedule as approved by the Owner, and CM/GC gives notice to Engineer and Owner that a shorter review time is necessary; provided, however, that the time for review

shall be extended for reasonable review time in the event submittals are returned to CM/GC because of incomplete submittals. Each party will instruct their respective representatives to act reasonably and promptly when reviewing and approving/rejecting submittals. Such shorter review periods shall be on a limited occasion, and not made routine.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 Definitions

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

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

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

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

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

§ 5.2.3 If the Owner or Engineer has reasonable objection to a person or entity proposed by the CM/GC, the CM/GC shall propose another to whom the Owner or Engineer 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 CM/GC has acted promptly and responsively in submitting names as required.

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

§ 5.2.5 CM/GC shall provide Owner within 10 days of execution with a true and complete copy of any executed subcontract(s) or supply contract(s), including scoping documents and modifications thereto. Such Subcontracts shall include all provisions and flow down obligations set forth in this Agreement.

§ 5.3 Subcontractual Relations

§ 5.3.1 By appropriate written agreement, prior to performance of the applicable Work, the CM/GC shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the CM/GC by terms of the Contract Documents, and to assume toward the CM/GC all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the CM/GC and all obligations and duties regarding confidentiality and background checks, by these Contract Documents, assumes toward the Owner and Engineer. Each subcontract agreement shall preserve and protect the rights of the Owner and Engineer 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 CM/GC that the CM/GC, by the Contract Documents, has against the Owner. Where appropriate, the CM/GC shall require each Subcontractor to enter into similar agreements with Sub-Subcontractors. The CM/GC shall make available to each proposed Subcontractor, prior to execution of the subcontract agreement, copies of the Contract Documents to which the

Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-Subcontractors.

§ 5.3.2 The CM/GC shall schedule, supervise and coordinate the operations of all Subcontractors of any tier, including any suppliers of early procurement items. Subcontracting of any of the Work shall not relieve the CM/GC from its responsibility for the performance of the Work in accordance with the Contract Documents or from its responsibility for the performance of any other of its obligations under the Contract Documents. The CM/GC is responsible for the timely, accurate and appropriate Subcontractor coordination of the Work of lower tier Subcontractors in accordance with the overall Work, including communications, meetings, drawings, illustrations, and other necessary associated activities required for the successful coordination of all trades, schedules, materials and workmanship.

§ 5.3.3 The CM/GC agrees to diligently, and using its best efforts, cause each Subcontractor to correct, at the Subcontractor's own expense, all Work performed by the Subcontractor that is defective in material or workmanship or otherwise fails to conform to the Contract Documents, including all necessary removal, replacement and/or repair of any other portion of the Project which may be damaged in removing, replacing or repairing any portion of the Project. If any Subcontractor defaults in its obligation promptly to correct any such deficiency, the CM/GC shall be responsible for correcting the deficiency as a Cost of the Work within the Guaranteed Maximum Price.

§ 5.3.4 Contracts between CM/GC and its Subcontractors shall provide the CM/GC and Subcontractor waive all rights that they may have against one another for damages caused by fire or other perils covered by the property insurance described in these General Conditions to the extent of any insurance recovery, except such rights as they may have to the proceeds of such insurance; and the CM/GC shall pay each Subcontractor a just share of any insurance monies received by the CM/GC on account of losses under policies issued pursuant to the Contract.

§ 5.3.5 Subcontracts between CM/GC and its Subcontractors shall also include the following: (1) the Subcontractor shall defend, indemnify, and hold harmless the Owner and Owner Related Entities to the same extent and for the same duration as CM/GC has agreed to indemnify and defend Owner and Owner Related Parties, including the waiver of waivers of subrogation required of CM/GC under the Contract Documents; (2) the Subcontractor shall subordinate its lien rights in the same manner and degree as CM/GC subordinates its lien rights as provided in this Agreement; (3) the Owner shall be an intended third party beneficiary of such subcontracts; and (4) each Subcontractor shall maintain the insurance in accordance with the requirements of **Exhibit A** and CM/GC shall submit proof of such insurance to the Owner prior to each such Subcontractor commencing any Work on the Project.

§ 5.4 Contingent Assignment of Subcontracts

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

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

If the Owner accepts the assignment of a subcontract agreement, the Owner assumes the CM/GC's rights and obligations under the subcontract for the period after such acceptance.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 60 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

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

§ 5.5 Subcontractor Selection

§ 5.5.1 All Subcontractors performing Work must be, as legally required or appropriate for the Work they are performing, registered or licensed by the following before such Subcontractors commence Work and for the duration of the subcontract:

- i. The Construction CM/GCs' Board in accordance with ORS 701.035 to 701.138;
- ii. The State Board of Examiners for Engineering and Land Surveying in accordance with ORS 672.002

- to 672.325;
- iii. The State Board of Architect Examiners in accordance with ORS 671.010 to 671.220;
 - iv. The State Landscape Architect's Board in accordance with ORS 671.310 to 671.459; or
 - v. The State Landscape CM/GC's Board in accordance with ORS 671.510 to 671.710.

§ 5.5.2 These registration and licensing requirements shall also apply to employees of the CM/GC and it shall require and ensure that they are in compliance.

§ 5.5.3 The CM/GC shall pay and comply with, and require Subcontractors to pay and comply with State prevailing wage rates in effect at the time of execution of the first Early Work Amendment, or if no Sandy TBD CM/GC Contract Page 20 of 31 Early Work Amendment is executed, at the time the GMP Amendment is executed, as listed in the BOLI publication titled "Prevailing Wage Rates for Public Works Contracts in Oregon", and any amendments thereto. The higher of those rates shall be incorporated in the Contract and shall then apply throughout the remainder of the Project.

§ 5.5.4 The CM/GC shall review all bids and shall work with bidders to clarify submitted bids, reduce exclusions, verify scope and quantities, and seek to minimize work subsequently awarded via the Change Order process.

§ 5.5.5 Unless otherwise provided, the selection of all Subcontractors and suppliers shall be made by competitive bidding in a manner that will not encourage favoritism or substantially diminish competition. While not subject to the competitive procurement requirements of ORS Chapter 279C, the process shall conform to the procedures discussed herein, in general compliance with the open and competitive nature of public procurement, taking into account industry subcontracting practices.

§ 5.5.6 CM/GC shall submit to City's Authorized Representative its proposed procurement documents for review and comment before they are issued for solicitation. CM/GC shall consider and respond to all City comments regarding any proposed Offer packages. As Offers are received, CM/GC shall submit to the City an Offer comparison in a mutually agreeable form together with any specific back-up documentation requested by City. The competitive process used to award subcontracts by the CM/GC may be monitored by the City's Authorized Representative; provided that such monitoring shall not excuse CM/GC from compliance with the subcontracting requirements of this Agreement. CM/GC shall cooperate in all respects with City's monitoring. The City's Authorized Representative shall be advised in advance of and be given the opportunity to be present at bid openings, and CM/GC shall provide him or her with a summary or abstract of all bids in form acceptable to the City's Authorized Representative, and copies of particular bids if requested, prior to CM/GC's selection of bids. Prior to opening bids, the CM/GC agrees to disclose in writing to City any financial interest it has in any such Subcontractor, supplier or other contracting party whenever such Subcontractor, supplier or contracting party intends to compete on any Project Work, directly or indirectly, including whether such party is an Affiliate of CM/GC.

§ 5.5.7 The following minimum requirements apply to the Subcontract solicitation process:

For solicitations where the resulting subcontract estimated to exceed \$100,000:

- i. Solicitations shall be advertised at least ten (10) business days prior to opening in the Daily Journal of Commerce. CM/GC also agrees to advertise in a local community newspaper in the area in which the Project is located, in order to allow for local participation in the solicitation process.
- ii. Unless specific other prior arrangement has been made with the City representative, all bids will be written, and submitted to a specific location at a specific time. CM/GC shall time/date-stamp all bids as received. Subcontractors must be qualified to perform the Work for this Project by being appropriately registered with the State of Oregon Construction CM/GCs Board.
- iii. If fewer than three (3) bids are submitted in response to any solicitation estimated to exceed \$100,000, (inclusive of any bid submitted by CM/GC), prior written approval by a City representative shall be required to accept a bid. iv. City may at its sole discretion, require CM/GC to re-solicit for bids based on the same or modified documents. Sandy TBD CM/GC Contract Page 21 of 31.
- v. The CM/GC shall document any and all discussions, questions and answers, modifications and responses to from any bidder and ensure that the same are distributed to all bidders, and City shall be entitled to inspect such documentation on request.
- vi. CM/GC shall determine the lowest responsive and responsible bid for each solicitation that meets CM/GC's reasonable performance standards for the components of the Work at issue; provided that if CM/GC determines it is unable to execute a suitable subcontract with such bidder, CM/GC may, with

City's prior approval, execute a subcontract with the second-lowest Offeror pursuant to paragraph 11.c.9) below. CM/GC may alternatively utilize a solicitation method whereby both price and Subcontractor qualifications are evaluated. In such case, the solicitation method and evaluation process must be documented in writing, must be competitive, fair and open, and must be prior approved by City. City reserves the right to approve such a method on a case by case basis.

For solicitations where the resulting subcontract estimated to be below \$100,000:

- i. Solicitations must be publicly advertised in any or all of the following methods: electronically, in the Oregon Daily Journal of Commerce, or a local community newspaper.
- ii. Unless specific other prior arrangement has been made with the City representative, all bids will be written, and submitted to a specific location or email address at a specific time. Quotes may be sent and submitted electronically. CM/GC shall retain a record of the time and date all quotes are received. Subcontractors must be qualified to perform the Work for this Project by being appropriately registered with the State of Oregon Construction CM/GCs Board.
- iii. A minimum of three (3) written quotes must be solicited. CM/GC may consider price and other qualifications in awarding such subcontracts.

Generally:

- i. CM/GC may develop and implement a prequalification process in accordance with Oregon Revised Statutes for competitive bidding for particular solicitations, followed by selection of successful bids among those bidders that CM/GC determines meet the prequalification standards, with City's prior written approval of such prequalification process.
- ii. The CM/GC shall comply, and require Subcontractor compliance, with the State of Oregon Bureau of Labor & Industries prevailing wage rate requirements. The wage rates that apply to this Project are described in paragraph C.1. of Exhibit A - General Conditions.

§ 5.5.8 Under special circumstances and only with prior written authorization by City, Work may be subcontracted on other than a low price basis, including without limitation, through competitive negotiation. As a condition to its authorization, City may require CM/GC's agreement to establish and implement qualification and performance criteria for bidders, including a scoring system within requests for proposals. Examples include: where there are single fabricators of materials; special packaging requirements for Subcontractor Work; design-build work or, where an alternative contracting method can be demonstrated to clearly benefit City. Such alternative procurements may, at the sole determination of the City, be subject to the City's procurement policies.

§ 5.5.9 When the Subcontractor selection process for a particular Work package will not be "competitive" as provided for in paragraph 11.c.5., the process must meet the following requirements:

- i. The CM/GC must prepare and submit a written justification to the City explaining the project circumstances that support a non-competitive Subcontractor selection process for a particular Work package, including, but not limited to, Emergency circumstances, the CM/GC's need to utilize a key Subcontractor member of the CM/GC's project team consistent with the CM/GC's project proposal, the need to meet other specified Contract requirements, the continuation or expansion of an existing Subcontractor agreement that was awarded through a "competitive process" along with facts supporting the continuation or expansion of the Subcontractor agreement, or a "sole source" justification.
- ii. For a "sole source" selection of a Subcontractor to proceed, the Contracting Agency must evaluate the written justification provided by the CM/GC and must find that critical project efficiencies require utilization of labor, services or materials from one Subcontractor; that technical compatibility issues on the project require labor, services or materials from one Subcontractor; that particular labor, services or materials are needed as part of an experimental or pilot project or as part of an experimental or pilot aspect of the project; or that other project circumstances exist to support the conclusion that the labor, services or materials are available from only one Subcontractor;
- iii. If required by the City, the CM/GC must provide an independent cost estimate for the Work package that will be subject to the non-competitive process.
- iv. The CM/GC must fully respond to all City questions or comments pertaining to a proposed or completed non-competitive selection process or associated Work package.
- v. The City must approve the CM/GC's use of the non-competitive Subcontractor selection process prior

to the CM/GC's pursuit of the non-competitive process.

§ 5.5.10 A competitive selection process may be preceded by a publicly advertised Subcontractor prequalification process, with only those Subcontractors meeting the pre-qualification requirements being invited to participate in the later competitive process through which the CM/GC will select the Subcontractor to perform the construction Work described in the selection process;

§ 5.5.11 If the CM/GC or an Affiliate or subsidiary of the CM/GC will be included in the Subcontractor selection process to perform particular construction Work on the project:

- i. the CM/GC must disclose that fact in the selection process documents and announcements.

§ 5.5.12 CM/GC shall notify City in writing in advance before award of any proposed Subcontract, which notice shall include summaries in a form acceptable to City of all bidders received for the Subcontract at issue. City reserves the right to disapprove any proposed Subcontractors, suppliers and Subcontract or supply contract awards, based on legal standards of responsibility. City shall not unreasonably disapprove any proposed Subcontractor or supplier and increased costs due to City's disapproval shall be cause for an increase in the GMP. Notification shall be made with suitable time for review and comment/approval by the City before issuance of the Subcontract for execution.

§ 5.5.13 The CM/GC shall notify the City in the event that it receives an objection or protest in response to Subcontractor selection. The City must approve the CM/GC's proposed resolution to any such objections or protests, prior to the CM/GC implementing the resolution.

§ 5.5.14 Briefings for Unsuccessful Subcontractors. Unsuccessful Subcontractors will be allowed 60 days from the CM/GC's notice of award of a subcontract for a particular Work package to request, in Sandy TBD CM/GC Contract Page 23 of 31 writing, a post-selection meeting with the CM/GC and the City. The CM/GC shall hold such meetings within 45 days of the Subcontractor's written request.

§ 5.5.15 CM/GC's subcontracting records shall not be considered public records; provided, however, that City and other agencies of the State shall retain the right to inspect, audit and monitor the subcontracting process in order to protect the City's interests.

§ 5.6 CM/GC Field Work

§ 5.6.1 The CM/GC or its Affiliate(s) may provide GC Work required to complete the Project with its own forces, without the necessity of subcontracting such Work.

§ 5.6.2 Except as provided in paragraph 11.d.1), any other portion of the Work proposed to be performed by CM/GC or any Affiliate, including without limitation provision of any materials, equipment, or supplies, shall be subject to the provisions of paragraph 11.e.

§ 5.7 Change of Subcontractors. Once a subcontract has been accepted by the City and executed by the CM/GC and Subcontractor, CM/GC shall not terminate or substitute the Subcontractor without prior Sandy TBD CM/GC Contract Page 24 of 31 written approval of the City. In the event a change to the subcontract assignment is made, CM/GC shall initiate a new bid package consistent with this Agreement to procure a new Subcontractor.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CM/GCS

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

§ 6.1.1 The term "Separate CM/GC(s)" shall mean other CM/GCs retained by the Owner under separate agreements. A Separate CM/GC shall not include utility service providers or similar vendors. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces. Owner shall endeavor to retain such Separate CM/GCs under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation. If the CM/GC claims that delay or additional cost is involved because of such action by the Owner, the CM/GC shall submit a 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 "CM/GC" in the Contract Documents in each case shall mean the CM/GC who executes each separate Owner-CM/GC Agreement.

§ 6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate CM/GC with the Work of the CM/GC, who shall cooperate with them. The CM/GC shall participate with any Separate CM/GCs and the Owner in reviewing their construction schedules when directed to do so. The CM/GC shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. CM/GC will be compensated for any additional work or time required to accommodate the work of others outside of this Contract provided CM/GC submits a Notice of Claim, and otherwise complies with the notice requirements of this contract. The construction schedules shall then constitute the schedules to be used by the CM/GC, Separate CM/GCs, and the Owner until subsequently revised.

§ 6.1.4 Notwithstanding anything to the contrary contained in Section 6.1.3 above, Owner and CM/GC agree and acknowledge that regardless of what party is responsible for the installation of utilities (including, but not limited to, gas, electric, sewer, water, cable and communications) at the Project, the CM/GC is responsible for scheduling and coordinating such installation with the Separate CM/GC's Work.

§ 6.2 Mutual Responsibility

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

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

§ 6.2.3 The CM/GC shall reimburse the Owner for costs the Owner incurs that are payable to a Separate CM/GC because of the CM/GC's delays, improperly timed activities or defective construction. The Owner may be responsible to the CM/GC for costs the CM/GC incurs because of a Separate CM/GC's delays, improperly timed activities, damage to the Work or defective construction that CM/GC establishes could not have been avoided through CM/GC's reasonable mitigation measures and provided CM/GC complies with the Claim procedures set forth in this Agreement.

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

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

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the CM/GC, Separate CM/GCs, 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 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. No additional work shall begin and no additional costs or time shall be incurred without Owner's prior written approval.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner and CM/GC. A Construction Change Directive requires execution by the Owner and may or may not be agreed to by the CM/GC. An order for a minor change in the Work may be issued by the Owner alone or by the Engineer with written permission from the Owner.

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

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument signed by the Owner, CM/GC, and (if applicable) Engineer 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 Within ten (10) days of first notification of a potential or requested change originating from the Owner, unless otherwise agreed to in writing by Owner, CM/GC shall provide a ROM (rough order of magnitude) estimate of the amount of the adjustment in Contract Time and/or Contract Sum. Within thirty (30) days of first notification of a potential or requested change originating from the Owner, unless otherwise agreed to in writing by Owner, CM/GC shall provide Owner with a final estimate of the amount of adjustment in Contract Time and/or Contract Sum with all backup necessary to verify any adjustment in Contract Sum or Contract Time. Failure to provide a timely ROM or submit the amount of the adjustment or estimate thereof within the time periods and with the backup required in this Agreement shall constitute an absolute and complete waiver, bar, and release of such right to seek an increase in Contract Sum or Contract Time for Work related to or arising under any potential Change Order. CM/GC shall follow Article 15 if seeking an additional time or compensation

§ 7.2.3 The execution of a Change Order shall constitute full satisfaction and a waiver of any and all claims, including cumulative impacts, requests for costs, or requests for time by the CM/GC arising out of, or relating in any way to, the Work to be performed or deleted pursuant to Change Order, including all direct and indirect costs associated with such change, delay or acceleration damages, and general home office overhead expenses, and any and all adjustments to the Contract Sum and Contract Time, except as specifically described in the Change Order, and shall constitute a final settlement of all such matters, including those related to Subcontractors and Suppliers that are subject of the Change Order.

§ 7.2.4 Fee for CM/GC and all Subcontractors and Sub-Subcontractors shall not exceed CM/GC's Fee as set forth in AIA Document A102-2017. Such fee on changed work shall be full compensation for any direct and indirect costs, including delay or acceleration damages, general conditions, and overhead expenses, associated with such change).

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order signed by the Owner, 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 consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost of the Work (as defined by AIA Document A102-2017 as revised) to be determined in a manner agreed upon by the parties and CM/GC's Fee; or
- .4 As provided in Section 7.3.7.

§ 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 CM/GC, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the CM/GC shall promptly proceed with the change in the Work involved and advise the Engineer and Owner Representative of the CM/GC'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.

§ 7.3.6 A Construction Change Directive signed by the CM/GC indicates the CM/GC'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 CM/GC does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner 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 (not to exceed CM/GC's Fee for Change Orders or Subcontractor's Fee for Change Orders, which shall cover any impact damages associated with such additional work). CM/GC's entitlement to extended general conditions, if any, shall be governed by Article 8. In such case, and also under Section 7.3.3.3, the CM/GC shall segregate at the time incurred, keep, and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Engineer or Owner Representative;
- .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 CM/GC or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Subject to the Cost of the Work definition in AIA Document A102-2017, as modified, Costs of supervision and field office personnel directly attributable to the change and when the changes involve an extension of Project schedule for completion and such impact directly solely affects the critical path of the Project (Contract Time).

§ 7.3.8 If the CM/GC disagrees with the adjustment in the Contract Time or Contract Sum, the CM/GC may make a Claim in accordance with applicable provisions of Article 15. Failure to make a Claim as set forth in Article 15 shall constitute an absolute and complete waiver, bar, and release of such disagreement with the adjustment in the Contract Time or Contract Sum, or both.

§ 7.3.9 Upon receipt of a Construction Change Directive, the CM/GC shall promptly proceed with the change in the Work involved and advise the Engineer or Owner Representative of the CM/GC'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.

§ 7.3.10 The amount of credit to be allowed by the CM/GC 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 Owner. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit in the form of CM/GC's Fee shall be figured on the basis of net increase or decrease, if any, with respect to that change.

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

§ 7.3.12 When the Owner and CM/GC agree with a determination 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 CM/GC will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.3.13 CM/GC shall not be entitled to a Change Order for any change in the Work unless a Change Order has been signed by Owner, a Construction Change Directive issued, or a similar written Authorization has been issued by Owner, prior to initiation of such Work.

§ 7.4 Minor Changes in the Work

The Engineer or Owner Representative may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such an order for minor changes shall be in writing. If the CM/GC believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the CM/GC shall notify the Engineer and Owner, and shall not proceed to implement the change in the Work. If the CM/GC performs the Work set forth in an order for a minor change without prior notice to the Engineer and Owner that such change will affect the Contract Sum or Contract Time, the CM/GC waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents, as applicable to the CM/GC's performance of the Work, are of the essence of the Contract. By executing the Agreement, the CM/GC confirms that the Contract Time is a reasonable period for performing the Work.

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

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

§ 8.2.4 The CM/GC shall furnish sufficient forces and equipment, and shall work such hours, including night shifts, overtime operations, and weekend and holiday work as may be necessary to perform the Work in accordance with the date of Substantial Completion and the approved CM/GC's Construction Schedule. If the CM/GC fails to perform in a timely manner in accordance with the Contract Documents and, through the fault of the CM/GC or Subcontractor(s) fails to meet the CM/GC's Construction Schedule, the CM/GC shall take such steps as may be necessary to immediately improve its progress by increasing the number of works, shifts, overtime operations, or days of work, as a Cost of the Work within the Guaranteed Maximum Price and in accordance with the Contract Documents.

§ 8.3 Delays and Extensions of Time and Force Majeure

§ 8.3.1 Subject to this Section 8.3, if the CM/GC is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Engineer, of an employee of either, or of a Separate CM/GC; (2) by changes ordered in the Work; (3) by delay authorized by the Owner in writing pending mediation and dispute resolution; or (4) by other causes not otherwise addressed in the Contract Documents, that the CM/GC asserts, and the Owner determines, justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine, provided notice of such delay is given as set forth in Article 15.

§ 8.3.1.1 The CM/GC shall be required to use best efforts to mitigate both the necessity of the delay and the period of the delay. No delay shall be recognized unless it extends the time required to complete a task that is on the Construction Schedule for the Project, and no delay shall be recognized unless it alone increases the overall critical path duration of the schedule in effect at the time of the delay. Such extension of Contract Time shall not be for any

delays caused by or due to the fault or negligence of the CM/GC or which are otherwise the responsibility of the CM/GC. All Schedule Float shall belong to the Project. The amount of Schedule Float will be identified in the Schedule when submitted to the Owner, and use of the Schedule Float must be approved by Owner, approval of which shall not be unreasonably denied. If not specifically noted, the default is no less than ten (10) calendar days. In order to use Schedule Float for any adverse weather condition that does not constitute an "Unusually Severe Weather Condition", CM/GC must provide oral notice to and approval from Owner's Representative prior to stopping or delaying Work as the result of any active or forecast adverse weather condition, identifying the Work affected by the weather condition, the anticipated length of the delay to the Work caused by the weather condition, any Work activities that can be performed (whether on or off the critical path), and any other information related to any such weather delay. Any extension of the Contract Time under this Section 8.3 shall be limited to the actual impact on the critical path after consumption of Schedule Float.

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

§ 8.3.3 CM/GC shall be entitled to an equitable adjustment in the Guaranteed Maximum Price and Contract Time for increased costs directly attributable to a delay set forth in Section 8.3.1, but only to the extent explicitly allowed under Section 8.3 and 8.4, and provided it makes a Notice of Claim in accordance with Article 15. CM/GC shall be entitled to an adjustment to the Contract Time for changes made in the time of performance directly attributable to the Force Majeure Event, as defined below, provided it makes a Notice of Claim in accordance with Article 15. However, CM/GC shall not be entitled to any adjustment in the Contract Sum resulting from a Force Majeure Event. CM/GC shall not be entitled to any adjustment in Contract Time or in the Contract Sum for any delay or failure of performance to the extent such delay or failure was caused or contributed to by CM/GC or anyone for whose acts CM/GC is responsible. To the extent any delay or failure of performance was concurrently caused by the Owner and CM/GC, CM/GC shall be entitled to an adjustment in the Contract Time for that portion of the delay or failure of performance that was concurrently caused, provided it submits notice of claim in connection with Article 15, but shall not be entitled to any adjustment in Contract Sum. CM/GC shall make all reasonable efforts to prevent and mitigate the effects of any delay, however caused. CM/GC's failure to provide Notice of Claim in accordance with Article 15 constitutes a complete waiver and absolute bar to any such Claim.

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

- .1 Acts of God or public enemy, including terrorism and malicious mischief or riot;
- .2 Acts or omissions of any government entity;
- .3 Fire or other casualty, such as tornadoes, floods, hurricanes, earthquakes, tidal waves, blizzards or other physical natural disasters, for which CM/GC or its Subcontractors at any tier were not responsible;
- .4 Quarantine, epidemic, or pandemic;
- .5 Strike or defensive lockout; and
- .6 Unusually Severe Weather Conditions which could not have been reasonably anticipated; and
- .7 Unusual disruptions in the supply chain for materials and equipment, which the CM/GC has used all reasonable efforts to prevent and avoid, including monitoring supply chain and proposing timely substitutions to mitigate any delays.

§ 8.3.5 "Unusually Severe Weather Condition" as used in this Agreement means weather that is more severe than the adverse weather anticipated for the Project Site during any given season. Unusually Severe Weather Condition as used in the prior sentence means the atmospheric conditions at the definite time and place, as measured by the National Climatic Data Center station closest to the Site, that are unfavorable to construction activities. Unusually Severe Weather Conditions must actually cause a delay to the completion of the Work and the critical path. The delay must be beyond the control and without the fault or negligence of the CM/GC. For any Claims related to an Unusually Severe Weather Condition, the CM/GC must comply with Article 15 of this Agreement.

§ 8.3.6 No Claim for delay shall be allowed the CM/GC on account of the Engineer's or Owner's failure to return drawings and shop drawings to the CM/GC until the later of (i) ten (10) working days after Engineer's receipt of a demand for such drawings or (ii) a reasonable time for review and comment after such demand for such drawings, and not then, unless such claim is just and allowable as provided above. Disapproval of incomplete or defective submittals shall not be a claim for delay.

§ 8.3.7 When the Contract Time has been extended due to a delay set forth in Section 8.3.1 and CM/GC is entitled to an increase in the Guaranteed Maximum Price under Section 8.3.1.1 and 8.3.3, CM/GC's adjustment in Guaranteed Maximum Price for such extension (if any) shall be limited to extended general conditions at actual cost, but which shall not exceed the average daily charge for general conditions over the course of the Project without the extension. Owner shall have no other obligation to the CM/GC or any Subcontractor for delay-related costs related to the Project.

§ 8.3.8 Neither the CM/GC nor any Subcontractor shall be entitled to damages arising out of actual or alleged loss of efficiency or productivity; morale, fatigue, attitude, or labor rhythm; cumulative impact, constructive acceleration; home office overhead; expectant underrun; trade stacking; reassignment of workers; concurrent operations; dilution of supervision; learning curve; beneficial or joint occupancy; logistics; ripple; season change; extended overhead; profit upon damages for delay; impact damages; or similar theories of damages.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

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

§ 9.2 Schedule of Values

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the CM/GC shall submit a schedule of values to the Engineer before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work (Schedule of Values). The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Engineer or Owner. This schedule, unless objected to by the Engineer or Owner, shall be used as a basis for reviewing the CM/GC's Applications for Payment. Any changes to the schedule of values shall be submitted to the Engineer or Owner and supported by such data to substantiate its accuracy as the Engineer or Owner may require, and unless objected to by the Engineer or Owner, shall be used as a basis for reviewing the CM/GC's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment review meeting, the CM/GC shall submit to the , Owner and Owner's Representative (if any) an itemized Application for Payment prepared in accordance with the Schedule of Values, if required under Section 9.2, for completed portions of the Work. The Application shall be notarized, if required, and supported by all data substantiating the CM/GC's right to payment that the Owner requires or that is otherwise required under the Contract Documents, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. Conditional and unconditional claim waiver and release of liens shall be provided by the CM/GC and all Subcontractors and suppliers (of any tier) whose contract amounts exceed \$50,000 or who have provided Owner or CM/GC with a pre-lien notice. The Application for Payment shall constitute a representation by the CM/GC that except as otherwise specifically stated, there are no mechanics', materialmen's or laborers' liens or claims outstanding or known to exist at the date of the Application; all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current Application, and the waivers and releases have been obtained from the Subcontractors, Sub-Subcontractors and suppliers. Owner shall issue payment as set forth in AIA Document A102-2017, as modified, following approval of the Pay Application.

§ 9.3.1.1 The CM/GC shall require that Subcontractors prepare and submit pay application breakdowns with work divided in sufficient detail. The monthly billing breakdown shall reflect description of the work, total value, percent of the work complete to date, value of work complete to date, previous amount billed, current amount due, less retainage. Any trade breakdown that fails to include sufficient detail, is unbalanced, or exhibits 'front-loading' of the value of the work shall be rejected. In all cases, sufficient funds shall be withheld from Pay applications to ensure an adequate reserve (exclusive of normal retainage) to complete the work and any punch-list or closeout work.

§ 9.3.1.1 As provided in Section 7.3.11, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the CM/GC does not intend to pay a Subcontractor or supplier. If such Work has been performed by others whom the CM/GC intends to pay, the CM/GC must notify the Owner and obtain prior written consent from the Owner before including such request in an Application for Payment.

§ 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 CM/GC 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. Such information shall include, but not be limited to, the following information: cost per unit, quantity of materials stored, dates for storage, location/address for where materials are being stored, photographs of stored materials, and certificates of insurance. In addition, CM/GC shall provide information sufficient for Owner and Owner's lender (if any) detailing how the materials are stored and secured, i.e., whether in a climate controlled facility, weather protection, security, whether in a gated/guarded facility, etc.

§ 9.3.3 As the Work progresses, title to each item of material or equipment shall vest in Owner upon the earlier to occur of (a) incorporation of such item into the Work, or (b) payment for such item by Owner. Each such item shall then become the sole property of Owner, subject to the right of Owner to reject the same at any time prior to the date of Substantial Completion for failure to conform to the Contract Documents. Each item of material or equipment that is not rejected prior to the date of Substantial Completion shall be deemed delivered and accepted by Owner. The CM/GC 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 CM/GC further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the CM/GC's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the CM/GC, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work. Nothing contained in this Section, however, diminishes CM/GC's responsibility to replace stolen, defective or vandalized work, materials or equipment. Such responsibility does not diminish CM/GC's right to recover under insurance provisions.

§ 9.3.4 The CM/GC shall notify the Owner immediately of any accidents or delays, or hindrances to the delivery of the store materials to the Project jobsite which the CM/GC, its Subcontractors or agents experience or observe, and follow-up with written notification to the Owner within 24 hours of occurrence, together with an action plan to rectify the matter.

§ 9.4 Certificates for Payment

§ 9.4.1 The Owner or Owner's Representative will, within seven days after receipt of the CM/GC's final and approved Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the CM/GC; or (2) issue to the Owner a Certificate for Payment for such amount as the Owner or Owner's Representative and Owner determines is properly due, and notify the CM/GC and Owner of the Owner or Owner's Representative's reasons for withholding certification in whole or in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the CM/GC of the reason for withholding the certification in whole or in part as provided for in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Owner or Owner's Representative to the Owner, based on the evaluation of the Work and the data in the Application for Payment, that, to the best of the Owner's or Owner's Representative's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the CM/GC is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Owner or Owner's Representative. However, the issuance of a Certificate for Payment will not be a representation that the Owner or Owner's Representative has (1) made exhaustive or

continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the CM/GC's right to payment; (4) made examination to ascertain how or for what purpose the CM/GC has used money previously paid on account of the Contract Sum, or (5) verified definitely that none of the conditions listed in Sections 9.5.1 exist at the time of certification.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner or Owner's Representative may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in its opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Owner or Owner's Representative is unable to certify payment in the amount of the Application, it will notify the CM/GC and Owner as provided in Section 9.4.1. If the CM/GC and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount for which the Owner is able to make such representations to the Owner. The Owner or Owner's Representative 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 Owner's or Owner's Representative's opinion to protect the Owner from loss for which the CM/GC is responsible, including, but not limited, to loss resulting from acts and omissions described in Section 3.3.2, because of:

- .1 defective Work not remedied (150% of the estimated value of such defective Work may be withheld;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the CM/GC;
- .3 failure of the CM/GC to make payments properly to Subcontractors or suppliers for labor, materials or equipment and cause the removal of mechanic's liens as required in the Contract Documents;
- .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 CM/GC;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
- .7 failure to carry out the Work in accordance with the Contract Documents;
- .8 overpayment of prior amounts included in prior Certificates for Payment;
- .9 Claims that the Owner has against CM/GC under or in connection with the Contract Documents or CM/GC's Work; or
- .10 any other reason for withholding allowed by the Contract Documents or applicable law (including ORS 701.625, to protect the Owner, including failure by the CM/GC to comply with the Contract Documents.

Owner or Owner's Representative shall have the same rights of withholding. If the Owner shall decline to make payment as requested in an Application for Payment because the Owner believes that the Work has not progressed to the point indicated in the Application for Payment, the quality of Work is not in accordance with the Contract Documents, or for any other reason listed in this Section 9.5.1, the Owner shall so notify the CM/GC.

§ 9.5.2 If the CM/GC disputes any decision regarding a Certificate for Payment or withholding under Section 9.5.1, in whole or in part, the CM/GC must submit a Claim in accordance with Article 15. Withholding under this provision shall not be deemed a breach entitling CM/GC to terminate or damages, provided that Owner has provided notice in writing to the CM/GC of the nature of the default or failure to perform as set forth in this Sections 9.4 and 9.5.

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

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

§ 9.5.5 To the fullest extent allowed by law, CM/GC shall have no right to stop the Work if CM/GC is timely paid for all undisputed amounts, and if so paid, CM/GC shall proceed with the performance of its obligations hereunder with reservation of all rights and remedies it may have at law or in equity with respect to disputed amounts.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner or Owner's Representative has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents.

§ 9.6.2 The CM/GC shall pay each Subcontractor, no later than ten (10) days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the CM/GC on account of the Subcontractor's portion of the Work. The CM/GC shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-Subcontractors in a similar manner.

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

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

§ 9.6.4.1 The Owner shall have the right to make payments to Subcontractors by multiple-payee, direct, or joint checks of amounts owed to Subcontractors under the governing subcontracts, purchase orders and similar agreements, and then deduct the amount of such payments from the amount of the final payment otherwise owed to the CM/GC; provided that, prior to making multiple-payee, direct, or joint check payments under this Clause, the Owner shall provide reasonable written notice to the CM/GC.

§ 9.6.4.2 Upon the Owner's written request, the CM/GC shall furnish to the Owner with the final Application for Payment information required to facilitate multiple-payee or direct payments pursuant to Section 9.6.4.1, including but not limited to a complete listing of the outstanding amounts owed to all Subcontractors and, to the extent known, Sub-Subcontractors. The Owner's payment to a Subcontractor pursuant to Section 9.6.4.1 by multiple-payee, direct, or direct check shall not be construed to grant to such Subcontractor any third-party beneficiary or other rights against the Owner.

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

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

§ 9.6.7 Unless the CM/GC provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the CM/GC for Work properly performed by Subcontractors or provided by suppliers shall be held by the CM/GC for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the CM/GC 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 CM/GC. CM/GC shall comply with all applicable legal requirements regarding payment of Subcontractors.

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

§ 9.6.9 The Owner may condition any payment otherwise due to CM/GC upon the CM/GC's prior submission of unconditional lien waivers from Subcontractors and suppliers covering any Work for which CM/GC has received payment from the Owner.

§ 9.7 Failure of Payment

If the Owner or Owner's Representative does not issue a Certificate for Payment, through no fault of the CM/GC, within seven days after receipt of a final and approved Application for Payment, or if the Owner does not pay the CM/GC within fourteen days after the date established in the Contract Documents, the amount certified by the Owner or Owner's Representative or awarded by binding dispute resolution, then the CM/GC may, upon seven additional days' notice to the Owner and Owner's Representative, 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 CM/GC's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. Any such occupancy or use described above shall not negate or change the responsibility of the CM/GC to Owner for satisfactory completion of the Work.

§ 9.8.1.1 For Substantial Completion to be achieved, the Owner must have received a temporary or final certificate of occupancy and all other governmental approvals as necessary and required for the Owner to occupy or utilize the Work, or portion thereof which the Owner agrees to accept separately, for its intended purpose. In addition, the Work will not be considered suitable for Substantial Completion review until all Project systems included in the Work are operational and comply with the requirements of the Contract Documents, designated instruction of Owner's personnel in the operation of all Project systems has been completed, the CM/GC has delivered all operation and maintenance manuals for all Project systems to the Owner, and all final finishes are in place. The only remaining Work after Substantial Completion shall be minor and "punch list" in nature, so that the Owner could occupy the Project on that date and the completion of the Work by the CM/GC would not materially interfere with or hamper the Owner's or its residents', clients', or tenants' normal business operations or activities.

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

§ 9.8.3 Upon receipt of the CM/GC's list, the Engineer will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Engineer's inspection discloses any item, whether or not included on the CM/GC'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 CM/GC shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Engineer. In such case, the CM/GC shall then submit a request for another inspection by the Engineer to determine Substantial Completion. The Owner or Owner's Representative shall have the same right of inspection and right to demand completion and correction as Engineer. If more than two inspections by the Engineer or Owner are required to determine Substantial Completion, not due to the fault of either the Engineer or Owner, the CM/GC shall reimburse Owner for any additional costs associated with such additional inspections, including costs of the Engineer.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Engineer or Owner's Representative will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and CM/GC for security, maintenance, heat, utilities, damage to the Work and insurance; and shall fix the time within which the CM/GC shall finish any and all items on the list of non-conforming, defective, or incomplete Work items accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof, except for non-conforming, defective, or incomplete Work as of the Substantial Completion Date, in which case, warranty periods will commence upon completion of the corrective Work and except as otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and CM/GC for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, The Owner shall make payment of retainage applying to the Work or designated portion thereof at Final

Completion. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.8.6 Unless otherwise agreed upon in the Contract Documents, retainage shall be held in accordance with the law, including ORS 701, et seq.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work, provided such occupancy or use is authorized by public authorities having jurisdiction over the Project and approved by Builders' Risk Insurance carrier. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and CM/GC have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the CM/GC considers a portion substantially complete, the CM/GC shall prepare and submit a list to the Engineer as provided under Section 9.8.2. Consent of the CM/GC 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 CM/GC or, if no agreement is reached, by decision of the Engineer.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, CM/GC, and Engineer 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 expressly agreed to in writing, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the CM/GC's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner or Owner's Representative finds the Work and all punch-list or corrective work complete and acceptable under the Contract Documents, and if the CM/GC has submitted all documentation required by the Contract Documents, and the Contract fully performed, including providing all backup required to verify the costs included in the final Application for Payment, the Owner or Owner's Representative will promptly issue a final Certificate for Payment stating that to the best of the Owner's or Owner's Representative's knowledge, information and belief, and on the basis of the Owner's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the CM/GC and noted in the final Certificate is due and payable. The Owner's or Owner's Representative's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the CM/GC's being entitled to final payment have been fulfilled.

§ 9.10.1.1 The term "Final Completion" as used in the Contract Documents shall mean that (1) Substantial Completion of the Work or designated portion thereof has been achieved and the Engineer has certified that the Project is finally complete; (2) the Owner has received a final certificate of occupancy and all other governmental approvals as necessary and required for the Owner to occupy or utilize the Work or designated portion thereof for its intended purpose; and (3) the Owner's and Engineer's punch lists are fully completed; and (4) the CM/GC has performed all of its obligations under the Contract, except for those obligations which by their nature continue or arise after final payment. Notwithstanding the foregoing, Final Completion shall be deemed achieved if all construction, submittals and other performance by the CM/GC has been completed but the permanent certificate of occupancy has not been issued solely because of factors beyond the reasonable control of the CM/GC. A delay in the applicable governmental agency's issuance of a certificate of occupancy, following the CM/GC's completion of construction, submittals and other performance that is of normal duration for that agency shall not constitute a factor "beyond the reasonable control of the CM/GC" as that phrase is used in the prior sentence.

§ 9.10.1.2 Section 9.10.1.1 shall not apply to designated portions of the Work to the extent certificates of occupancy and other approvals are not required by governmental authorities with jurisdiction in order for the Owner to occupy or utilize the designated portions for their intended uses.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the CM/GC submits to the Owner all close out documents required by the Contract Documents that have been received and accepted by

Owner and Engineer, including (1) an affidavit that to the extent of prior payments by Owner, 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 on form G706 and G706A, (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 CM/GC knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) all O&M's, as-builts, and submittals required by the Owner, (6) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (7) other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner in its sole discretion. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the CM/GC may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the CM/GC shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

§ 9.10.2.1 Unless otherwise required by applicable law, partial release of retention shall not be made by the CM/GC to any Subcontractor unless approved by the Owner in writing, and all Owner closeout documentation required by the Contract Documents have been completed, submitted to, and approved by, the and the Owner.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the CM/GC or by issuance of Change Orders affecting final completion, and the Engineer so confirms, the Owner shall, upon application by the CM/GC and certification by the Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the CM/GC to the Owner 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.

§ 9.10.3.1 If the Owner makes such payment in advance of Final Completion, the Owner shall retain an amount equal to one hundred fifty percent (150%) of the sum of the Cost of the Work for the CM/GC or its Subcontractors to finally complete the Work, as determined by the Owner, plus the CM/GC's Fee on that Cost of the Work.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

§ 10.1.1 The CM/GC shall be solely and completely responsible for conditions of the Project site, including safety of all persons and property, during performance of the Work, except that CM/GC is not responsible for Owner's Separate CM/GCs. The CM/GC shall maintain the Project site and perform the Work in a manner that meets statutory and common-law requirements for the provisions of a safe place to work. This requirement shall apply continuously and not be limited to working hours. Any review by the Owner or Engineer of the CM/GC's performance shall not be construed to include a review of the adequacy of the CM/GC's safety measures in, on or near the site of the Work. The CM/GC shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract Documents. As part of this responsibility, the CM/GC shall develop a specific safety program for the Project, which the CM/GC shall submit to the Owner prior to the commencement of Work. The CM/GC shall update the safety program on a monthly basis and provide the updates to the Owner upon request. The safety program shall specifically address worker and public safety as related to the Project. The CM/GC shall implement, monitor and maintain the safety program in full compliance with all applicable laws. The CM/GC shall have on staff a qualified safety officer who shall provide guidance and direction to the CM/GC's staff concerning safety-related issues. The safety officer shall inspect the Project at regular intervals.

§ 10.1.2 No action or inaction of the Owner or the Engineer relating to safety or property protection or a violation thereof will (1) relieve the CM/GC of sole and complete responsibility for the violation and the correction thereof, or of sole liability for the consequences of said violation; (2) impose any obligation upon the Owner or Engineer to inspect or review the CM/GC's safety program or precautions or to enforce the CM/GC's compliance with the requirements of this Article 10; (3) impose any continuing obligation upon the Owner or Engineer to ensure the CM/GC performs the Work safely, (4) affect the CM/GC's sole and complete responsibility for performing the Work safely or the CM/GC's responsibility for the safety and welfare of its employees; or (5) affect the CM/GC's responsibility for the protection of persons and property.

§ 10.2 Safety of Persons and Property

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

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

§ 10.2.2 The CM/GC 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 CM/GC shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards. The CM/GC shall also be responsible for all measures necessary to protect any property, and improvements thereon, adjacent to the Project. Any damage to such property or improvements caused by construction of the Project shall be promptly remedied by CM/GC without cost to the Owner. These repairs will under no circumstances increase the Contract Sum.

§ 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 CM/GC shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The CM/GC shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the CM/GC, 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 CM/GC is responsible under Sections 10.2.1.2 and 10.2.1.3. The CM/GC may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Engineer 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 CM/GC. The foregoing obligations of the CM/GC are in addition to the CM/GC's obligations under Section 3.18.

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

§ 10.2.6.1 The CM/GC shall, and shall require its Subcontractors, to: (1) be responsible for the adequate strength and safety of all scaffolding, staging and hoisting equipment and for temporary shoring, bracing and tying; (2) furnish approved hard hats, other personal protective equipment as required, approved first aid supplies, the name of an individual on each shift who has completed the OSHA Supervisory Training Course and a posted list of emergency facilities; (3) take prompt action to correct any hazardous conditions reported; (4) comply with the requirements of the Occupational Safety and Health Act ("OSHA") and all other applicable federal, state and local worker safety laws, rules and regulations, including all standards and regulations which have been promulgated by the governmental authorities which administer such acts and said requirements, standards and regulations are incorporated herein by reference. The CM/GC shall be directly responsible for compliance therewith on the part of

its agents, employees, Subcontractors, Sub-Subcontractors, and materialmen and shall directly receive and be responsible for all citations, assessments, fines or penalties which may be incurred by reason of the failure of its agents, employees, materialmen, Subcontractors or Sub-Subcontractors to so comply. CM/GC shall provide adequate fire protection procedures during the use of cutting torches, welding equipment, plumber's torches and other flame and spark producing apparatus and comply with NFPA Standard No. 51B, as amended, or its replacement.

§ 10.2.6.2 The CM/GC, in all cases, shall comply and cause its Subcontractors at all tiers to comply with all Governmental Requirements. The term "Governmental Requirements" as used in the Contract Documents shall mean any and all building, traffic, environmental, occupancy health, accessibility for disabled and other applicable laws, statutes, ordinances, regulations or decrees, of any federal, state, county, municipal, or other governmental or quasi-governmental authority or agency pertaining (a) to the Project or the Work, (b) to the use and operation of the Project or the Work for their intended purposes, or (c) if the context of the sentence establishes this term is being used in connection with a different subject than those described in clauses (a) or (b), then to the subject matter described in the Section in which the term is used.

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

§ 10.2.8 Injury or Damage to Person or Property

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

§ 10.2.9 Wastewater/Stormwater CM/GC shall comply with all state, federal, and local rules, regulations, laws, and ordinances and/or any required permits related to limitations, special conditions, monitoring, reporting obligations, or other requirements related to water or stormwater.

§ 10.3 Hazardous Materials, Archeological Sites

§ 10.3.1 The CM/GC is responsible for compliance with any requirements of any applicable laws and restrictions included in the Contract Documents regarding hazardous materials as defined by ORS 453.005(7) and ORS 635.005(7), both as and if amended. If the CM/GC encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the CM/GC, the CM/GC shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Engineer in writing. If CM/GC encounters items or circumstances which it reasonably believes could be an archeological site, CM/GC shall immediately stop work in the area and inform the Owner and Engineer in writing.

§ 10.3.2 Upon receipt of the CM/GC's notice, the Owner shall obtain the services of a licensed laboratory or inspector to verify the presence or absence of the material or substance reported by the CM/GC and, in the event such material or substance is found to be present, to cause it to be rendered harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and CM/GC. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the CM/GC's reasonable additional costs of shutdown, delay, and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the CM/GC, Subcontractors 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, after notice from CM/GC as provided above, provided that such claim, damage, loss, or expense (i) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) and (ii) is not covered by insurance, except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the CM/GC brings to the site unless such materials or substances are specifically required by the Contract Documents.

The Owner shall be responsible for hazardous materials or substances specifically required by the Contract Documents, except to the extent of the CM/GC's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The CM/GC shall not use, generate, transport, dispose of, or install, any materials containing asbestos, lead or hazardous materials, and shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of any material or substance the CM/GC brings to the site and negligently handles, or (2) where the CM/GC 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 CM/GC, the CM/GC is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the CM/GC for all cost and expense thereby incurred, unless those costs are otherwise included in the CM/GC's scope of work.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the CM/GC shall act, at the CM/GC's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the CM/GC on account of an emergency shall be determined as provided in Article 15 and Article 7. CM/GC shall provide notice to Owner and Engineer of such emergency as soon as practical, but in no event more than 24 hours after such emergency.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CM/GC's Insurance and Bonds

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

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

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

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

§ 11.2 Owner's Insurance

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

§ 11.2.2 Failure to Purchase Required Property Insurance. If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the CM/GC in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the CM/GC may delay commencement of the Work and may obtain insurance that

will protect the interests of the CM/GC, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the CM/GC, Subcontractors, and Sub-Subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the CM/GC is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the CM/GC for all reasonable costs and damages attributable thereto.

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

§ 11.3 Waivers of Subrogation

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

§ 11.4 Adjustment and Settlement of Insured Loss

§ 11.4.1 A loss insured under the property insurance shall be adjusted by the Owner 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 11.4.2. The Owner shall pay the Engineer and CM/GC their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Engineer and CM/GC shall make payments to their consultants and Subcontractors in similar manner.

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

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

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

§ 12.1.3 Owner and Owner's Representative shall have the same rights to have Work uncovered and replaced as Engineer.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The CM/GC shall promptly correct Work rejected by the Engineer, Owner, or inspection agencies or governmental inspections having jurisdiction over the Work, for failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Engineer's services and expenses made necessary thereby (to the extent such are incurred), shall be at the CM/GC's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the CM/GC's obligations under Section 3.5, the CM/GC shall provide a two (2) year warranty for major systems and the Work, or by terms of any applicable special warranty required by the Contract Documents. If, within two years after the date of Substantial Completion of the entire Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the CM/GC shall correct it promptly at its sole cost and expense and without reimbursement after receipt of notice from the Owner to do so, unless the Owner has previously given the CM/GC a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the period for correction of Work, if the Owner fails to notify the CM/GC and give the CM/GC an opportunity to make the correction, the Owner waives the rights to require correction by the CM/GC and to make a claim for breach of warranty. If the CM/GC fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Engineer or Owner's Representative, the Owner may correct it in accordance with Section 2.5 and seek reimbursement from CM/GC for all such costs and damages. Owner's right to seek reimbursement from CM/GC of any such costs and damages shall survive until the longer of: (a) the expiration of the statute of repose; or (b) one year past the expiration of the warranty set forth in this Section 12.2, including any extensions of warranty set forth in Sections 12.2.2.2 through 12.2.2.3.

§ 12.2.2.2 The 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 period for correction of Work shall be extended for corrective Work performed by the CM/GC pursuant to this Section 12.2, but only for that portion of the corrected Work so that such corrective Work itself receives at least a one-year warranty from the date of correction.

§ 12.2.3 The CM/GC 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 CM/GC nor accepted by the Owner.

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

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

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made or whether or not this Agreement has been terminated. Owner shall not be obligated to accept defective or non-conforming Work, or damages for the difference in value between conforming and defective or nonconforming Work, and in all cases Owner, in its sole and absolute discretion, shall be entitled to full removal and correction of defective or non-conforming Work. At all times, Owner shall be entitled to offset against any sum due and owing CM/GC amounts associated with the removal and correction of defective or non-conforming Work.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules.

§ 13.2 Successors and Assigns

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

§ 13.2.2 Notwithstanding 13.2.1 above, The Owner may, without consent of the CM/GC, assign the Contract to a purchaser, another entity owned or related to Owner or a lender providing construction financing for the Project, if the assignee assumes the Owner's rights and obligations under the Contract Documents. The CM/GC shall execute all consents reasonably required to facilitate the assignment.

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the CM/GC 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 CM/GC shall give the Engineer timely notice of when and where tests and inspections are to be made so that the Engineer may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require. Should any re-testing or re-inspection of work be required attributable to the CM/GC for any reason, the cost of such work, including any associated schedule delay, shall be reimbursed by the CM/GC and shall not be considered a part of the Cost of the Work.

§ 13.4.2 If the Engineer, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Engineer will, upon written

authorization from the Owner, instruct the CM/GC to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the CM/GC shall give timely notice to the Engineer of when and where tests and inspections are to be made so that the Engineer may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures, compensation for the Engineer's services and expenses, and schedule delay, shall be at the CM/GC's expense and not be a Cost of the Work.

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

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

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

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in this Agreement.

§ 13.6 No Personal Liability of Owner

No personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforced against any affiliate, partner, volunteer, member, officer, director, trustee, beneficiary of Owner, Owner's Representative, or other representative of the Owner, or Engineer on account of any agreement contained in the Agreement or any other Contract Documents, whether expressed or implied. Liability with respect to the entry and performance of this Agreement and all other Contract Documents, however it may arise, with respect to Owner shall be asserted and enforced only against Owner, and CM/GC shall have no recourse to any assets of any affiliate, partner, member, director, officer, employee, trustee, beneficiary or other representative of Owner. Any and all personal liability, if any, beyond that which may be asserted against Owner is expressly waived and released by CM/GC and by all persons or entities claiming by, through and under CM/GC.

§ 13.7 Interpretation

The Contract Documents have been carefully reviewed and negotiated by both parties at arm's length and they shall be given fair and reasonable interpretation in accordance with the words contained in them without any weight being given to whether a provision was drafted by one party or its counsel. Paragraph headings are for convenience only and shall not be a part of the Contract Documents or considered in their interpretation. The Exhibits attached hereto are made a part hereof.

§ 13.8 Waiver, Amendment, and Extension

No waiver, amendment, extension, or variation in the terms of the Contract Documents shall be valid against a party unless in writing and signed by such party and then only to the extent specifically set forth in the writing. No failure or delay on the part of a party in exercising any right, power or privilege under the Contract Documents, nor any course of dealing between the parties, will waive, amend or vary the terms of the Contract Documents.

§ 13.9 Relationship

CM/GC at all times is acting as an independent CM/GC under the Contract Documents. Nothing in the Contract Documents is intended or shall be construed as creating any other relationship or designating CM/GC as an agent for or joint venturer with Owner.

§ 13.10 Severability

If any clause or provision of the Contract Documents is determined to be illegal, invalid, or unenforceable under present or future laws, the remainder of the Contract Documents shall not be affected by such determination, and in lieu of each clause or provision that is determined to be illegal, invalid or unenforceable, there shall be added as a part of the Contract Documents a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

§ 13.11 Counterparts

This Contract may be executed in counterparts, a complete set of which shall be considered an original.

§ 13.12 Survival

If the full performance of an obligation is not required prior to the termination of this Contract, such obligation shall survive the termination and be fully enforceable thereafter.

§ 13.13 Authority

Each of the parties and signatories to the Contract represents and warrants that he or she has the full right, power, legal capacity and authority to enter into and perform the parties' respective obligations hereunder, and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith. Each person signing the Contract on behalf of any entity represents and warrants that he or she has the full right, power, legal capacity and authority to sign the Contract on behalf of such entity.

§ 13.14 Construction Lender Requirements

§ 13.14.1 This Agreement may be amended in any respect, including without limitations procedures for payment, assignment, Change Orders, lien releases, and termination, as may be reasonably required by any construction or permanent lender who may from time to time have a mortgage or deed of trust on the jobsite or have outstanding a loan commitment on the jobsite upon agreement by the CM/GC, such agreement to not unreasonably be withheld. CM/GC also agrees to timely provide any such lender with any documents and information it reasonably requires within the limits afforded the Owner in this Agreement. The CM/GC shall make every reasonable effort to conform its documentation in support of progress payments to the requirements of the lender under the construction loan agreement. If requested by the Owner, CM/GC agrees to (a) execute a "CM/GC's Letter of Consent of Assignment," and (b) provide to the construction lender such certificates or such other reasonable documents relating to the completion of the Work in compliance with applicable codes, ordinances, rules and regulations, in such form as may be required by the Owner's lender.

§ 13.14.2 It is understood that funding to pay the CM/GC under this Contract is or will be subject to the terms and conditions of a certain construction loan agreement between the Owner and its lender, however, nothing therein shall reduce the Owner's obligations in strict accordance with the Contract requirements, or appreciably change the terms and conditions of payment under this Agreement. The CM/GC agrees to cooperate with the Owner and the lender to the extent administratively possible in meeting the Lender's requirements under the construction loan agreement.

§ 13.14.3 CM/GC hereby subordinates all contractual and statutory liens and security interests (whether choate or inchoate) which CM/GC may be (or may become) entitled to assert against the Property to all of the liens and security interests securing any financing obtained by Owner, and CM/GC fully and completely waives any and all rights that the CM/GC may have, now or in the future, to claim, directly or indirectly, a priority of lien or security interest, in whole or in part, against or in the Property over any assignments, liens and security interests that Owner's or Owner's lender may claim against the Property under the lender's applicable security instruments (including any future amendments thereto). This subordination shall be self-operative, and no further instrument of subordination shall be required. However, in further confirmation of such subordination, CM/GC shall promptly, upon the request of Owner or its lender(s), execute, acknowledge and deliver such additional instruments as may be reasonably required to confirm such subordination. CM/GC shall obtain subordination of lien rights in substantially the same form (as herein) from each of its Subcontractors.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the CM/GC

§ 14.1.1 The CM/GC may terminate the Contract if the entire Work is stopped for a period of 90 consecutive days through no act or fault of the CM/GC, a Subcontractor, a Sub-Subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, 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; or
- .3 Because the Certificate for Payment has not been timely issued after receipt of all information required in the Contract Documents and has not notified the CM/GC of the reason for withholding

certification as provided in Section 9.4.1, or because the Owner has not, with an additional 15 day period follow receipt of written notice to cure by CM/GC, made payment on the undisputed amount of the Certificate for Payment within the time stated in the Contract Documents.

§ 14.1.2 The CM/GC may terminate the Contract if, through no act or fault of the CM/GC, a Subcontractor, a Sub-Subcontractor, their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the CM/GC, 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 CM/GC may, upon fourteen (14) days' prior written notice or longer period to the extent required by Owner's lender (as applicable) to the Owner, Owner's lender (as applicable), and Engineer, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit on such Work, and costs incurred by reason of such termination. In no event shall the total amount of the costs recovered exceed the balance due of the Stipulated Contract Sum or Guaranteed Maximum Price, including any revisions by Change Order, and the CM/GC shall not be entitled to payment for overhead, profit or Fee on unperformed Work.

§ 14.1.4 If the entire Work is stopped for a period of 90 consecutive days through no act or fault of the CM/GC, a Subcontractor, a 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 CM/GC 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 CM/GC may, upon seven (7) additional days' notice to the Owner and the Engineer, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the CM/GC

- .1 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the CM/GC and the Subcontractors or Suppliers;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise is guilty of substantial or material breach of a provision of the Contract Documents;
- .5 refuses to comply with requests to cure from the Owner or Engineer;
- .6 is adjudged bankrupt or insolvent or makes a general assignment for the benefit of CM/GC's creditors, or a trustee or receiver is appointed for CM/GC or for any of its property, or files a petition to take advantage of any debtor's act, or to reorganize under bankruptcy or similar law;
- .7 fails to timely provide a recovery Schedule when requested by the Owner; or
- .8 for any other reason provided for under the Contract Documents.

§ 14.2.2 For any of the reasons described in Section 14.2.1 Owner may, upon seven (7) days' notice to CM/GC and CM/GC's surety, if any, and without prejudice to any other rights or remedies of the Owner, terminate employment of the CM/GC and may:

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

If the CM/GC has secured a surety bond and such surety elects to complete the Project, it shall notify Owner of such election within 14 days. The surety's failure to provide such election within this time period shall entitle the Owner to proceed as set forth in this Section 14.2.2 and pursue a direct claim against the CM/GC's surety for all costs incurred by Owner after the 14-day period.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the CM/GC shall not be entitled to receive further payment until the Work is finished. If a court of competent jurisdiction determines

that Owner did not have justification to terminate this Agreement for cause under this Section 14.2, any termination by the Owner shall be treated as a termination for convenience subject to Section 14.4.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Engineer'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 CM/GC. If such costs and damages exceed the unpaid balance, the CM/GC shall pay the difference to the Owner. The obligation for payment and the amount to be paid to the CM/GC or Owner, as the case may be, shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include Fee. 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 CM/GC is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

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

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

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

§ 14.4.3 In case of such termination for the Owner's convenience, the CM/GC shall be entitled to receive payment for Work executed, and costs actually incurred by reason of such termination. In no event shall the total amount of the costs recovered exceed the balance due of the Stipulated Contract Sum or Guaranteed Maximum Price, including any revisions by Change Order, nor shall CM/GC be entitled to payment for overhead, profit or Fee on unperformed Work, nor any shared savings or early completion bonus (if any). Termination of this Agreement under this Section 14.4.1 shall not relieve the CM/GC for Work performed prior to the date of termination, including any warranty obligations associated with such Work.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

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

§ 15.1.2 Notice of Claims

In the event that the CM/GC believes it has a Claim against Owner for additional compensation, additional time or some other remedy arising out of or in connection with the Contract, the Work or the actions or omissions of Owner (or the parties for whom Owner is responsible), CM/GC shall give notice to Owner of such Claim within fourteen (14) days of when the CM/GC first knew or reasonably should have known, of the event, or condition, action, or inaction giving rise to the apparent Claim ("Notice of Claim"). The Notice of Claim shall be titled "Notice of Claim and shall describe the impact of the Claim in reasonable detail including at a minimum: (1) a description of the date and time of the event giving rise to the request for an adjustment or interpretation of Contract terms, payment of

money, an extension of time, or other relief with respect to the terms of the Contract; (2) a statement to the nature of the impacts to the CM/GC and its Subcontractors, if any; (3) the amount of the adjustment or an estimate thereof in Contract Sum and/or Contract Time, if any, sought by the CM/GC; (4) the contractual provisions on which the Claim is based; and (5) if the Claim includes any pass-through of claims and/or damages incurred, to be incurred, or alleged to be incurred by a Subcontractor or Supplier of any tier such that the CM/GC is sponsoring the pass-through claim or damage, the CM/GC shall certify that it has performed due diligence on the validity of Subcontractor's or Supplier's claim and that the amount requested by the Subcontractor or Supplier has appropriate supporting documentation and that there is good ground under the Contract Documents to support its claim against the Owner. The CM/GC shall provide the following certification on any Claim over \$500,000: "I certify that the Claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the Contract adjustment for which the CM/GC believes the Owner is liable; and that I am duly authorized to certify the Claim on behalf of the CM/GC." The certification shall be executed by an officer or partner of the CM/GC with proper authority. Failure to provide a Notice of Claim within this fourteen (14) day period and in strict compliance with this Section, including all of the information required herein shall constitute an absolute and complete waiver, bar, and release of such Claim. In any event, payment for Claims for additional compensation that are not waived shall not exceed those Costs allowed under this Agreement.

§ 15.1.3 Audit of Claims

All claims made against the Owner by CM/GC shall be subject to audit at any time following the receipt of the Notice of Claim. Failure of the CM/GC, Subcontractors, or sub-tier Subcontractors to maintain and retain sufficient records to allow the auditor to verify all or a portion of the Claim or to permit the auditor to timely access to the books and records of the CM/GC, Subcontractors, or sub-tier Subcontractors shall constitute an absolute waiver of the Claim and shall bar any recovery thereunder.

§ 15.1.4 Continuing Contract Performance

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

§ 15.1.5 Claims for Additional Cost

If the CM/GC wishes to make a Claim for an increase in the Contract Sum, a Notice of Claim as provided in Section 15.1.2 must be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the CM/GC wishes to make a Claim for an increase in the Contract Time, a Notice of Claim as provided in Section 15.1.2 must be given. In addition to the information required in Section 15.1.2, a Notice of Claim for an increase in the Contract Time shall also 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, the critical path analysis required by Section 8.3, and the number of days' increase in the Contract Time claimed as a consequence of each such cause of delay, the usage of any Project Schedule Float as of the date of the Notice of Claim, and shall contain a complete time impact analysis based upon a fragmentary CPM analysis (Fragnet) illustrating how CM/GC proposes to incorporate the change or alleged delay into the current updated Construction Schedule. Within 14 days of providing the Notice of Claim, the CM/GC shall provide such additional supporting documentation as the Owner may require including, where appropriate, a revised construction schedule indicating all the activities affected by the circumstances forming the basis of the Claim. Failure to provide this additional information within 14 days shall result in an absolute bar, release, and waiver of the Claim.

§ 15.1.6.2 The CM/GC shall not be entitled to a separate increase in the Contract Time for each one of the numbers 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 CM/GC.

§ 15.1.6.3 Requests for extension of construction time due to Unusually Severe Weather Conditions shall include the monthly issue of "Local Climatological Data" for the months involved plus the "Normals, Means and Extremes" table from the latest "Annual Summary of Local Climatological" published by the U.S. Department of Commerce, National Oceanic and Atmospheric Administration, National Climatic Data Center for the station closest to the Project Site. No such Claim shall be valid unless so made. No Schedule Float shall be used without Owner's prior

approval. Unless prescribed in the Owner or otherwise agreed upon by the Owner and CM/GC, the "Normals, Means and Extremes" table will be the basis for determining the number of adverse weather days in excess of the total number of days prescribed by the Owner or otherwise agreed upon by the Owner and CM/GC or, if not prescribed by the Owner or otherwise agreed upon, in excess of normally expected lost time; provided, however, if the Owner determines that the seasonal average of adverse weather days during construction is less than would be normally expected, no Change Order shall be issued and request for extension of time shall be denied.

§ 15.1.6.4 If Unusual Severe 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.

§ 15.1.7 CLAIMS FOR CONSEQUENTIAL DAMAGES

To the extent uninsured and except as provided below, the CM/GC and Owner waive Claims against each other for uninsured 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, business reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the CM/GC for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit.

This mutual waiver is applicable to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to waive or preclude (i) the assessment of the Liquidated Damages amount, if applicable, in accordance with the requirements of the Contract Documents; or (ii) any claims, losses, damages or other liabilities covered or that would be covered by the insurance required to be maintained by CM/GC pursuant to the Contract Documents; or (iii) or for claims by Owner for loss revenue or income to the extent arising out of or related to defects in construction discovered after Final Completion. In addition, and notwithstanding anything to the contrary contained herein, the foregoing waiver shall not apply to, limit, or affect either party's express indemnity obligations under the Contract to the extent such indemnity obligations relate to a Loss asserted by third parties against the indemnified party.

§ 15.2 Meet and Confer

§ 15.2.1 Any dispute between the CM/GC and the Owner arising at any time during or after construction of the Project shall be resolved, if possible, by negotiations between a principal or owner or member on behalf of the CM/GC and [REDACTED] on behalf of the Owner. The meet and confer requirement is a condition precedent to CM/GC initiating any litigation for any Claim related to or arising out of this Agreement or the Work.

§ 15.2.2 If the officers designated above are unable to resolve the dispute within sixty (60) days after submission to them, either party may file for mediation in accordance with Section 15.3 below.

§ 15.2.3 In the event of a Claim against the CM/GC, 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 CM/GC's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.4 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 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 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 (AAA) or JAMS (at the Owner's sole and absolute discretion) in accordance with its Construction Industry Mediation Procedures in effect on the date of the request for mediation. 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.

§ 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.

§ 15.3.4 **WAIVER OF RIGHT TO JURY TRIAL.** To the fullest extent permitted by law, each party hereto irrevocably and expressly waives all rights, if any, to a jury trial in any Claims or disputes between the two of them arising directly or indirectly from or relating to the Project or this Agreement. Each party knowingly and intentionally agrees to such waiver of trial by jury.

§ 15.3.5 In the event of litigation, the prevailing party as determined by the Court, shall be entitled to recover their reasonable attorney fees, costs and consultant costs. However, the parties agree that any court considering a request for fees pursuant to this paragraph should avoid an "all or nothing" approach, and should instead consider a variety of factors in deciding whether either party could be fairly characterized as a prevailing party, and if so, the extent to which such party prevailed in the legal proceeding. Factors to be considered by a court should include, but not be limited to: (a) the amount of any final judgment or award in comparison to (i) the total amount of damages asserted by the claimant, (ii) the amount of any damages, if any, acknowledged by the defending party, and (iii) the amount of any statutory offer of settlement made by either party, if any, and (b) the extent of any reduction in a party's claimed damages on the basis of failure to mitigate, offset, or other defense that does not eliminate liability but reduces damages. If in the context of a particular legal proceeding, a court in its discretion concludes that neither party prevailed, then there will be no assessment of fees or costs against either party. If it is determined that a party prevailed but not entirely, then the award of fees and costs in favor of such party should be reduced so that it is reasonably proportionate to the degree of success achieved by such party in the legal proceeding as determined by the court in its discretion.

§ 15.4 Consolidation or Joinder

The CM/GC agrees and consents to be included by joinder into any arbitration or legal proceeding in which Owner is involved and where there is a dispute regarding, related to, or arising out of CM/GC's Work or this Agreement. The CM/GC consents to the jurisdiction of such arbitration or tribunal for both subject matter and personal jurisdiction. The CM/GC must include similar dispute resolution and consolidation provisions in its agreements with its Subcontractors.

§ 15.5 This Article 15 shall survive termination of this Agreement.