



AIA[®] Document A201[™] – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

Hidalgo County Courthouse

THE OWNER:

(Name, legal status and address)

County of Hidalgo, Texas

Hidalgo County Purchasing Department

2812 S. Business Hwy 281

Edinburg, Texas 78539

THE CONSTRUCTION MANAGER:

(Name, legal status and address)

Morganti Texas, Inc.

10590 Westoffice Drive, Suite 150

Houston, Texas 77042

The Construction Manager is referred to in the Modified AIA Document A201-2007 as the "Contractor."

THE PROGRAM MANAGER:

(Name, legal status and address)

Jacobs Project Management Com.

911 Central Parkway North, Suite 425

San Antonio, Texas 78232

The Program Manager is referred to in the Modified AIA Document A201-2007 as the "Program Manager" or "PM."

THE ARCHITECT:

(Name, legal status and address)

HDR Architecture, Inc.

8750 N. Central Expressway, Suite 100

Dallas, Texas 75231

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ADDITIONS AND DELETIONS:

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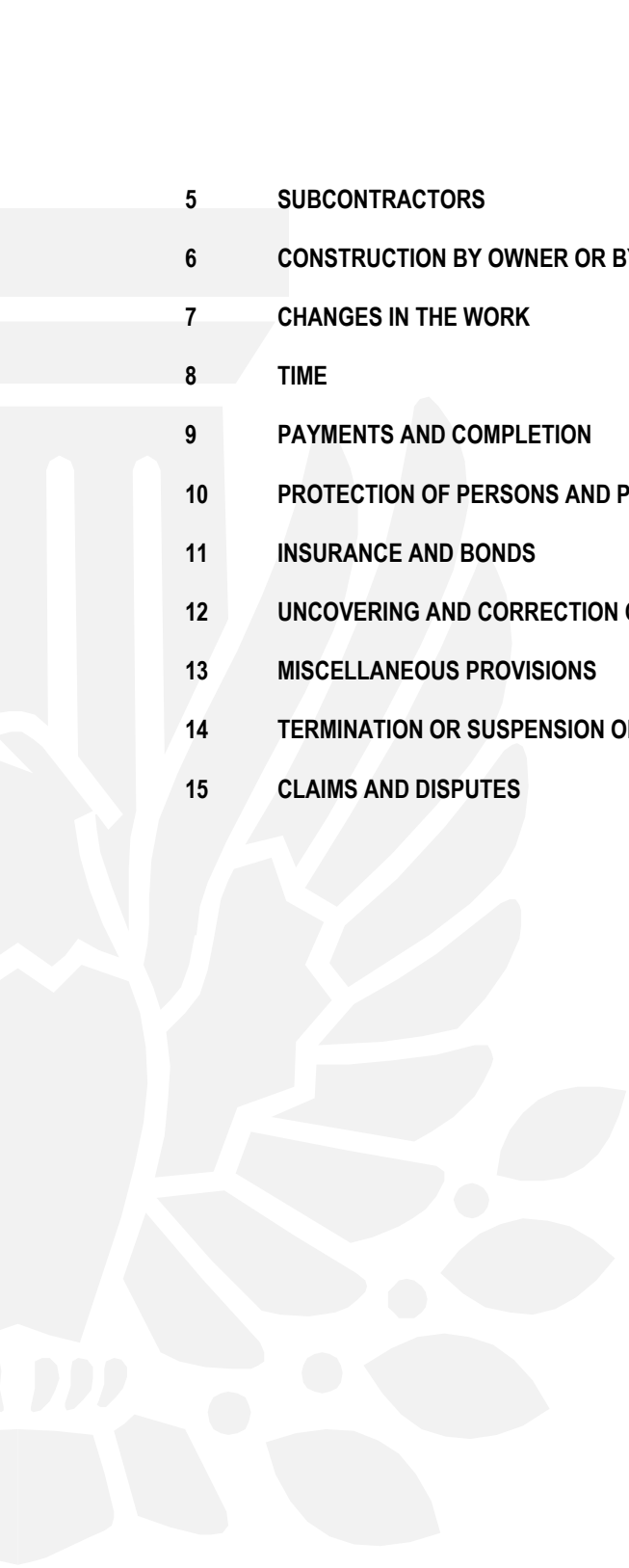
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User Notes:

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in Section 1.1 of the Modified A133-2009 Agreement of which these General Terms and Conditions are a part.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction (herein, "**Contract**" or "**Contract Documents**"). The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants or between the PM or PM's consultants or, (2) between the Owner and any Subcontractor or a Sub-subcontractor (except as provided in 5.4), (3) between the Owner and the Architect or the Architect's consultants or between the PM or PM's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect and PM shall, however, be entitled, respectively, to performance and enforcement of obligations under the Contract intended to facilitate their performance.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. The Work includes all labor, parts, supplies, skill, supervision, transportation, services, storage and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract Documents and all other items reasonably inferable from the Contract Documents as needed to produce, construct and fully complete the Work items shown by the Contract Documents.

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

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

§ 1.1.6 THE SPECIFICATIONS

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

§ 1.1.7 INSTRUMENTS OF SERVICE

"**Instruments of Service**" are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 CONTRACTOR-RELATED PERSON

A "**Contractor-Related Person**" means Contractor's Subcontractors of any tier, suppliers, consultants, and their employees, agents and representatives and any other persons or entities performing portions of the Work for or on behalf of them and all other persons for whom Contractor is legally liable with respect to this Project.

§ 1.1.9 PROGRAM MANAGER

The Owner retained the Program Manager ("**PM**") to carry out some of the functions of the administration of the Owner's construction program. The Contractor shall cooperate with the PM and Architect in the performance of their respective functions. The management and reporting systems used by the Owner or Program Manager may be changed by Owner during the Project.

§ 1.1.10 KNOWLEDGE

The terms "**knowledge**," "**recognized**" and "**discover**," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor actually knows, recognizes or discovers. The expression "**reasonably inferable**" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill and diligence required of a contractor experienced in working on projects similar to the Project.

§ 1.1.11 BUSINESS DAY

The term "**business day**" is a day the Owner's Administration Building is scheduled to be open for normal business purposes, unless closed by the Owner for inclement weather or other reason. A business day does not include a day on which the Owner's Administration Building is open only for the purposes of conducting candidate filing, early voting, elections, or other special events.

§ 1.1.12 ANTICIPATED WEATHER DAYS

An allowance Anticipated Weather Days, established as anticipated Work Days lost due to weather days, shall be included in Contractor's proposed completion time. Only lost weather days in excess of Anticipated Weather Days shall be considered by Owner for time extensions based upon weather.

§ 1.1.13 CALENDAR DAY

A calendar day is a day on the Gregorian Calendar. The Contract Time is established in calendar days. Extensions of time granted, if any, will be converted to calendar days. Unless otherwise stated, all references to "day" or "days" shall mean Calendar Days.

§ 1.1.14 HOLIDAYS

Owner-approved holidays for Contractor's Work are limited to New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

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

Notwithstanding the foregoing, in the event of inconsistencies within or between parts of the Contract Documents or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall (1) provide the better quality or greater quantity of Work or (2) comply with the more stringent requirement. With regard to inconsistencies in the Drawings, given dimensions shall take precedence over scaled measurements, and large scale Drawings over small scale Drawings. The terms and conditions of this paragraph shall not relieve the Contractor of any of the obligations set forth in Section 3.2 and Section 3.7. Without limiting the foregoing, should discrepancies appear, Contractor shall not proceed with the Work without clarification from the Architect. Contractor shall request clarification in a reasonable time to avoid delays and increases in the Contract Sum. Owner shall respond in a reasonable time.

§ 1.2.1.1 Except as otherwise provided in the Agreement, the most recently issued document takes precedence over previously issued forms of the same document. If Contractor discovers that an item is shown one place in the Drawings, but not another, or is called for in a schedule or the Specifications, but not shown on the Drawings, such discrepancy shall be promptly brought to the attention of the Owner and Architect. Existing conditions take precedence over Drawings and Specifications for dimensions and such dimensions shall be verified by Contractor.

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

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

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§ 1.2.4 Any material or system specified by reference to the number, symbol, or title of a specific standard, such as a commercial standard, a federal specification, a trade association standard, or other similar standard, shall comply with the requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date of the Contract Documents, except as limited to type, class, or grade or modified in such reference.

§ 1.2.5 The standards referred to, except as modified in the Specifications, shall have full force and effect as though printed in the Specifications. These standards are not fully set out in the Contract Documents for the reason that the manufacturers and trades involved are assumed to be familiar with the requirements.

§ 1.2.6 When specific products, systems or items of equipment are referred to in the Contract Documents, any ancillary devices necessary for proper functioning shall also be provided, but not including any manufacturers' options on any particular device. When standards, codes, manufacturer's instructions and guarantees are required by the Contract Documents with no edition specified, the current edition as of the date of the Contract Documents shall apply. Unless otherwise stated in the Contract Documents, references to standards, codes, manufacturer's instructions and guarantees shall apply in full, except they do not supersede more stringent standards set out in the Contract Documents, and any exclusions or waivers that are inconsistent with the Contract Documents do not apply.

§ 1.2.7 DISCOVERY OF ERRORS OR CONFLICTS

The Contractor shall make no changes in the Work inconsistent with the Contract Documents and anything reasonably inferable therefrom without a duly executed Change Order. If the Contractor, either before commencing the Work or in the course of performing the Work finds (1) that the Drawings and Specifications are at variance with one another, (2) that the Work has not been sufficiently detailed or explained in the Drawings and Specifications, (3) any discrepancy between the Drawings and/or Specifications, and the physical conditions on the site, or (4) any error or omission in any of the Drawings or Specifications or in any survey, or a misunderstanding arises regarding the real meaning of the Drawings or Specifications, the Contractor shall promptly notify the Owner, PM and the Architect in writing of such variance, insufficiency, discrepancy, error, omission or misunderstanding (collectively, "**Design Errors**"). If the Contractor observes that any portion of the Drawings and/or Specifications are at variance with any applicable law, ordinance, regulation, order or decree (collectively, "**Conflicts**"), the Contractor shall promptly notify the Owner, with a copy to the PM and Architect, in writing of such Conflict. If the Contractor observes any Error in work done by others affecting the Work, Contractor shall promptly notify the Owner, PM and the Architect in writing of such Error. The Owner, upon receipt of any such notice, shall have the issue promptly investigated and give appropriate written instructions to the Contractor. Until such instructions are given, any Work done by the Contractor, either directly or indirectly, after the Contractor's discovery of such Error or Conflict but before receiving clarifying instructions, will be at the Contractor's own risk, and the Contractor shall bear all costs and loss arising there from. Contractor shall include in any requests for information or clarification from the Owner, PM or the Architect the reasonable time period within which a response from the Owner, PM or the Architect is required in order for Contractor to meet the critical path set out in the construction schedule of and the extension of time and delay costs anticipated to be incurred by Contractor due to the Error or Conflict, to the extent quantifiable.

§ 1.3 CAPITALIZATION

Terms capitalized in these Modified A201-2007 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 Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain or give all common law, statutory and other reserved rights, including copyrights, and licenses as provided in the contract between the Owner and Architect. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of such rights.

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

§ 1.5.3 Contractor hereby grants Owner a paid-up, royalty-free non-exclusive license to use any and all drawings, specifications, submittals and other documents prepared or produced by or for Contractor or any Contractor-Related Person. This license shall survive termination of the Agreement. Additionally, all subcontracts between Contractor and its Subcontractors shall expressly grant Owner an exclusive license and shall require all sub-subcontracts to contain similar provisions. , from both itself and its Subcontractors,

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

§ 1.6.1 Contractor and its Subcontractors may request copies of the Architect's Drawings in electronic format (hereinafter referred to as "Drawing Files") from the Architect, through the PM, in connection with the design and construction of the Project for use as backgrounds for submittals or drawings prepared by Contractor or its Subcontractors. The Contractor or Subcontractor shall obtain a copy of the signed and sealed drawings before any use or reuse of the Drawing Files on this Project. In the event of any inconsistency between the information in the signed and sealed Drawings and the information in the Drawing Files, the signed and sealed drawings shall prevail. The Contractor and any Subcontractor using such Drawing Files agree that Architect and the Owner shall not be responsible or liable to such party to the extent that information in the Drawing Files is inconsistent with information in the latest version of the sealed Drawings issued for construction. The Architect, as a condition to providing Drawing Files to Contractor or its Subcontractors, may require the requesting party to acknowledge these terms and expressly agree to additional terms and conditions. Any and all use or reuse of Drawing Files by Contractor or any Subcontractor shall be at the sole risk of that party. Contractor and any Subcontractor using such Drawing Files agrees that the Owner, PM and Architect shall have no liability to such party for such use or reuse of Drawing Files, all of which are produced "AS IS." The Owner, PM and Architect have no duty to keep Contractor or any Subcontractors informed of, or provide any, updates of revisions to the Drawing Files. To the fullest extent permitted by applicable law, Contractor shall indemnify and hold harmless and release and waive all claims against the Owner Parties, as defined below, and the PM and Architect from all claims, damages, costs, causes of action and expenses, including without limitation attorney's and experts' fees and costs of litigation ("**Claims**"), arising from any use or reuse of the Drawing Files by the Contractor or any Subcontractors.

§ 1.7 Contractor may submit for consideration proposed substitutions of materials, equipment or processes from those set out in the Contract Documents. Submittals of proposed substitutions must be made in writing at such time as not to delay the Work and should contain sufficient information to allow the Architect and Owner to determine if the proposed substitution is in fact equal or better than the requirements of the Contract Documents. Contractor shall bear the risk of any delay in performance caused by submitting substitutions. Also refer to 3.4 and other sections herein related to substitutions.

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 has only such authority as granted by the Commissioners' Court of the Owner. Except as otherwise provided in Section 4.2.1, neither the PM nor Architect have such authority.

§ 2.1.2 The presence of the Owner (or its representatives), PM or Architect at the Project site does not imply acceptance or approval of the Work.

§ 2.1.3 The Contractor stipulates and agrees that the Owner has no duty to discover any design errors or omissions in the Construction Documents, and has no duty to notify Contractor of same. By entering into the

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Contract, Owner does not warrant the adequacy and accuracy of any Construction Documents.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 [Omitted]

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

§ 2.2.3 The Owner shall furnish geotechnical information and surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall review this information and shall promptly inform Owner and PM of any concerns it has, errors it observed and additional information reasonably required for Contractor's execution of the Work. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner, except with respect to certain survey information described below and except to the extent of known errors or concerns not properly addressed, but shall exercise proper precautions relating to the safe performance of the Work. The Contractor shall not be entitled to rely upon the accuracy in surveys of non-dimensioned information and information on subsurface utilities including, without limitation, the locations of utility lines, cables, pipes or pipelines. The Contractor shall field verify the locations of such utilities and perform the Work in a manner that will not cause injury to them. The Contractor shall be responsible for and repair or have repaired any damage to such utilities caused by failing to take such precautions.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. The Contractor acknowledges, however, that the Owner is a public entity and often cannot obtain or provide information as promptly as private entities. The Contractor shall submit requests for such information with ample lead time in order for the Owner to respond. The Contractor waives any claims against Owner for not timely providing information requested if the Contractor has not timely requested such information or left inadequate time for Owner to respond to any such request.

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

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. The Contract Time shall not be extended and the GMP shall not be increased due to the Work being stopped pursuant to this Section.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

§ 2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the PM and Architect's additional services made necessary by such default, neglect or failure. The amounts charged by the Owner shall be reasonable and necessary. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 2.4.2 After the Work is complete, the Owner may make emergency repairs to the Work if the Contractor does not promptly respond to a notice of a condition requiring repairs. Contractor shall be responsible to Owner for this cost if

the reason for the repairs is defects in Contractor's Work. If payments then or thereafter due the Contractor are not sufficient to cover such costs by offsets made by Owner, the Contractor shall pay the difference to the Owner.

§ 2.5.2 Owner has the authority to reject Work which does not conform to the Contract Documents. Whenever, in its reasonable opinion, Owner considers it necessary or advisable for implementation of the requirements of the Contract Documents (which, for the purposes of this Agreement, includes both the express requirements and those requirements which are reasonably inferable from the Contract Documents), Owner will have the authority to require special inspection or testing of the Work in accordance with Section 13.5.2 whether or not such Work is then fabricated, installed or completed. However, neither the Owner's authority to act under this Section 2.5.2, nor any decision made by the Owner, either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Owner to the Contractor, any Subcontractor, Sub-subcontractors or supplier, any of their agents, representatives or employees, or any other person performing any of the Work.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

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

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

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

§ 3.1.4 The Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work:

- .1 that it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;
- .2 that it is able to furnish the tools, materials, supplies, equipment and labor required to timely complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- .3 that it is authorized to do business in the State of Texas, and it and all its trade contractors, subcontracts, suppliers and any consultants are properly licensed by all necessary governmental, public and quasi-public authorities having jurisdiction over it, the Work, or the site of the Project to perform the Work required by the Contract; and
- .4 that the execution of the Contract and its performance thereof are within its duly-authorized powers.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited 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. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the unconcealed conditions and limitations under which the Work is to be performed, including, without limitation (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment, (5) all applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities relating to Contractor's means, methods, techniques and sequences. With the exception of pre-existing

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hazardous materials, Owner assumes no responsibility or liability for the safety of or safety programs for the Project site or any improvements located on the site. Contractor shall be solely responsible for providing all safety programs and ensuring a safe place for the performance of the Work. Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Contractor-Related Person to comply with the requirements of this Section. Neither any oral representation by nor oral agreement with any officer, agent, or employee of Owner, PM or Architect before or after execution of this Agreement shall affect or modify any of Contractor's obligations hereunder. Contractor is not aware of any facts that make misleading or inaccurate in any material respect any information Owner, PM or Architect has furnished to Contractor which would have a material, adverse effect on the Contract Time or Contract Sum, and if, during the course of the performance of the Work, Contractor learns of any such facts, it will so advise each of said parties.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall and warrants that it has or will, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, take field measurements of any existing conditions related to that portion of the Work, and observe any conditions at the site affecting it, also as required by Section 2.2.3. Before ordering any materials or doing any Work, Contractor shall verify all measurements at the site and shall be responsible for the correctness of same. Contractor shall not be entitled to additional compensation or an extension of the Contract Time arising from the Contractor's failure to visit the site and take the measurements required by the Contract prior to commencing Work. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Owner, PM and Architect in writing any errors, deficiencies, inconsistencies or omissions discovered by or made known to the Contractor. Such inquiries shall be made through a request for information ("**RFI**") in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. It is the Contractor's duty, however, to seek clarifications through RFI's of any condition in the Work about which it has any uncertainty before commencing Work at such conditions. The Contractor shall submit follow-up RFI's if prior responses to the RFI do not provide the information needed.

§ 3.2.2.1 The Contractor shall not submit RFI's when the information sought can be ascertained from the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation and response to the Contractor's requests for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation. If, in the reasonable opinion of the Architect, the Contractor does not make reasonable effort to comply with any of the above requirements of the Contract Documents and this causes the PM or the Architect or its Consultants to expend an unreasonable amount of time in the discharge of the duties imposed by the Contract Documents, then the Contractor shall bear the cost of compensation for the Architect's additional services made necessary by such failure.

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

§ 3.2.4 If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the Work or to honor any warranty, or will result in a limitation of or interference with the Owner's intended use, then the Contractor shall promptly notify the Owner, PM and Architect in writing, providing substantiation for its position. If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.5 Prior to performing any Work, and only if applicable, Contractor shall locate all utility lines as shown and located on the plans and specifications, including telephone company lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, but not limited to, all buried pipelines and buried telephone cables, and shall perform any Work in such a manner so as to avoid damaging any such lines, cables, pipes, and pipelines. In addition, Contractor shall independently determine the location of same. Contractor shall be responsible for any damage done to such utility lines, cables, pipes and pipelines during its Work, and shall be responsible for any loss, damage, or extra expense resulting from such damage. Repairs shall be made immediately to restore all service. Any delay for such break shall be attributable to Contractor. In addition, and only if applicable, Contractor shall review the appropriate AHERA and hazardous materials surveys for the Project, and shall notify all Subcontractors and Sub-subcontractors of the necessity to review said surveys. Contractor shall perform any Work in such a manner as to avoid damaging, exposing, or dislodging any asbestos containing materials that are clearly identified and located in AHERA and other hazardous material surveys. Before performing any portion of the Work, the Contractor shall fully investigate all physical aspects of the Project Site and verify all dimensions, measurements, property lines, grades and elevations, existing improvements, and general suitability of existing conditions at the Project site.

§ 3.2.6 The Contractor shall arrange meetings prior to commencement of the Work of all major Subcontractors to allow the Subcontractors to demonstrate an understanding of the Construction and Contract Documents to the PM and Architect and to allow the Subcontractors to ask for interpretations, when necessary. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including without limitation:

- .1 The location, condition, layout, drainage and nature of the Project site and surrounding areas;
- .2 Generally prevailing climatic conditions;
- .3 Anticipated labor supply and costs;
- .4 Availability and cost of materials, tools and equipment; and
- .5 Other similar issues.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, trenching and procedures and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner, PM and Architect and shall not proceed with that portion of the Work without further written instructions from the PM or Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures, except to the extent such loss or damage results from or is caused by the Contractor's failure to follow such instructions or the Contractor's failure to exercise reasonable care and skill in carrying out such instructions.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor and any Contractor-Related Person. As part of this responsibility, Contractor shall enforce alcohol-free, drug-free, tobacco-free, harassment-free and weapon-free policies and zones, which will require compliance with those policies and zones by Contractor and any Contractor-Related Person. Failure of an individual to adhere to these standards of conduct shall result in the immediate removal as permitted by law of the offending employee from all construction Work on any of Owner's property. Repeated violations of these rules can result in the immediate termination of the Contract by Owner for cause.

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

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§ 3.3.4 Laying Out and Constructing the Project

Contractor shall employ an experienced and competent licensed surveyor or civil engineer to establish permanent benchmarks to which easy access may be had during the progress of the Work, determine all lines and grades, and verify same from time to time during the progress of the Work.

§ 3.3.5 To the extent that any portion of the Work requires a trench excavation exceeding five (5) feet in depth, in accordance with Texas Health and Safety Code Section 756.023(a), Contractor shall fully comply, and shall require any applicable subcontractor to comply, with:

- .1 The Occupational Safety and Health Administration standards for trench safety in effect for the Construction of the Work;
- .2 The special shoring requirements, if any, of the Owner; and
- .3 Any geotechnical information obtained by Owner for use by the Contractor in the design of the trench safety system.
- .4 Trench excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used.

§ 3.3.6 The Contractor shall review Subcontractor safety programs, procedures, and precautions in connection with performance of the Work. However, the Contractor's duties shall not relieve any Subcontractor(s) or any other person or entity (e.g., a supplier), including any person or entity with whom the Contractor does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state, and local laws, rules, regulations, and ordinances which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. The foregoing notwithstanding, the requirements of this Paragraph are not intended to impose upon the Contractor any additional obligations that the Contractor would not have under any applicable state or federal laws, including, but not limited to, any rules, regulations, or statutes pertaining to the Occupational Safety and Health Administration.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for qualified, careful, and efficient workers and labor eligible to work in accordance with state and federal law, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

§ 3.4.2.1 After the Guaranteed Maximum Price Amendment is executed, if the Contractor seeks to substitute a material or product of a different brand or manufacturer in lieu of that specified in the Contract Documents, it shall submit a written request to the Owner, PM and Architect for approval of such proposed substitution pursuant to this Section and Section 1.7 herein. Each request for substitution shall be accompanied by complete descriptive literature, performance data, and cost information with regard to both the specified item and the proposed substitution, plus any samples as may be required by the Owner, PM or Architect. Each proposed substitution shall require the written approval of the Owner, PM or Architect before its incorporation into the Work. The Contractor shall submit requests for substitution as soon as practicable after the need for the substitution is determined to allow for adequate consideration of such request and to minimize delay in the progress of the Work. Owner shall promptly act on such request so as to endeavor to minimize delay in the progress of the Work. Contractor shall bear the risk of any delay in performance caused by submitting requests for substitutions. The Owner may condition approval of the substitution on Contractor's proving clearly and certifying that the substitution is equal in performance characteristics to the

requirements of the Contract Documents, equally compatible with existing installations and complementary to the design for the Work. The Owner may reject any proposed substitution in its sole discretion.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor and all Contractor-Related Persons. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. TO THE MAXIMUM EXTENT ALLOWED BY LAW, THE CONTRACTOR RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS THE OWNER FOR CONTRACTOR'S FORCES' NON-COMPLIANCE WITH OWNER'S DRUG-FREE, ALCOHOL-FREE, WEAPON-FREE, HARASSMENT-FREE, AND TOBACCO-FREE ZONES, CONTRACTOR'S FORCES' NON-COMPLIANCE WITH CRIMINAL LAW, OR CONTRACTOR'S OR CONTRACTOR'S FORCES' NON-COMPLIANCE WITH IMMIGRATION LAW OR REGULATIONS. Any individual found by Owner to have violated these restrictions is subject to permanent removal from the Project, at Owner's request. Contractor shall place similar language in its subcontract agreements, requiring its Subcontractors and Sub-subcontractors to be responsible for their own forces and Contractor shall cooperate with the Owner to ensure Subcontractor and Sub-subcontractor compliance.

§ 3.4.8 PREVAILING WAGE RATES

§ 3.4.8.1 In accordance with and to the extent required by applicable law, including without limitation Texas Government Code Section 2258 *et seq.* and Texas Labor Code Section 62.051 *et seq.*, Contractor, Contractor's Subcontractors and Sub-subcontractors shall pay all workers not less than the general prevailing rate of per diem wages for work of a similar character where the Project is located, as detailed in the "Minimum Wage Schedule" provided herein. Wages listed are minimum rates only. However, no claims for additional compensation above the Contract Sum shall be considered by the Owner because of payments of wage rates in excess of the applicable rate provided herein.

§ 3.4.8.2 Contractor shall be liable to Owner in the sum of \$60 (which may be offset of sums thereafter due and payable to Contractor) for each laborer, worker or mechanic employed for each Calendar Day or part of the day that the worker is paid less than the wage rates stipulated in the Contract Documents or as otherwise required by applicable law. It is agreed that the sum of \$60 per day is a reasonable estimation of the damages that Owner will incur as a result of Contractor's failure to comply (such damages being difficult to ascertain) with this Section 3.4.8 and is not being assessed as a penalty.

§ 3.4.8.3 Owner reserves the right to receive and review payroll records, payment records, and earning statements of employees of Contractor, and of Contractor's Subcontractors and Sub-subcontractors.

§ 3.4.8.4 In executing the Work under the Contract Documents, Contractor shall comply with all applicable state and federal laws, including but not limited to, laws concerned with labor, equal employment opportunity, safety and minimum wages.

§ 3.4.8.5 Prevailing Wage Rates are as set forth on Exhibit I of the A133-2009 Agreement. If no schedule is attached then the parties shall use the wage rate determined by the US Department of Labor in accordance with the Davis-Bacon Act, 40 USC Section 276a, which can be accessed on the internet at www.gpo.gov/davisbacon/.

§ 3.5 WARRANTY

(Paragraph deleted)

§ 3.5.1 The Contractor warrants to the Owner, PM and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that Contractor shall perform the Work in a good and workmanlike manner, continuously and diligently in accordance with the Contractor's standard of care stated in the Contract, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship, in which case the standard shall be the higher standard. All material shall be installed in a true and straight alignment, level and plumb; patterns shall be uniform; and jointing of materials shall be flush and level, unless otherwise directed in writing by the Architect. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements shall be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If

required by the Owner, PM or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 The Contractor agrees to assign to the Owner at the time of final completion of the Work or termination of this Agreement, whichever is earlier, any and all manufacturer's, subcontractors' and suppliers' warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties required by Contract Documents or otherwise provided. The Contractor shall obtain and deliver to owner of warranty documentation necessary for owner to enforce such warranties. Contractor retains the non-exclusive right to enforce directly any manufacturer's warranties. Contractor shall request that each trade contractor, Subcontractor or supplier making bids or proposals include with its bid or proposal an Add/Alternate to provide the longest available manufacturer's or supplier's warranty, or if longer than that, take all required actions to obtain the longest available manufacturer's or suppliers' warranties required by the Contract Documents, unless instructed otherwise by Owner in writing. Upon selection of the successful bidders, the Owner shall advise Contractor whether the Owner desires to purchase any such longer warranty, and the cost of such warranty shall be included in the Guaranteed Maximum Price.

§ 3.5.3 The warranties of Contractor provided in Paragraphs 3.5 shall in no way limit or abridge the warranties of the suppliers of equipment and systems which are to comprise a portion of the Work. All such warranties shall be in form and substance as required by the Contract Documents. Contractor shall take no action or fail to act in any way that results in the termination or expiration of such third party warranties or that otherwise results in prejudice to the rights of Owner under such warranties. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with the providers and manufacturers of such systems and equipment whereby Owner shall have a direct right, but not a duty, of enforcement of such warranty obligations.

§ 3.5.4 The form of warranty to be issued by each first tier Subcontractor and supplier shall be submitted to the Owner, PM and Architect for review and approval. Contractor shall maintain a complete and accurate schedule of the dates upon which any warranty will expire. Contractor shall provide a copy of such schedule to Owner, PM and Architect.

§ 3.5.5 Contractor shall, in addition to the other prerequisites to achieving final completion:

- .1 Obtain documentation of warranties making the date of beginning of the warranties the Date of Final Completion, unless an earlier date is required by use of operating equipment before final completion;
- .2 Verify that the documents are in proper form and contain full information;
- .3 Co-sign warranties when required;
- .4 Retain warranties and bonds for simultaneous submissions to the Architect;
- .5 Bind all warranties in commercial quality binders;
- .6 Include a Table of Contents, with each item identified by the number and title of the specification section under which the product is specified; and
- .7 Separate each warranty with index tab sheets keyed to the Table of Contents listing.

§ 3.5.6 The Contractor shall certify to Owner that the Project has been constructed in conformance with the Construction Documents, as modified from time to time pursuant to the terms of the Contract. Contractor shall fully complete a "Certification of Project Completion" as required by 19 Texas Administrative Code Section 61.103(c)(3)(F).

§ 3.5.7 When deemed necessary by the Owner and prior to installation of any item specifically made subject to a performance standard or regulatory agency standard under any provision of the Contract Documents, Contractor shall furnish proof of conformance to the PM and Architect. Proof of conformance shall be in the form of: an affidavit from the manufacturer certifying that the item is in conformance with the applicable standards; an affidavit from a testing laboratory certifying that the product has been tested and is in conformance with applicable standards; or such further reasonable proof as is required by the Architect.

§ 3.6 TAXES

The Owner is an exempt entity under the tax laws of the State of Texas. The Owner represents that this Project is eligible for exemption from the State Sales Tax on tangible personal property and material incorporated in the Project, provided that the Contractor fulfills the requirements of the Limited Sales, Excise and Use Tax Rules and Regulations.

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For the purpose of establishing exemption, it is understood and agreed that the Contractor may be required to segregate materials and labor costs at the time the Contract is awarded, and will accept a Certificate of Exemption from the Owner. Contractor shall obtain Certificates of Resale from suppliers. Failure of Contractor or any Contractor-Related Person to obtain Certificates of Resale from their suppliers shall make the Contractor or any Contractor-Related Person responsible for absorbing the tax, without compensation from Owner. Contractor shall pay all necessary local, county and state taxes, income tax, compensation tax, social security and withholding payments as required by law. Contractor shall release, defend, indemnify and hold harmless Owner from any and all claims and demands made as a result of the failure of Contractor or any Subcontractor to comply with the provisions of any or all such laws and regulations.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

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

§ 3.7.1.1 The Contractor shall arrange and pay for all temporary utility charges, tap charges, and water meter charges. After consultation with the Owner and PM, the Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any: associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the Project; and obtain all permits and approvals, and pay all fees and expenses, if any, associated with Storm Water Pollution Prevention and Pollution Control Plan (SWPPP) regulations administered by the Texas Commission on Environmental Quality (TCEQ) and local authorities. Contractor's obligations under this section may require it to obtain or perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. The Contractor shall obtain any permits and approvals for drainage alterations made by Contractor during the construction process. Reimbursable expenses shall not include any fines or penalties assessed against the Contractor, any Contractor-Related Person or the Project. Reimbursement of such fees shall be in accordance with Article 6 of the Modified A133-2009 Agreement.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. The Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the city or by any other public or private body with jurisdiction over the Project. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary back-up material and furnish the surety with any required personal undertakings.

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

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner, PM and the Architect before conditions are disturbed and in no event later than three (3) business days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, may recommend an equitable adjustment in the Contract Sum or Contract Time, or both. The Owner's Contingency (if any) may, in Owner's sole discretion, be utilized to cover increased costs, if any. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner, PM and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice,

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the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.7.6 The Contractor shall be responsible for timely notification to and coordination with all utility companies regarding the provision of all necessary services to the Project. The Contractor shall inform the Owner, PM and Architect at once when the Owner's participation is required. Obtaining connections for permanent utilities and payment for temporary utilities services required for the Work are the responsibility of the Contractor unless otherwise agreed.

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness subject to the Contractor providing adequate time for the Owner to make such selection.

§ 3.8.4 When performing Work under allowances, Contractor shall solicit and receive not less than three written proposals or bids, and the selection shall be made, as required by 2269.255 and 2269.256 of the Texas Government Code.

§ 3.8.5 Contractor shall keep separate and adequate records of all allowances and shall submit such records to Owner no less than on a monthly basis.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent(s), project manager(s) and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner, PM and the Architect the name and qualifications of a proposed superintendent. The Owner, PM or Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner has reasonable objection to the proposed superintendent or (2) that the Owner requires additional time to review.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner has made reasonable and timely objection.

§ 3.9.4 At all times during the construction Work and through final completion, Contractor shall assign to the Project a project manager assigned to the Project through final completion, approved by Owner and shall keep on the job the full-time through final completion a superintendent approved by Owner, and neither the project manager nor the superintendent shall be removed or transferred from the Work without Owner's consent, which shall not be unreasonably withheld. However, such obligation to furnish the superintendent shall not be construed (a) to preclude the promotion within Contractor's organization of any person assigned to the Work or (b) to give rise to any liability of

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Contractor if any person assigned to the Work leaves Contractor's employ. If Owner reasonably determines that any employee of Contractor or any Contractor-Related Person is uncooperative, careless, not qualified to perform the Work assigned to him or otherwise unsuitable, and Owner and Contractor cannot, after a diligent and good faith attempt, agree what action should be taken with respect to the removal or reassignment of such employee, the Contractor shall promptly and lawfully remove such employee from the Work and replace such employee. At all times during the construction Work and through final completion, Contractor shall appoint a resident individual (approved by Owner, acting reasonably) authorized to act on behalf of Contractor and with whom Owner may consult at all reasonable times, and who shall be authorized to receive the instructions, requests and decisions of Owner. All of Contractor's and Subcontractors' personnel shall comply with all applicable health, safety, and loss prevention rules of applicable authorities and all rules, policies, procedures, and requirements of the Owner. Contractor shall, at its own expense, remove from the Work any person who fails to comply with such rules and instructions in any material respect. Prior to the commencement of the Work, Contractor shall deliver to Owner for Owner's approval an organization chart setting forth the job titles, names and responsibilities of Contractor's personnel who will be assigned to the Work.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The construction schedule shall be furnished in a detailed precedence-style critical path management or Primavera-type format (P6) satisfactory to the Owner PM, and Architect that shall include a graphic representation of all activities and events that will occur during the performance of the Work and set forth dates and milestones that are critical in ensuring the timely completion of the Work. Upon approval by the Owner, PM and Architect, the construction schedule so provided shall become a part of the Contract Documents. The accepted construction schedule shall be updated to reflect actual conditions of the site. A detailed, critical path schedule format shall be used for the construction schedule with thorough updates to the construction schedule prepared and distributed to Owner and Architect at least monthly. The construction schedule and all updates should address submittal activities as well as actual field construction activities.

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

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner, PM and Architect, provided such schedules are consistent with and do not exceed the time limits under the Contract Documents.

§ 3.10.4 The Contractor shall hold weekly progress meetings at the Project Site, or at such other time and frequency as are acceptable to the Owner and PM. Progress of the work shall be reported at said meetings with reference to Contractor's construction schedule. The Contractor shall submit to the PM and Architect with each monthly application for payment, an XER or equivalent native format copy of the progress schedule showing all modifications required, and shall take whatever corrective action is necessary to assure that the Project completion schedule is met at no additional cost to Owner, except as allowed herein. In the event that Contractor shall fall behind schedule at any time, Contractor shall develop and deliver a recovery plan to the Owner and PM with a recovery schedule and a program describing the additional manpower, overtime, material expediting, resequencing of the Work and other steps Contractor shall take to meet the requirements of the Contract. Contractor shall not be entitled to compensation from the Owner or any increase in the Contract Sum for the schedule recovery efforts. No approval or consent by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Substantial Completion Date or the Final Completion Date

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Owner, PM and Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. References herein to the "Architect" with regard to submittals may include such other designated design professionals retained by Owner. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect and PM, if requested by the Owner, to the Owner, all Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the PM and Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner, PM Architect or of separate contractors. The form, quantity and recipients of such material shall be established by the PM.

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

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

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to, and shall not, provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify the performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner, PM and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents, however, Contractor shall comply with the requirements of Section 3.2.1 and Section 3.2.2 above and shall notify Owner, PM and Architect if it believes that the performance or design criteria required by the Contract Documents are inadequate.

§ 3.12.14 The Contractor represents and warrants that to the best of Contractor's knowledge, all such submittals shall be prepared by persons and entities possessing the necessary expertise and experience in the trade for which the submittals, or by duly licensed professionals where required for performance specifications.

§ 3.12.15 Shop Drawings and other submittals may be transmitted electronically via the Project's technology platforms, to the extent they can be transmitted in such a manner. Physical samples are excluded from this provision.

§ 3.13 USE OF SITE

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

§ 3.13.2 Contractor shall employ reasonable measures to protect construction materials and equipment stored at the Project site from weather, theft, damage and all other adversity.

§ 3.13.3 Contractor and its subcontractors shall not erect any sign on the Project site without the prior written consent of the Owner.

§ 3.13.4 Contractor shall ensure that the Work, at all times, is performed in a manner that affords Owner, PM and Architect reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed in such a manner that public areas adjacent to the Site of the Work shall be free from all debris, building material, over-spray, dust (within the Contractor's control) and equipment likely to cause hazardous conditions or a nuisance. Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of any area or building adjacent to the site of the Work.

§ 3.14 CUTTING AND PATCHING

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

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

withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

§ 3.14.3 No cutting of structural elements will be permitted unless specifically approved in writing by Architect. Fitting and patching shall only be done with new products, and shall only be performed by those skilled in the performance of the original Work. Visible patching that does not match its surroundings shall be corrected by any means necessary.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall, on not less than a daily basis, keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. Contractor shall provide on-site containers for the collection of waste materials, debris and rubbish, and shall periodically remove waste materials, debris and rubbish from the Work site and dispose of all such materials at legal disposal areas away from the site. All cleaning operations shall be scheduled so as to ensure that contaminants resulting from the cleaning process will not harm or deface surfaces or travel off the Project site. Immediately after unpacking materials, all packing case lumber or other packing materials, wrapping or other waste shall be collected and properly disposed of. Care shall be taken by all workers not to mark, soil or otherwise deface any finish. In the event that any finish becomes defaced in any way by mechanics or workers, the Contractor shall clean and restore such surfaces to their original conditions. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

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

§ 3.15.3 The Contractor shall be responsible for the protection of the Work. Prior to the Architect's inspection for Substantial Completion, the Contractor shall clean exterior and interior surfaces exposed to view; remove temporary labels, stains, putty, soil, paint and foreign substances from all surfaces, including glass and painted surfaces; polish transparent and glossy surfaces; clean equipment and fixtures to a sanitary condition; replace air filters in mechanical equipment; clean roofs, gutters, and downspouts; remove obstructions and flush debris from drainage systems; clean site; sweep paved areas and rake clean other surfaces; remove trash and surplus materials from the site; clean and polish all floors; clean and polish all hardware; and repair all Work damaged during cleaning.

§ 3.15.4 After construction is complete, Contractor shall: (1) employ skilled workers for final cleaning; (2) remove grease, mastic adhesive, dust, dirt, stains, fingerprints, labels and other foreign materials from all sight-exposed interior and exterior surfaces; (3) wash and shine glazing and mirrors; (4) polish glossy surfaces to a clear shine; (5) vacuum clean carpeted and similar soft surfaces; (6) clean (damp mop with clean mop and water) resilient and hard surface floors, repeating as necessary until no visible residue remains on floors; clean plumbing fixtures to a sanitary condition; (8) clean surfaces of all equipment and remove excess lubrication; (9) clean permanent filters and replace disposable filters in ventilating systems if units were operated during construction and clean ducts, blowers and coils; (10) clean light fixtures; (11) remove waste, foreign matter and debris from roofs, gutters, area ways and drainage ways; (12) remove waste, debris and surplus materials from the site; (13) remove stains, spills and foreign substances from paved areas; and (14) clean exterior concrete and paved surfaces and clean the grounds.

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

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§ 3.18 INDEMNIFICATION

§ 3.18.1 TO THE FULLEST EXTENT PERMITTED BY LAW THE CONTRACTOR SHALL INDEMNIFY, DEFEND (TO THE MAXIMUM EXTENT PERMITTED BY LAW) AND HOLD HARMLESS THE OWNER, AND ITS COMMISSIONERS, OFFICIALS, AGENTS AND EMPLOYEES ("OWNER PARTIES") FROM AND AGAINST:

- .1 ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, EXPERTS' FEES AND COSTS OF LITIGATION ARISING, OR ALLEGED TO ARISE, FROM ANY OF THE FOLLOWING (THE "INDEMNIFIED MATTERS"):**
- (A) THE ACTS OR OMISSIONS, INCLUDING THE ONGOING OR COMPLETED OPERATIONS, OF CONTRACTOR AND ANY CONTRACTOR-RELATED PERSON;**
 - (B) NEGLIGENCE, NEGLIGENT MISREPRESENTATION, FRAUD, BREACH OF FIDUCIARY DUTY, WILLFUL, RECKLESS, OR CRIMINAL MISCONDUCT, OR ANY ACTIONS OF CONTRACTOR AND ANY CONTRACTOR-RELATED PERSON BEYOND THE SCOPE OF WORK;**
 - (C) DEFAULT BY CONTRACTOR UNDER THIS AGREEMENT;**
 - (D) FAILURE BY CONTRACTOR OR ANY CONTRACTOR-RELATED PERSON TO MAINTAIN INSURANCE REQUIRED TO BE MAINTAINED BY IT PURSUANT TO THIS AGREEMENT;**
 - (E) CONTRACTOR'S OR ANY CONTRACTOR-RELATED PERSON'S VIOLATION OF ANY ORDINANCE, REGULATION, STATUTE OR OTHER LEGAL REQUIREMENTS; OR**
 - (F) RELEASE OR DISTURBANCE OF HAZARDOUS MATERIALS OR SUBSTANCES THAT OCCURS IN OR FROM THE PROPERTY AND ARISES FROM CONTRACTOR'S OR A CONTRACTOR-RELATED PERSON'S ACTIVITIES OR OPERATIONS OR THE REMEDIATION OF SUCH RELEASE OR DISTURBANCE ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE WORK;**

PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK ITSELF) CAUSED IN WHOLE OR IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF THE CONTRACTOR OR ANY CONTRACTOR-RELATED PERSON;

.2 REGARDLESS OF:

- (A) WHETHER THE CLAIM IS ALSO CAUSED IN PART BY THE ORDINARY, ACTIVE OR PASSIVE, JOINT, CONCURRENT OR COMPARATIVE NEGLIGENCE OF SUCH OWNER PARTY;**
- (B) WHETHER LIABILITY WITHOUT FAULT OR STRICT LIABILITY IS IMPOSED UPON OR ALLEGED AGAINST THE OWNER PARTY; AND**
- (C) THE SCOPE OF ANY PERSON'S INSURANCE AND IS INDEPENDENT OF INSURANCE;**

.3 BUT WILL NOT BE ENFORCED TO THE FOLLOWING EXTENT ("EXCLUDED MATTERS"):

- (A) OF OWNER'S BREACH OF THIS CONTRACT; OR**
- (B) A LOSS IS CAUSED IN WHOLE OR IN PART BY THE MISCONDUCT OR NEGLIGENCE OF AN OWNER PARTY.**

IF LOSSES, DAMAGES, LIABILITIES AND EXPENSES ARISE OUT OF THE CONCURRENT NEGLIGENCE OF BOTH OWNER AND CONTRACTOR OR THE RESPECTIVE PARTIES FOR WHOM EACH IS RESPONSIBLE, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS OWNER ONLY TO THE EXTENT OF CONTRACTOR'S OWN NEGLIGENCE OR THOSE FOR WHICH IT IS RESPONSIBLE HEREUNDER OR UNDER APPLICABLE LAW; PROVIDED, HOWEVER, CONTRACTOR SHALL PROVIDE OWNER AND/OR THE OWNER PARTIES WITH A COMPLETE DEFENSE OF SUCH

CONCURRENT NEGLIGENCE CLAIM UNTIL THE CLAIM IS SETTLED OR A FINAL JUDGMENT IS ENTERED ON SUCH CLAIM, AT WHICH TIME OWNER AND/OR ITS INSURANCE CARRIER(S) SHALL REIMBURSE CONTRACTOR AND/OR ITS INSURANCE CARRIER(S) FOR DEFENSE COSTS PROPERLY ALLOCATED TO OWNER AND/OR THE OWNER PARTIES. CONTRACTOR'S INDEMNITY HEREIN IS EXPRESSLY INTENDED TO CONSTITUTE A WAIVER OF ANY IMMUNITY IT MAY HAVE UNDER THE LAW TO THE EXTENT NECESSARY TO PROVIDE OWNER AND OWNER PARTIES WITH A COMPLETE INDEMNITY FOR THE NEGLIGENCE OF CONTRACTOR OR CONTRACTOR'S EMPLOYEES, TO THE EXTENT OF THEIR NEGLIGENCE.

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

§ 3.18.3 Expenses recoverable by the Owner Parties as part of the Contractor's indemnity obligations under this Section 3.18 shall include, without limitation, reasonable attorney's fees, experts' fees and any other costs incurred by such Owner Parties in a legal proceeding brought against the Contractor to enforce this Section 3.18.1. The provisions contained Section 3.18 shall survive the expiration or earlier termination of this Agreement, the final completion of the Work, and any other services to be provided pursuant to the Contract Documents.

§ 3.18.4 The Contractor shall promptly advise Owner in writing of any action, administrative or legal proceeding or investigation as to which this indemnification may apply, and Contractor, at Contractor's expense, shall as permitted by law assume on behalf of the Owner Parties and conduct with due diligence and in good faith the defense thereof (to the maximum extent permitted by law) with counsel satisfactory to Owner; provided, however, that Owner and the other Owner Parties shall each have the right, at their option, to be represented therein by legal counsel of their own selection and at their own expense. In the event of failure by the Contractor to fully perform in accordance with this Indemnification paragraph, the Owner Parties, at their option, and without relieving Contractor of its obligations hereunder, may so perform, but all costs and expenses so incurred by the Owner Parties in that event shall be reimbursed by Contractor to such Owner Parties, together with interest on the same from the date any such expense was paid by such Owner Parties until reimbursed by Contractor, at the rate of interest provided to be paid an judgments under the laws of the State of Texas.

§ 3.18.5 TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR WAIVES ALL CLAIMS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO, USE OR DESTRUCTION OF TANGIBLE PROPERTY AGAINST OWNER AND ALL OWNER PARTIES ARISING IN CONNECTION WITH THIS AGREEMENT, ITS PERFORMANCE OR INTERPRETATION OR WITH RESPECT TO THE PROJECT OR WORK THE AGREEMENT REQUIRES REGARDLESS OF WHETHER ANY SUCH CLAIMS ARE CAUSED, OR ARE ALLEGED TO BE CAUSED, BY ANY NEGLIGENCE, NEGLIGENT MISREPRESENTATION, BREACH OF CONTRACT OR BREACH OF ANY OTHER DUTY OR OBLIGATION OF OWNER OR ANY OWNER PARTIES.

§ 3.19 DELIVERY OF DOCUMENTS*

Contractor shall furnish Owner with such documents, instruments and certificates as may reasonably be required by Owner, PM or Architect with respect to the construction of the Project and the payment of the costs thereof. Without limiting the generality of the foregoing, Contractor shall furnish:

- .1 a breakdown of the cost of each category of the Work included in the construction of the Project certified by Contractor to be true and complete in the form of a cost certificate;
- .2 an projected disbursement schedule in form and content acceptable to Owner setting forth the dates on which Contractor expects to request payment and specifying the portions of the Work, materials and other costs to be covered by such requests for payment ("**Disbursement Schedule**"). Such Disbursement Schedule is a projection provided for Owner's convenience only. Construction Manager does not guarantee or warrant that it will strictly adhere to such Disbursement Schedule;
- .3 the site development and construction drawings approved by all applicable governmental authorities (bearing stamps or other evidence of such government authorities' approval) issued to Contractor;

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- .4 for each trade or division of the Work, under the direction of the Contractor, a complete and accurate record of all changes or deviations from the Contract Documents. The Contractor shall prepare or cause to be prepared drawings certifying the as-built conditions of the entire Work and specifically defining the variations, if any, from requirements of the Contract Documents (referred to herein as the "**As-Built Drawings**"). All such changes shall be neatly and correctly shown on the drawings affected, or in the specifications, with appropriate supplementary notes. The record set of prints of Drawings, Shop Drawings and Specifications shall be kept at the site for inspection of Architect, PM and Owner. The Contractor's As-Built, along with such other Drawings, Shop Drawings and Specifications kept by the Contractor at the site, shall be delivered to Owner in good condition at or before final completion and as a condition precedent to final payment.
- .5 certificates that the Work has, to date, been constructed in accordance with the Contract Documents, and
- .6 temporary and final certificates of occupancy, as a condition precedent to final payment.

*As-builts are to be delivered at completion in both hard copy and CADD format.

§ 3.20 INSPECTIONS

Contractor shall use diligent efforts to cause all necessary governmental inspections and approvals of the Work to be performed on a timely basis. No inspection performed or failed to be performed by Owner, PM or Architect shall constitute a waiver of any of Contractor's obligations hereunder or be construed as an approval or acceptance of the Work or any part thereof.

§ 3.21 SAFETY

Contractor shall take reasonable precautions to prevent damage, injury or loss to (1) all persons involved with the Work and other persons who may be affected by the Work, (2) all the Work and all materials and equipment to be incorporated therein, including those in storage on or off site under the care, custody or control of Contractor or any Subcontractor, Sub-subcontractor or supplier, and (3) the Owner's personal and real property and other property at the Work site or adjacent thereto, including without limitation, fixtures, carpets and other related items. Contractor shall at all times take such precautions as may be reasonably necessary to shore, brace, secure and protect the Work. Contractor shall further post necessary danger signs and other warnings against hazards, promulgate and enforce safety codes and rules. Contractor shall particularly be responsible for compliance with all applicable state and federal safety laws, ordinances, rules, regulations and lawful orders of all governmental authorities and other persons or entities having jurisdiction which pertain to the Work.

§ 3.22 MATERIALS

Any material specified by reference to the number, symbol or title of a specific standard such as that of the American Society for Testing Materials ("ASTM"), a product or commercial standard, federal specification or other similar standards, shall comply with the requirements of the dated revisions stated in the Specifications, or where the Specifications contain no revision date, shall unless otherwise specified comply with the requirements of the latest revisions thereof and any supplement or amendment thereto, in effect on the date of Owner's receipt of the GMP. The standards referred to, except as specifically modified in the Specifications, shall have the same force as if they were printed verbatim within the Specifications.

§ 3.23 MANUFACTURER'S INSTRUCTIONS

Where it is required in the Specifications that materials, products, processes, equipment or the like be installed or applied in accord with manufacturer's instructions, directions or specifications or words to this effect, it shall be construed to mean that said application or installation shall be in strict accord with current printed instructions furnished by the manufacturer of the material concerned for use under conditions similar to those at the site.

§ 3.24 MONTHLY REPORTS*

The Contractor shall perform the Work in general accordance with the most recent schedules submitted to and approved by the Owner, PM and Architect. On or before the first day of each calendar month, the Contractor shall provide a written monthly report in PDF format to each of the Owner, PM and the Architect on the progress of the entire Work (the "Monthly Report"), which includes a narrative noting major activities (both those in progress and those completed) during the preceding month, as well as those activities planned for the following month. An XER file

of the latest progress schedule, as compared to the baseline schedule, shall be included in the report. Delays and disruptions incurred during the preceding month shall be noted in such Monthly Report, along with the Contractor's proposal for making up any lost time to ensure that the Work is satisfactorily completed within the Contract Time (as defined in Section 8.1.1). Each Monthly Report shall include a Change Order log, an updated construction schedule (electronic with hard copies in the computer application format), the progress of pending decisions with impacts on the construction schedule, a Request for Information ("RFI") log, a submittal log, project progress photos, and a log of accidents and other incidents involving the safety of persons on or about the Project site. Owner's obligation to release the progress payment for any given month shall be conditioned upon Owner's receipt of a complete and accurate Monthly Report for such previous month. On or before the first day of each calendar quarter, the Contractor shall provide the Owner with a detailed accounting ledger indicating amounts actually paid by Contractor pursuant to the previous calendar quarter's Applications for Payment and accounting for any underpayment or overpayment by Owner on the previous calendar quarter's Progress Payments (the "**Quarterly Accounting Report**"). The Contractor shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Contractor shall identify variances between actual and estimated costs and report the variances to the Owner and Architect in each Quarterly Accounting Report.

*Master schedule is to be updated monthly and included in Contractor's Monthly Report. Monthly report is to include status of any LEED reports required from Contractor.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

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

§ 4.1.2 Omitted

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

§ 4.1.4 Except as expressly provided herein, the Contractor shall not be relieved of Contractor's obligation to perform the Work in strict accordance with the Construction Documents and Contract Documents by the duties, responsibilities or activities of the PM or Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate for Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, 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 Owner, PM and Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner, PM and Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

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

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reimburse the Owner for compensation paid to the Architect for additional site visits made necessary by the fault, neglect or excessive requests of the Contractor.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

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

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

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

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

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

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

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

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

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

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

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

§ 4.2.15 Notwithstanding any other provision of this Agreement to the contrary, the Architect (or such other design professional designated by the Owner) shall not have the authority to order or approve any material deviation from the Contract Documents, whether or not such deviation affects the Contract Sum or other Substantial Completion Date (as defined herein). In the event any such deviation is sought, prior written approval from Owner must be obtained.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

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

§ 5.2.1 All subcontractors shall be procured in accordance with Texas Government Code Chapter 2269, and the requirements of this Contract. The Contractor shall be fully responsible for the performance of its subcontractors, including those recommended or approved by the Owner.

(Paragraphs deleted)

§ 5.3 SUBCONTRACTUAL RELATIONS

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

§ 5.3.2 Contractor shall receive, review and approve all requests for payment from Subcontractors and material suppliers performing work and providing materials in the construction of the Project before submitting such requests for payment to Owner, PM or Architect, and Contractor shall pay such Subcontractors and material suppliers within 10 days after receipt of payment from Owner except only for any amounts that Contractor is entitled to retain for retention or for incomplete or unsatisfactory Work or other claims under a Subcontract or purchase order.

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§ 5.3.3 Contractor shall furnish the Owner or PM with copies of all executed subcontracts and with a list of all the Subcontractors and major suppliers on the Project. Each subcontract or supply agreement shall contain provisions that:

- .1 require that the Contract forms a part of such Subcontract to the extent applicable to the Work of the Subcontractor;
- .2 require that the Work performed pursuant to such subcontract be performed in accordance with the requirements of the Contract Documents (both express requirements and those that are reasonably inferable from the Contract Documents);
- .3 require submission of Applications for Payment in a form reasonably approved by Owner, together with a reasonably detailed schedule of a values and other supporting documentation required by Owner;
- .4 require each Subcontractor and supplier to maintain insurance coverage as provided in the subcontract or other applicable agreement and to file certificates of such coverage with Contractor;
- .5 require each Subcontractor and supplier to furnish to Contractor in a timely fashion all information necessary for the preparation and submission of the Monthly Reports and Quarterly Reports required herein; and
- .6 require that each Subcontractor and supplier continue to perform under its subcontract if the Contract is terminated for cause and if Owner takes an assignment of the subcontract or supply agreement and requests the Subcontractor or supplier to continue such performance.

§ 5.3.4 Contractor shall require Subcontractors of any tier and suppliers to submit a payment application schedule of values to the Owner and PM for the Owner's approval before the Work commences. Such schedule of values must be consistent with the schedule of values required by Section 9.2 hereof and the Agreement, and must fairly estimate the percentage of the Subcontractor's, Sub-subcontractor's or supplier's work that will be completed (or materially delivered) each application date. The percentage of the total cost reflected in any tier of Subcontractors' and supplier's bid to be requested on each payment application date shall not exceed the percentage of the Work completed (or materials delivered) prior to the submission of such request for payment, less the percentage of the total cost reflected in prior applications for payment. The Contractor shall obtain the Owner's approval of such schedule of values before the Contractor submits the first Application for Payment to the Owner.

§ 5.3.5 The Owner, PM and Architect shall be obligated to pay or to insure the payment of any monies to subcontractors due to any non-payment to the Contractor or non-payment of subcontractors by the Contractor.

§ 5.3.6 The Contractor shall require any potential subcontractor to disclose to the Contractor any ownership interest or familial relationship between the Contractor, Architect, PM or any Owner Party and the potential subcontractor prior to entering into a subcontract. Contractor shall report to Owner and PM all such disclosures and the Owner shall have the right, in its sole discretion, to reject any such affiliated subcontractor.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract that accrue subsequent to Owner's exercise of this right of conditional assignment. Such assignment shall not constitute a waiver by Owner of its right against Contractor, because of defaults, delays, and defects for which a Subcontractor or supplier may also be liable. Contractor shall defend, indemnify and hold Owner harmless from any loss or damages caused by failure or refusal of any Subcontractor to comply with any provision of the Contract Documents.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 90 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension. Such assignment shall not constitute a waiver by Owner of its rights against Contractor, including, but not limited to, claims for defaults, delays or defects for which a Subcontractor or supplier may also be liable.

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

§ 5.4.4 Contractor will assign to the Owner all express and implied Subcontractor warranties at the earlier of the Owner's termination of the Contract or substantial completion of the entire Work.

§ 5.4.5 Owner, or its follow-on contractor as applicable, shall only be responsible for compensating Subcontractors and suppliers for Work performed or material furnished from and after the date on which the Owner gives written notice of its acceptance of the subcontract agreement assignment. Owner shall not be responsible for any Work performed or materials furnished by subcontractors prior to the date of Owner's written notice of acceptance.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

(Paragraph deleted)

§ 6.2 MUTUAL RESPONSIBILITY

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner, PM and Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

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

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

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

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. No change in the Contract Sum and/or Contract Time will be allowed for a change in the Work unless prior to performing the changed Work the Contractor has provided the Owner in writing with a proposal for any increase in the Contract Sum and/or increase in Contract Time caused by the change in Work. No response to a Request for Information to the Architect or a field directive from the Architect or Owner shall be recognized as having any impact upon the Contract Sum or the Contract Time, and Contractor shall have no Claim therefore, unless Contractor shall, within 30 days of receipt (or otherwise as soon as practicable) and prior to complying with such response or field directive submit a preliminary Change Proposal to the Owner.

§ 7.1.2 A Change Order or Allowance Expenditure Authorization (as hereinafter defined) shall be based upon agreement between the Owner and Contractor; a Construction Change Directive requires agreement by the Owner and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

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

§ 7.1.4 The Contractor, upon receipt of written notification by the Owner, PM or the Architect of a proposed item of change in the Work, shall prepare as soon as possible a proposal for the change ("Change Proposal") in such form or forms as directed by the Owner, PM or the Architect and in accordance with the following:

- .1 Each Change Proposal shall be numbered consecutively and shall include material's costs, labor costs, fees, overhead and profit. The Change Proposal shall specify all costs related to the proposed Change in the Work, including any disruption or impact on performance.
- .2 The Subcontractors' itemized accounting shall be included with the Change Proposal.
- .3 If a Change Proposal is returned to the Contractor for additional information or if the scope of the proposed change in the Work is modified by additions, deletions or other revisions, the Contractor shall revise the Change Proposal accordingly and resubmit the revised Change Proposal to the Owner, PM and Architect.
- .4 A revised Change Proposal shall bear the same Change Proposal number but shall indicate a sequential revision number.
- .5 If a Change Proposal will be funded by an Allowance within the Contract Sum, upon written approval of a Change Proposal by the Owner, the Contractor will prepare an Allowance Expenditure Authorization authorizing such change in the Work. If funds are required in excess of the Contract Sum, Contractor will prepare a Change Order authorizing such change in the Work on such form as directed by the Owner.
- .6 The Contractor shall request extensions of Contract Time due to change in the Work only at the time of submitting its Change Proposal. Contractor's failure to do so shall represent a waiver of any right to request a time extension.
- .7 The Contractor shall maintain such Allowance Expenditure Authorization and Change Order log (with Change Proposals) in such form as directed by Owner.

§ 7.1.5 Except as permitted in the Agreement with regard to amounts to which Owner is entitled to payment or offset arising from Contractor's breach or default hereunder, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order Modification. No course of conduct or dealings between the parties, nor express or implied acceptance of unauthorized alterations or additional to the Work, and no claim that the Owner has been unjustly enriched by any such alternations or additions to the Work whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim of any increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents. Contractor shall obtain the Owner's written authorization before proceeding with any change in the Work. The PM and Architect are not authorized to give instructions to the Contractor that will increase the cost or price of the Work to the Owner unless the PM or Architect has separate specific written authorization from Owner to do so. Prior to instituting Work requested by the PM or Architect that may result in an increase in the cost or price to Owner above the previously approved Contract Sum, Contractor must verify with the Owner that the PM and Architect is authorized to order the Work costing the additional amount. Any advice the PM or Architect gives the Contractor is not given as agent for or on behalf of Owner and shall in no way be construed as authorizing Contractor to perform extra Work.

§ 7.1.6 The total subcontractor mark-up for overhead, profit and fee for work performed by the subcontractor's own forces shall not exceed 10% of the cost of the Change in the Work. The total subcontractor mark-up for overhead, profit and fee for supervision of work performed by a sub-subcontractors' forces shall not exceed 5% of the cost of the Change in the Work. In no event shall total markup for overhead, profit and fee in any work which involves a subcontractor or one or more Sub-subcontractors, regardless of who performs the work, exceed 15% of the total cost of the Change in the Work.

The Contractor will not be allowed an overhead, profit and fee mark-up when changes in the Work are funded by one of the Allowances within the Contract Sum as any such markups are assumed to already be included in the Contractor's Fee.

§ 7.2 CHANGE ORDERS

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

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

§ 7.2.2 An Allowance Expenditure Authorization (herein so called) is a written instrument prepared by the Architect and signed by the Owner, PM, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The reallocation of money from/to an allowance or contingency to/from the Cost of Work

§ 7.2.3 Contractor stipulates that acceptance of a Change Order and Allowance Expenditure Authorization by the Contractor constitutes full accord and satisfaction for any and all Claims, whether direct or indirect, arising from the subject matter of the Change Order.

§ 7.2.4 In no event shall a single change, or the aggregate of all changes, result in the total costs, reimbursements and fees exceeding the Contract Sum or the Guaranteed Maximum Price unless agreed to in writing by Owner prior to the commencement of such modified or changed Work.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

§ 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, all subject to the limitations of Section 7.1.6:

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

§ 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 Contractor, the applicable unit prices shall be equitably adjusted.

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

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

§ 7.3.7 If the Contractor does not respond promptly nor object in writing to the Owner and Architect within 10 calendar days after receipt of the Construction Change Directive, such Directive shall be deemed accepted by the Contractor and shall be effective and recorded as a Change Order, or Allowance Expenditure Authorization if funded within the Contract Sum. If Contractor disagrees with the method for adjustment in the Contract Sum, and timely and properly objects, the method and the adjustment shall be determined on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, subject to such provisions for adjustments to the Contract Sum as provided in the Contract Documents and as further limited immediately below including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the 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 costs, to the extent such costs are actually incurred by the Contractor and are reasonable, subject to the limitations of Section 7.1.6:

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

The Contractor shall keep and present in such form as the Owner or PM may prescribe, an itemized account of the items listed above, together with appropriate supporting documentation.

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Owner will make an interim determination per 7.3.7 for purposes of monthly certification for payment for those costs. 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.

§ 7.3.10 When the Owner and Contractor agree to reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded preparation and execution of an appropriate Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor. Contractor shall carry out such written orders promptly. Minor changes in the Work shall not include changes that involve the material change to outward appearance of the structure, color schemes, floor plans, building materials or mechanical equipment.

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 first business day following the Contractor's written notice to proceed. The notice to proceed shall not be issued until Guaranteed Maximum Price Amendment has been signed by the Contractor and the Owner, and the Owner, PM and Architect have received and approved as to form all required payment and performance bonds and insurance as required by Article 11.

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§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8. The date of Final Completion is the date certified by the Architect in accordance with Paragraph 9.10. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur not more than 30 days after the date of Substantial Completion.

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

§ 8.2 PROGRESS AND COMPLETION

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

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

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

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor's critical path is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner, PM or Architect, or of an employee of them, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Owner or PM determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine. Contractor agrees to include a contingency of 20 business days, in addition to the required Weather Days, at the end of the schedule, and prior to Substantial Completion, to account for any possibly delays and will not be entitled to a delay claim or time extension unless said contingency is exceeded.

§ 8.3.1.1 If the Contractor becomes entitled to time extensions that would result in the Contract Time being extended, the Contractor will, upon the Owner's request, expeditiously develop and deliver to Owner, a recovery plan consistent with the requirements of the Agreement. In its subcontracts, Contractor will obtain commitments from its Subcontractors to the obligation to expeditiously develop recovery schedules and budgets, if needed. The Owner may either elect to institute the plan for accelerated performance or extend the Contract Time.

§ 8.3.1.2 The Owner's consideration of extension of the Contract Time by Change Order shall be based on the following:

- .1 Claims for extension of time must be made in writing on or before the due date of Contractor's Application for Payment covering the period in which the delay began. In the case of a continuing cause of delay, only one claim is necessary.
- .2 Claims for extension of time shall be stated in whole or half Calendar Days, as applicable. The actual date on which the delay(s) occurred must be stated in the claim.
- .3 In case of claims for extension of time because of unusual inclement weather, such extension of time will be granted only if such unusual inclement weather prevented the execution of Work on normal working days. Unusual inclement weather as used herein means unusually severe weather which is beyond the normal weather recorded and expected for the locality of the Work and/or the season or seasons of the year. Normal weather conditions shall be determined based upon information compiled from the records of the U.S. Weather Bureau Station at the location of the Work. If unusually inclement weather conditions are the basis for a claim for additional time, such claim shall be documented by data substantiating such conditions, the fact that the same could not have been reasonably anticipated, and the fact that they had an adverse effect on the scheduled construction.

- .4 Any claim for extension of time for strikes or lockouts shall be supported by a statement of facts concerning the strike, including the dates, the craft concerned, the reason for the strike, efforts to resolve the dispute, and the efforts of the Contractor to minimize the impact of the strike upon progress of the Work.
- .5 Any claim for extension of time for delays in transportation shall be supported by a statement of facts demonstrating that the delays are beyond the Contractor's control, and reciting the Contractor's efforts to overcome such delays.

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

§ 8.3.3 To the fullest extent permitted by law, this Section 8.3 precludes recovery of damages for delay, and the sole remedy shall be an extension of any delay to the critical path commensurate with the delay.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. Subject to the provisions of Section 9.5.1, Owner shall have the right to withhold payment due Contractor hereunder to the extent allowed by Section 9.5.1 or as otherwise required by applicable law. However, Owner shall not be entitled to withhold more than the sum of (a) the amount that Owner reasonably estimates is necessary to cure any such default or failure of performance by Contractor, and (b) the amount of damages incurred by Owner as a result of such default or failure of performance by Contractor, subject to any limitation or waiver of damages or costs set forth herein.

§ 9.2 SCHEDULE OF VALUES

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Owner, PM and Architect, before the first Application for Payment, a schedule of values fairly allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner, PM or Architect may require. The schedule of values shall be developed in such detail as the Owner may reasonably require. Once approved by the Owner and updated for changes in the Work, the schedule of values shall be used only as a basis for reviewing the Contractor's Applications for Payment and is not to be taken as evidence of market or other value. The schedule of values and any modifications or amendments thereto shall not overvalue early job activities. Contractor's Fee and general conditions costs shall be set out as separate line items. The schedule of values shall follow the trade divisions of the Specifications so far as practicable. Any modifications or amendments thereto after execution of the Guaranteed Maximum Price Amendment and completion of the "buy out" process must be approved by the Owner, which approval will not be unreasonably withheld. Contractor shall revise its original schedule of values or cost breakdown from time to time at the reasonable request of the Owner or as circumstances otherwise may require. Such schedule of values and any supplements or amendments thereto shall be subject to the prior written approval of Owner, PM and Architect, which approval will not be unreasonably withheld. Unless otherwise agreed by the Owner, in writing, the schedule of values shall be on an AIA Document G703 (most recent edition) or such other form as may be required or approved, in writing, by the Owner and the first schedule of values submitted shall be accompanied by such other information as the Owner may reasonably require to substantiate its accuracy including, if applicable, a detailed breakdown of that portion of the Cost of the Work to be performed by the Contractor using its own force .

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 Procedures and requirements for payments under the Contract Documents are provided in Article 3 of the Modified A133-2009 Agreement. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

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

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Without limiting the foregoing, the following conditions shall be met for all materials and equipment stored off the site, for which the Contractor is requesting payment:

- .1 The location must be agreed to, in writing, by the Owner and Surety.
- .2 The location must be a bonded warehouse.
- .3 The Contractor's Surety must agree, in writing, to the amounts included in each Application for Payment.
- .4 The Contractor must bear the cost of the Owner's and Architect's expenses related to visiting the off-site storage area and reviewing the stored contents. Contractor acknowledges that Architect's time is an additional service and shall compensate Architect directly for same.
- .5 Payment shall not include any charges for overhead or profit on stored materials.
- .6 Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance (naming the Owner as insured and naming the specific materials or equipment stored and their location) and transportation to the site for those materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment until the materials or equipment are delivered to Owner's site. Failure to follow these procedures shall result in nonpayment for storage of or insurance on stored materials and equipment. Failure to follow these procedures shall also result in nonpayment of materials and equipment until said materials and equipment are incorporated into the Work.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. **CONTRACTOR SHALL INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY THE CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.**

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 See Article 7 of the Modified A133-2009 Agreement.

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

requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.4.3 The issuance of a Certificate for Payment shall constitute a recommendation to the Owner regarding the amount to be paid. This recommendation is not binding on the Owner if Owner knows of other reasons under the Contract Documents why payment should be withheld.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Owner may withhold payment in whole or in part, to the extent reasonably necessary to protect the Owner for any reason permitted by the Contract Documents for any loss for which the Contractor is responsible, including, without limitation, loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied, proper materials not furnished, clean-up not performed;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment, transportation or shipping costs, taxes, fees or other obligations properly incurred in connection with the Work;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 failure to carry out the Work in accordance with the Contract Documents;
- .8 with respect to the final request for payment, failure to deliver all close-out documents required by the Contract Documents, including As-Builts or Record Drawings, written guarantees or warranties, operating instructions and maintenance manuals when requested, but in any event prior to the earlier of (a) one month after the issuance of the certificate of occupancy, or (b) submitting the Application for Payment for the final payment;
9. failure to obtain the approvals (including the release of applicable bonds), permits, certificates of occupancies required by any authority having jurisdiction;
10. failure to provide Owner with a revised construction schedule and recovery plan acceptable to Owner in accordance with the Agreement to address how the Contractor intends to timely achieve the Substantial Completion Date;
11. failure to timely provide Owner with accurate and complete Monthly Reports and Quarterly Reports, Project photographs and/or videotape and all of the other items required to be included in each Monthly Report or Quarterly Report; or
12. failure to provide Owner with accurate and complete evidence that Contractor and any Contractor-Related Person currently performing any portion of the Work or providing materials to the Project is carrying the insurance required by their respective agreements.

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

§ 9.5.3 If the Owner is entitled to withhold payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.5.4 If Contractor disputes any determination by Owner with regard to all or any part of an Application for Payment or a Certificate of Payment, Contractor shall nevertheless expeditiously continue to prosecute the Work but shall be entitled to make a Claim as provided in Article 15.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 Omitted

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

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Should Contractor neglect or refuse to cause to be paid when due any undisputed bill or charge legitimately incurred by it, Owner shall have the right, but not the obligation, to pay the bill directly, and Contractor shall immediately reimburse Owner for same. If Contractor does not reimburse Owner, Owner may offset the amount of the unpaid, undisputed bill against amounts owed by Owner to Contractor hereunder. Owner shall have the further right to pay such unpaid, undisputed bills due to any Subcontractor or supplier by joint check payable to Contractor and each such Subcontractor, Sub-subcontractor or supplier.

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

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

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 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 Contractor shall pay promptly when due all lawful demands of Subcontractors, suppliers, laborers, workmen, mechanics, materialmen, and persons who furnish labor, materials, machinery or parts thereof, equipment, power tools, or any other supplies whatsoever for debts incurred in the furtherance of the performance of this Contract, and (provided Owner has paid Contractor in accordance with the Contract Documents) shall indemnify and save Owner harmless from all claims growing out of such demands. Upon request by Owner, PM or Architect, Contractor shall furnish satisfactory evidence that all such obligations have been paid, discharged, bonded around or waived or that such obligations relate to or arise outstanding payments due Contractor. In the event Contractor fails to do so, Owner may, at its election, after having served written notice on Contractor, either pay unpaid bills of which Owner has written notice or withhold from Contractor's unpaid compensation a sum of money equal to the claimed amount. When satisfactory evidence has been received by Owner that all such liabilities have been fully discharged, waived, release or bonded around, Owner shall resume payment in accordance with the terms of the Agreement. In no event shall the provisions of this Section be construed to impose any obligation upon the Owner to either Contractor or its surety. The provisions of this Section shall be deemed to be in addition to the provisions of state law relating to the matters dealt with therein, and in no event shall they be deemed to alter, amend, or change the same, nor as an attempt to do so.

§ 9.7 FAILURE OF PAYMENT

§ 9.7.1 Subject to Article 7 of the Modified A133-2009 Agreement, if the Architect does not timely issue a Certificate for Payment or if the Owner does not timely pay the Contractor after the date established in the Contract Documents the amount certified by the Architect for payment, subject to Owner's right to withhold payment as set out in Section 9.5.1 above, or awarded by binding dispute resolution, then the Contractor may give written notice to the Owner, PM and Architect, and Owner shall have fourteen (14) business days after receipt of such notice to provide or obtain a Certificate for Payment. If Owner fails to provide or obtain the Certificate for Payment suspend the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to: (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 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; provided, however, as a condition precedent to Substantial Completion, the Owner has received a temporary certificates of occupancy and any other permits, approvals, license, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project (or if the same has not been delivered for reasons not the fault or responsibility of Contractor, nevertheless all Contractor's obligations necessary to the issuance of such certificates, permits, approvals, or licenses will have been performed). Without limiting the foregoing, Substantial Completion shall not occur until the Project has the appearance of completion in accordance with the Contract Documents, all systems, equipment, and components are working properly, except for minor adjustment, and any corrective or completion work required for final completion is minor in nature.

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

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

If, in Owner's, Architect's or PM's opinion, the Project is not sufficiently complete to warrant a substantial completion inspection, or if the list of items included in the Contractor's punch list is excessive for this type of project, the Owner, Architect or PM may terminate the inspection until such time as either deem the project ready for inspection.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, upon request by the Owner, the Contractor will prepare and execute a Certificate of Substantial Completion that shall set out the agreed upon date of Substantial Completion and the responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the punch list accompanying the Certificate not exceeding 30 days from the date of Substantial Completion. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion if a different date is set out in the Certificate of Substantial Completion and if the Owner agrees to the different date pursuant to Section 9.8.5.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner for its acceptance and to the PM and Architect for the Architect's Certificate, if requested by Owner.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided

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the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Owner, PM and Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. Contractor agrees that the Owner may place and install as much equipment and furnishings as is possible before completion or partial completion of portions of the Work.

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

§ 9.9.3 Unless otherwise agreed upon, partial occupancy, installation 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.

§ 9.9.4 In the event that Owner takes partial occupancy or installs furnishings and equipment prior to Substantial Completion of the Project, Owner shall request Contractor to obtain an endorsement to Contractor's Builder's Risk Policy to provide extended coverage for partial occupancy if Contractor's Builder's Risk Coverage required by Article 11 would not otherwise provide such coverage.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner, PM and Architect will promptly make such inspection and, when the Owner finds the Work acceptable under the Contract Documents and the Contract fully performed, Owner will make the final payment as provided by the Contract Documents. All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Owner as part of the final Application for Payment. The final payment will not be made by the Owner until all warranties and guarantees have been received and accepted by the Owner. Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner, PM and Architect, in addition to other information required to achieve Final Completion: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) such documentation and assignments with regard to warranties as required by Section 3.5.1, Section 5.4.4 or otherwise in the Contract Documents; (6) such drawings and record documents as required by Section 3.19 or as otherwise required by the Contract Documents; (7) such operations and maintenance manuals, records, instructions, and data, as required by the Contract Documents; (8) keys, access cards, and any other items for access to and security of the premises; (9) such other close-out submittals or documentation required by the Contract Documents.

§ 9.10.3 Omitted

§ 9.10.4 The making of final payment shall not constitute a waiver of Claims by the
(Paragraphs deleted)
Owner.

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

§ 9.10.6 Except as otherwise provided in the Agreement, records of reimbursable expenses and costs incurred by the Contractor and for which payment is sought or received from Owner for Work performed or to be performed hereunder shall be made available to Owner for its reasonable review and examination. Such records shall be preserved by the Contractor and made available to the Owner for a period of at least 3 years after final completion of the Work.

§ 9.10.7 Upon satisfaction of these conditions, final payment is to be made after 31 days have elapsed since final completion without Owner or Contractor having received notice of claim of a Subcontractor or other person relating to the Work of non-payment for the Work performed or labor or materials furnished by such person; provided, however, if the Contractor has provided the Owner with (a) consent of surety, if requested by Owner, and (b) security legally sufficient to hold Owner and its property harmless from such claim, the Owner shall not withhold final payment on the basis of such claim. Final payment shall not be deemed a waiver by Owner of defects in construction or performance of the Work by Contractor or of any other breach of this Contract by Contractor.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

(Paragraphs deleted)

§ 10.1.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract including, without limitation, enforcement of Section 3.3.2 and compliance with all provisions of the "Manual of Accident Prevention in Construction." published by the Associated General Contractors of America, Inc., latest edition. Contractor will develop a Site Specific Safety Program and submit a written manual that defines the Site Specific Safety Program and how it will be implemented and managed.

§ 10.1.2 Contractor's employees and any Contractor-Related Person shall not perform any Work or services while under the influence of any amount of alcohol or controlled substance, or use, possess, distribute, or sell alcoholic beverages while on Owner's premises. No person shall use, possess, distribute, or sell illicit or non-prescribed controlled drugs or drug paraphernalia; misuse legitimate prescription drugs, or act in contravention of warnings on medication while performing the Work or on Owner's premises.

§ 10.1.3 Contractor shall comply with all applicable federal, state, and local drug and alcohol-related laws and regulations. Any and all weapons are banned from the Project site, whether or not the owner thereof has a permit.

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

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

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including all necessary and adequate fall protection, barriers and fencing, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures reasonably necessary to protect the building in which the improvements are being

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constructed, including interior areas, and any improvements therein. Any damage to such property or improvements caused by, through or under the Contractor shall be promptly repaired by the Contractor.

§ 10.2.4 When use or storage of hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall give the Owner, PM and Architect reasonable advance notice thereof and shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. No explosives or use of explosives is allowed on the project site.

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

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

§ 10.2.7 The Contractor shall not 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, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner.

§ 10.2.9 When all or a portion of the Work is suspended for any reason, the Contractor shall protect the Work, as reasonably necessary, from injury damage to persons or property.

§ 10.2.10 TEMPORARY FACILITIES

Contractor shall make temporary connections for all utilities necessary during construction and shall remove them after completion of Project. Contractor shall provide, at a location on the Project site approved by Architect, a suitable weather-tight field office with raised floors available for use by Contractor at all times. Contractor shall furnish such field office with electric lights, telephone and ample desk space for use by Contractor. Field office is to include a separate room/office for use by Architect, PM and Owner. Contractor shall provide and maintain sanitary facilities for workmen at the job in accordance with the laws of Texas and the code and ordinances of the City. Contractor shall completely remove such facilities when the Project is completed. In conjunction with, but not in lieu of the requirements of Section 10.2.3, the Contractor shall provide an appropriate fence around the entire construction area for the duration of the Project as a minimum safety separation. This fence shall be equipped with vehicular and pedestrian gates with locks. The Contractor shall maintain the construction fences and gates in a state of good repair at all times for the duration of the Project. Gates shall be kept locked at all times when the Contractor's or any Contractor-Related Persons are not on the site. Any conditions of the construction fence and/or gates which the Architect, PM or Owner deems hazardous will be corrected promptly; provided, however, the Owner, PM and Architect shall have no duty to monitor any such hazardous conditions, as such activity is the Contractor's duty. If such conditions are not corrected promptly upon written notice, the Owner may correct the hazardous conditions and the cost of the corrective action will be deducted from the Contractor's payment.

§ 10.2.11 Contractor's obligations under Section 10.2 shall continue until final completion of the Project, Owner has taken 100% occupancy and all of Contractor's temporary facilities have been removed..

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. The Contractor shall not and shall not permit any hazardous materials to be brought to the Work site or used in the Work, except with respect to any materials expressly required by the Contract Documents that could have hazardous qualities in their pre-installation state. The Contractor shall follow all manufacturers' safety requirements when using such materials.

If the Contractor encounters a pre-existing 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 Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. The term "hazardous materials" includes, without limitation, any flammables, explosive, radioactive materials, petroleum based materials exceeding applicable federal, state, or local regulatory limits, asbestos, toxic substances or related materials, including without limitation, substances defined as "hazardous wastes," "hazardous substances," "hazardous materials," "toxic substances" or "solid wastes" in the Comprehensive Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C.A. Section 9601 *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C.A. Section 2601, *et seq.*; and any other applicable laws statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, an amendments and revisions thereto. Contractor shall obtain from manufacturers and furnish to Owner Material Safety Data Sheets (OSHA Form 20) for all materials incorporated into the Project by the Contractor; provided, however, that providing such material shall in no way relieve Contractor of its duties under Section 10.3.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the pre-existing material or substance reported by the Contractor and, in the event such pre-existing material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, PM and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. When the pre-existing material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up. Notwithstanding the foregoing, in those instances in which Contractor had notice of or should reasonably have known of the presence of such materials through information reviewed by Contractor, Contractor shall not be entitled to a Claim for any delays, disruption or interference it encounters.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor and any Contractor-Related Person 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 an area affected by hazardous materials if in fact such material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity. Notwithstanding any provision of the Contract Documents to the contrary, any recovery from the Owner under this Section 10.3.3 and Section 10.3.6 hereof is limited to coverage available to Owner under Owner's Pollution Liability insurance, including any deductible required by such policy. The Owner shall purchase a Pollution Liability insurance policy for this Project with project-specific limits of \$2,000,000 each loss and a \$2,000,000 policy aggregate. Such policy shall be written on an occurrence basis and shall include contractual liability coverage. A certificate of insurance evidencing such coverage and copy of such policy shall be provided to Contractor prior to commencement of the Construction Phase. The Owner will maintain such Pollution Liability insurance until the Work is substantially complete. The policy will be endorsed to provide Contractor with at 30 days' notice of cancellation. **WAIVER: THE CONTRACTOR WAIVES ALL SUCH CLAIMS IN EXCESS OF SUCH LIMITATION, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, REGARDLESS OF WHETHER ANY SUCH CLAIMS, CAUSES OF ACTION, LOSS, DAMAGES, FEES OR EXPENSES THAT ARE THE SUBJECT OF SUCH TERMS ARE CAUSED, OR ARE ALLEGED TO BE CAUSED, BY ANY NEGLIGENCE, NEGLIGENT MISREPRESENTATION, BREACH OF CONTRACT OR BREACH OF ANY OTHER DUTY OR OBLIGATION OF OWNER, PM, ARCHITECT OR THEIR OFFICIALS, EMPLOYEES, AGENTS OR REPRESENTATIVES.**

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§ 10.3.4 The Contractor shall be responsible under this Section 10.3 for such hazardous materials or substances the Contractor or a Contractor-Related Person brings to the site. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 INDEMNITY

THE CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER PARTIES AGAINST:

- .1 ANY CLAIM AND FOR LOSS THE OWNER INCURS (1) FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE CONTRACTOR OR A CONTRACTOR-RELATED PERSON BRINGS TO THE SITE, OR (2) WHERE THE CONTRACTOR FAILS TO PERFORM ITS OBLIGATIONS UNDER 10.3.1 OR AS REQUIRED BY LAW OR REGULATION
- .2 REGARDLESS OF
 - (A) WHETHER LIABILITY WITHOUT FAULT OR STRICT LIABILITY IS IMPOSED UPON OR ALLEGED UPON CONTRACTOR OR AGAINST ANY OWNER PARTIES, AND
 - (B) THE SCOPE OF ANY PERSON'S INSURANCE AND ITS INDEPENDENT OF INSURANCE;
- .3 BUT WILL NOT BE ENFORCED TO THE FOLLOWING EXTENT ("EXCLUDED MATTERS"):
 - (A) OF OWNER'S PRIOR, MATERIAL BREACH OF AN ESSENTIAL TERM OF THIS CONTRACT; OR
 - (B) A LOSS IS CAUSED IN WHOLE OR IN PART BY THE WILLFUL MISCONDUCT OR NEGLIGENCE OF AN OWNER PARTY.

NOTWITHSTANDING THE FOREGOING LIMITATIONS ON INDEMNITY OBLIGATIONS, THE OBLIGATIONS OF THE CONTRACTOR WITH REGARD TO THOSE CLAIMS OR LOSSES ASSERTED AGAINST OR INCURRED BY AN OWNER PARTY DUE TO OR ARISING OUT OF (A) A FAILURE OR ALLEGED FAILURE BY THAT INDEMNIFIED PARTY TO SUPERVISE, MONITOR, OR CONTROL CONTRACTOR'S OR ANY SUBCONTRACTOR'S ACTIVITIES ON OR ABOUT THE SITE OR OTHERWISE IN RESPECT TO PERFORMANCE OF THE WORK, OR (B) A FAILURE OR ALLEGED FAILURE BY THAT OWNER PARTY TO ENFORCE THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT DOCUMENTS SHALL NOT BE REDUCED BY THE COMPARATIVE NEGLIGENCE OF THE OWNER PARTY ATTRIBUTABLE TO OR RESULTING FROM SUCH OWNER'S ALLEGED FAILURE TO SUPERVISE, MONITOR OR CONTROL ANY CONTRACTOR-RELATED PERSON OR ALLEGED FAILURE TO ENFORCE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT DOCUMENTS.

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

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7; provided the Contractor shall not be entitled to additional compensation or an extension of time if an emergency is caused by the negligence or breach of the Contract Documents or the failure of the Contractor's personnel to supervise adequately the Work of any Contractor-Related Parties.

§ 10.5 HAZARDOUS MATERIALS CERTIFICATION

The Contractor shall provide written certification that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by federal, state or local standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards; and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the section in the Project Manual related to Contract Closeout.

ARTICLE 11 INSURANCE AND BONDS

§ 11.0 Attached hereto as Exhibit A to the Modified A133-2009 Agreement are specifications for insurance and bonds to be obtained and maintained by the party identified in the Exhibit. The specifications are in addition to the requirements set out in this Article 11. In the event of any direct conflict between the specification in the Exhibit and the requirements set out in the below sections of Article 11, the specifications in Exhibit A to the Agreement control and amend and supersede the conflicting requirement set out in the below sections of Article 11. Commercial General Liability, Worker's Compensation, Automobile Liability and Excess/Umbrella insurance will be provided by or on behalf of all Subcontractors of any tier and suppliers. Contractor will maintain certificates and evidence of insurance from all Subcontractors of any tier and suppliers, enumerating, among other information, the waivers of subrogation in favor of and additional insured status of the Owner Parties (as herein defined), as required by this Agreement. Contractor will make such certificates and evidence of insurance available to Owner Parties upon request. The coverages and limits set forth in Exhibit to A are minimum requirements and not a determination as to all of the coverages and maximum limits that Contractor should carry. The failure of a party to demand full compliance by the other party with respect to the minimum coverages outlined in Exhibit to A will not constitute a waiver with respect to the other party's obligation to maintain such coverages.

The failure of Contractor or any Contractor-Related Parties to obtain and maintain the required insurance will constitute a material breach of, and default under, Contract Documents. If Contractor or any Contractor-Related Parties fail to remedy such breach within 5 days after notice from Owner, Owner may, in addition to any other remedy available to it, at the Owner's sole option, purchase such insurance, at the Contractor's expense. The Contractor will indemnify the Owner, its officers and employees against any Claims arising from the Contractor's failure to purchase and/or maintain the insurance coverages required by this Agreement.

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance in coverage types, amounts and features not less than that required by the insurance requirements in Contract Documents including, without limitation both Exhibit A of the Agreement and this Article 11, and as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Contractor-Related Person or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 and the Contract Documents shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability, auto and umbrella liability coverage required by the Contract Documents to include (1) the Owner Parties as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner Parties as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during arising after as to the Contractor's completed operations. All such liability policies carried and maintained by Contractor must be endorsed to be primary to any liability insurance policies carried by the additional insureds with respect to Contractor's operations hereunder. Waivers of subrogation shall be provided in favor of the additional insureds on general, auto, workers' compensation/employers, umbrella and all other liability policies carried and maintained by Contractor where allowed by law.

§ 11.1.5 If the Contractor fails to purchase and maintain, or require to be purchased and maintained, any insurance required under this Article 11 or the insurance requirements in the Agreement, Owner may, but shall not be obligated to, upon 5 days' written notice to the Contractor, purchase such insurance on behalf of the Contractor and shall be entitled to be reimbursed by the Contractor upon demand.

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

§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.3 PROPERTY INSURANCE

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

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, lightning, hurricane, hail, explosion, riot, civil commotion, smoke, damage caused by aircraft or land vehicles, damages to materials stored on or off site or in transit, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, increased cost of construction and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. Such property insurance shall not cover any tools, apparatus, machinery, scaffolding, hoists, forms,

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staging, shoring and similar items commonly referred to as construction equipment, which may be on the site and the capital value of which is not included in the Work, to the extent that such premiums are made part of the Contract Sum. The Contractor shall have adequately insured all such construction equipment. Any such policy obtained by the Contractor under this paragraph shall include a waiver of subrogation in accordance with the requirements of Section 11.3.7.

§ 11.3.1.2 Omitted

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

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

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

§ 11.3.2 BOILER AND MACHINERY INSURANCE

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

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused, except as set forth in Section 15.1.6 hereof.

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

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise. If, after final payment, Owner provides property insurance for the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Omitted

§ 11.3.7 WAIVERS OF RECOVERY AND SUBROGATION

THE OWNER AND CONTRACTOR (THE "RELEASING PARTIES") WAIVE ALL RIGHTS AGAINST THE FOLLOWING PERSONS (THE "RELEASED PERSONS"): (1) EACH OTHER AND ANY OF THEIR SUBCONTRACTORS OF ANY TIER, SUB-SUBCONTRACTORS, COMMISSIONERS, OFFICIALS, AGENTS AND OFFICERS, DIRECTORS AND EMPLOYEES, EACH OF THE OTHER, AND (2) THE ARCHITECT, ARCHITECT'S CONSULTANTS, SEPARATE CONTRACTORS DESCRIBED IN ARTICLE 6, IF ANY, AND ANY OF THEIR SUBCONTRACTORS OF ANY TIER, SUB-SUBCONTRACTORS, AGENTS AND EMPLOYEES, FOR LOSSES AND CLAIMS FOR DAMAGE TO THE WORK UNDER CONSTRUCTION, DAMAGE TO THE COMPLETED WORK, AND DAMAGE TO OR LOSS OF FIXTURES OR MATERIALS, EQUIPMENT OR OTHER PERSONAL PROPERTY TO THE EXTENT PAID BY

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PROPERTY INSURANCE OBTAINED PURSUANT TO THIS SECTION 11.3 OR OTHER PROPERTY INSURANCE APPLICABLE TO THE WORK, OR THAT WOULD HAVE BEEN COVERED BY INSURANCE IF THE RELEASING PARTY FAILS TO MAINTAIN THE PROPERTY COVERAGE REQUIRED OF IT BY THIS AGREEMENT EXCEPT SUCH RIGHTS AS THEY HAVE TO PROCEEDS OF SUCH INSURANCE HELD BY THE OWNER OR CONTRACTOR IN GOOD FAITH. IN THE EVENT OF PROPERTY DAMAGE POTENTIALLY COVERED BY A PARTY'S PROPERTY INSURANCE POLICY, SUCH PARTY SHALL SUBMIT A CLAIM WITH ITS PROPERTY INSURANCE CARRIER AND USE COMMERCIALY REASONABLE EFFORTS TO SECURE PAYMENT FROM SUCH CARRIER BEFORE PURSUING ANY CLAIM AGAINST THE OTHER PARTY. SUBJECT TO SECTION 11.3.1.3, COSTS NOT COVERED BECAUSE OF DEDUCTIBLES OR SELF-INSURED RETENTIONS SHALL BE "PAID BY PROPERTY INSURANCE" FOR PURPOSES OF THIS SECTION 11.3.7. THE OWNER OR CONTRACTOR, AS APPROPRIATE, SHALL REQUIRE OF THE ARCHITECT, ARCHITECT'S CONSULTANTS, SEPARATE CONTRACTORS DESCRIBED IN ARTICLE 6, IF ANY, AND THE SUBCONTRACTORS OF ANY TIER, SUB-SUBCONTRACTORS, AGENTS AND EMPLOYEES OF ANY OF THEM, BY APPROPRIATE AGREEMENTS, WRITTEN WHERE LEGALLY REQUIRED FOR VALIDITY, SIMILAR WAIVERS EACH IN FAVOR OF THE RELEASED PERSONS ENUMERATED HEREIN. THE POLICIES SHALL PROVIDE SUCH WAIVERS OF SUBROGATION BY ENDORSEMENT OR OTHERWISE. A WAIVER OF SUBROGATION SHALL BE EFFECTIVE AS TO A PERSON OR ENTITY EVEN THOUGH THAT PERSON OR ENTITY WOULD OTHERWISE HAVE A DUTY OF INDEMNIFICATION, CONTRACTUAL OR OTHERWISE, DID NOT PAY THE INSURANCE PREMIUM DIRECTLY OR INDIRECTLY, AND WHETHER OR NOT THE PERSON OR ENTITY HAD AN INSURABLE INTEREST IN THE PROPERTY DAMAGED. THE RELEASES IN THIS SECTION WILL APPLY EVEN IF THE LOSS IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE, NEGLIGENT MISREPRESENTATION, BREACH OF CONTRACT OR OTHER LEGAL DUTY OR STRICT LIABILITY OF ANY RELEASED PERSON. THE RELEASES IN THIS SECTION SURVIVES COMPLETION OF THE WORK AND COMPLETION, TERMINATION OR EXPIRATION OF THIS AGREEMENT.

§ 11.3.8 A loss insured under the property insurance shall be adjusted by the Contractor as fiduciary and made payable to the Contractor as fiduciary for the insureds, as their interests may appear. The Contractor shall pay Owner and Contractor-Related Parties their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner. Contractor shall bear and pay the portion of the loss falling within the deductible of the property insurance.

§ 11.3.9 If required in writing by a party in interest, the Contractor as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Contractor's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Contractor as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Contractor's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner requires the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. The performance bond shall also include an amount necessary to reimburse Owner its reasonable and necessary attorneys' and experts' fees and litigation costs incurred in claims arising under the performance bond, and liquidated damages arising under the Contract Documents. The payment bond shall be in the statutorily required amount and form and issued by an issuer acceptable to Owner. The payment bond shall not be on an AIA bond form or such other form as Owner may require at the time of contracting. Any person, firm or corporation executing a performance or payment bond upon the Contractor's Work under the Agreement, shall be deemed to have consented in advance to any changes in the Work made by order of the Owner; any such changes shall in no way alter or impair the obligations of such person, firm or corporation executing such a bond. The amount of the bonds shall be written to increase with Change Orders. Contractor shall obtain and file with Owner bond increase riders for any increases in the Contract Sum as may be necessary to effectuate coverage for increases in the Contract Sum. Issuer must be at least a Best's Key Rating Guide A/VII company and listed on the United States Department of the Treasury's List of Acceptable Sureties and Reinsurers (the "T" list). The payment bond shall meet the requirements of Section 53.201 et seq. of the Texas Property Code. The surety company shall provide, if requested, information on bonding capacity and other projects under coverage and shall provide proof to establish adequate financial capacity for this Project. Should the bond amount be in excess of ten percent (10%) of the

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surety company's capital and surplus, then the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company's capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that amount reinsured by a reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus. Contractor shall immediately notify the Owner and Architect in writing if there is any change in: the rating; insolvency or receivership in any State; bankruptcy; right to do business in the State; or status of Contractor's sureties at any time until Final Completion.

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

§ 11.4.3 All bonds shall be originals. The Contractor shall require the attorney-in-fact who executes the required Bonds on behalf of the Surety to affix thereto a certified and current copy of the power-of-attorney. The name, address and telephone number of a contact person for the bonding company shall be provided including, without limitation the same contact information for any claim.

§ 11.4.4 Bonds shall guarantee the faithful performance of all of the covenants, stipulations, and agreements of the Contract. Bond shall be signed by an agent, resident in the State of Texas. If at any time during the continuance of the Contract, the Owner determines that the Contractor is unable to complete the Work in accordance with the Contract Documents, any of the Contractor's bonds become insufficient, the surety becomes insolvent, or the surety's rating drops below the required level, then the Owner shall have the right to require from the Contractor additional and sufficient sureties or other security acceptable to the Owner, which the Contractor shall furnish to the satisfaction of the Owner, within ten (10) days after notice to do so. These contractual remedies are in addition to all remedies available by law. In default thereof, all payment or money due to the Contractor may be withheld until the Contractor provides additional surety or security.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

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

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

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Owner, PM or Architect or Work failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the PM's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. If prior to the date of Substantial Completion, the Contractor or Contractor-Related Person or anyone for whom they may be responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner.

§ 12.2.1.1 The Owner may make emergency repairs to the Work or take such other measures necessary under the circumstances, if the Contractor does not promptly respond to a notice of defect or non-conforming Work. Contractor shall be responsible to Owner for this cost if the reason for the repairs is attributable to the

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Contractor. If payments then or thereafter due to the Contractor are not sufficient to cover such costs, then the Contractor shall pay the difference to the Owner on demand.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. Written notice shall not be required if Contractor has actual notice. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. Nothing herein shall be construed to negate or limit Contractor's obligations set forth in Section 3.18 above, including without limitation Contractor's duties to defend and indemnify the Owner Parties. Nothing contained in this Section 12.2 is intended to limit or modify any obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.

§ 12.2.2.2 Any corrective Work performed under or pursuant Section 12.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2 shall be warranted to the same extent as the Work is warranted hereunder for the greater of the remainder of the applicable warranty period or 90 days from the date such corrective Work has been completed.

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

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

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

§ 12.2.6 Owner shall have the right to operate equipment before defects are corrected and warranties met and shall have the right operate rejected equipment until it is replaced without charge for depreciation, use or wear.

§ 12.2.7 Contractor shall replace, repair, or restore any parts of the Project or furniture, fixtures, equipment or other items placed therein (whether by Owner or any other party) that are injured or damaged by any such parts of the Work that do not conform to the requirements of the Construction Documents or the Contract Documents or by defects in the Work.

§ 12.2.8 The provisions of this Section 12.2 apply to Work done by Subcontractors of the Contractor as well as Work done directly by employees of the Contractor. The provision of this Section shall not apply to corrective work attributable solely to the acts or omissions of any separate contractor of Owner (unless Contractor is acting in such capacities). The cost to Contractor of performing any of its obligations under this Section 12.2.7 to the extent not covered by insurance shall be borne by Contractor.

§ 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, based on the difference in value between the installed work and that which is shown or specified in the drawings ("diminished value"). Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the State of Texas, and where applicable, of the United States of America. Exclusive venue for any proceeding, claim or dispute arising out of the Work, the Project or the Contract Documents or their interpretation shall be in a District Court in Hidalgo County, Texas.

§ 13.2 SUCCESSORS AND ASSIGNS

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

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

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the representative(s) designated in writing in the Contract Documents to receive notices, with copies where required; or if delivered at, or sent by registered or certified mail return receipt requested or by courier service with signed receipt providing proof of delivery to the representative(s) designated in writing in the Contract Documents to receive notices, with copies where required.

§ 13.4 RIGHTS AND REMEDIES

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

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

§ 13.5 TESTS AND INSPECTIONS

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

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Owner will, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the owner, PM and Architect of when and where tests and inspections are to be made so that the owner, PM and Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense. The Contractor also agrees that the cost of testing services required for the convenience of the Contractor in its scheduling and performance of the Work, and the cost of testing services

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related to remedial operations performed to correct deficiencies in the Work that are not the result of design deficiencies shall be borne by the Contractor.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the PM and Architect's services and expenses shall be at the Contractor's expense.

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

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

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

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at rate established in the Modified A133-209 Agreement.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the applicable legal requirements.

§ 13.8 COSTS AND FEES. If any action at law or in equity is necessary to enforce or interpret the terms of the Contract Documents, the prevailing party shall be entitled to reasonable attorneys' fees, expert witness fees, costs, and necessary disbursements in addition to any relief to which it may be entitled.

§ 13.9 INTERPRETATION This Contract shall not be construed more or less favorable between the parties by reason of authorship or origin of language. Contractor agrees not to use the construction Documents in connection with any other construction that Contractor may be involved with. This provision shall survive the completion of the Work or the completion, termination or expiration of the Contract Documents.

§13.10 EQUAL OPPORTUNITY IN EMPLOYMENT

§ 13.10.1 The Contractor and the Contractor Related Persons shall comply with all laws prohibiting discrimination against any employee or applicant for employment because of race, religion, age, disability, sex, or national origin. The Contractor agrees to post in conspicuous places, available to employees and applicants, all legal notices setting forth the Contractors nondiscrimination policies and as required by law.

§ 13.10.2 The Contractor and the Contractor-Related Persons shall, in all solicitations or advertisements for employees placed by them or on their behalf, comply with all laws prohibiting discrimination against any employee or applicant for employment because of race, religion, age, disability, sex, or national origin and state that all qualified applications will receive consideration for employment without regard to race, religion, age, disability, sex, or national origin.

§ 13.9 JOB RECORDS

§ 13.9.1 Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll record, daily reports, diaries, logs, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, other financial data including, without limitation, the records described in Modified A133-2009 Agreement, Section 6.11, and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least five (5) years after the date of Final Completion of the Project. Within 10 days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, PM, Owner's auditors or experts, Architect or their respective representatives.

§ 13.9.2 Contractor shall also maintain, in accordance with the provisions of Section 13.9.1, the following: subcontract files, including proposals of successful and unsuccessful bidders, bid recaps and subcontractor payments: original estimates; estimating work sheets; general ledger entries detail cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner or PM to substantiate charges related to the Contract.

§ 13.9.3 Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may necessary for proper financial management under this Contract; the accounting and control system shall be satisfactory to the Owner and shall be subject to the provisions of Section 13.9.1.

§ 13.9.4 Contractor shall keep all Construction Documents related to the Project, subject to the provisions of Section 13.9.1, provided, however, Contractor shall not destroy said documents until Contractor has confirmed doing so with Owner.

§ 13.9.5 In the event that an audit by the Owner reveals any errors or overpayments by the Owner, then the Contractor shall refund to the Owner the full amount of such overpayment within thirty (30) days of such audit findings, or the Owner, at its option, reserves the right to deduct such amounts owed to the Owner from any payments due to the Contractor.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 90 consecutive days through no act or fault of the Contractor or any Contractor-Related Person performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons, subject to the requirements of Section 14.1.3 below:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 The Contractor is entitled to and has suspended performance in accordance with the Contract Documents.

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

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

§ 14.1.4 If the Work is stopped for a period of 90 consecutive days through no act or fault of the Contractor or any Contractor-Related Person performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner, PM and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

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

- .1 fails to diligently prosecute the Work to completion thereof in an efficient, timely, workmanlike, skillful and careful manner and in strict accordance with the provisions of the Contract Documents, including, but not limited to, refusing or failing repeatedly to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.
- .5 the Contractor becomes insolvent, or makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors;
- .6 the Contractor files or has filed against it a petition under any chapter or section of the United States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof, or shall be adjudged bankrupt or insolvent in any legal proceeding;
- .7 a receiver or trustee is appointed for all or a significant portion of the assets of Contractor;
- .8 the Contractor actually or constructively abandons, or puts Owner on actual or constructive notice that it intends to abandon, the Project;
- .9 engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the law prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or
- .10 the progress of construction is such that Owner reasonably believes that the Contractor shall not be able to achieve Substantial Completion within 60 days following the date of Substantial Completion required by the Agreement. Without limiting the foregoing, Owner shall be deemed to have a reasonable belief that the Contractor shall not be able to achieve Substantial Completion by the date required pursuant to the preceding sentence if the Contractor shall fail to achieve a critical milestone within 60 days of the date for such critical milestone set forth in the critical path schedule.

§ 14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

Notwithstanding the foregoing, if Owner reasonably determines that Contractor's acts or omissions pose an immediate and substantial threat or danger of injury to persons or damage to the Work or other property, Owner may, without prejudice to any other rights or remedies granted by Contract Documents or by law, immediately suspend Contractor's performance of the Work, take immediate possession of the Project site, take such further action reasonably necessary to prevent, mitigate against, remove, or repair such threat or damage, and deduct such costs and expenses it reasonably incurs from any sums due and owing to the Contractor, or, in the absence thereof, to recover such costs and expenses from the Contractor.

It is recognized that if Contractor is adjudged a bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, such could impair or frustrate Contractor's performance of this Agreement. Accordingly, it is agreed that upon the occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within 10 days of delivery of the request shall entitle Owner to terminate this Agreement and to the accompanying rights set forth above. In all events pending receipt of adequate assurance of performance and actual performance in accordance therewith, Owner shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis the cost of which will be back charged against the Contract Sum hereof.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 As required by Texas Government Code Chapter 2253, if a Performance Bond has been furnished and the Contractor is declared by the Owner to be in default under the Contract Documents, then the Surety shall promptly perform the Work, in full accordance with the plans, specifications and Contract Documents. Unless otherwise agreed in writing between the Surety and the Owner, the Surety shall complete the Work by the Surety entering into a

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Contract acceptable to Owner, with a Contractor acceptable to Owner, and shall obtain new Payment and Performance Bonds as required by law.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

§ 14.3.2 Subject to Section 2.3.3.5.2 of the Agreement, the Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

Furthermore, if this Contract is a multi-year contract funded through Owner's current general funds that are not bond funds, then the Owner's Commissioners' Court has the right to not appropriate adequate monies for the next fiscal year and to terminate this Contract at the end of each fiscal year during the term of the Contract, without the Owner incurring any further liability to Contractor as a result of such termination.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall promptly and expeditiously:

- .1 cease operations as directed by the Owner in the notice, including the prompt removal of its employees and equipment from the site, except to the extent necessary to carry out its remaining duties and obligations hereunder;
- .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, assign to Owner or terminate all existing subcontracts and purchase orders as directed by Owner and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be paid for Work properly executed and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed and fee earned on such Work in accordance with the Contract Documents prior to the effective date of termination, as measured by the Contract Sum, and the direct, actual, and unavoidable (by exercising reasonable care) costs incurred by Contractor in terminating the Work, including but not limited to, demobilization costs, the cost of canceling subcontracts and purchase orders not assumed by the Owner and other such out-of-pocket costs incurred by Contractor to third parties with respect to termination of this Agreement. Owner shall not be responsible for any lost profits or reimbursement for overhead on the Work not performed. The amounts owing by Owner to Contractor pursuant to this Section shall be as specified in Contractor's final Application for Payment and approved by Owner. In addition to payment for the Work performed prior to the effective date of termination and for any Work performed following the date of termination pursuant to Owner's written request, Contractor shall be entitled to payment for materials and equipment (whether specifically fabricated or otherwise) delivered and stored in accordance with the Owner's instructions, as well as restocking fees incurred for materials or equipment returned.

§ 14.4.4 Upon determination by a Court of competent jurisdiction that termination of the Contractor pursuant to Section 14.2 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.4, and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Section 14.4.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

For purposes of Section 15.1, a "**Claim**" is a demand or assertion by a party, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question that a party may have or assert arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party, and against the Owner to the PM and Architect. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Neither party shall waive a Claim against the other solely by virtue of the fact that notice of such Claim was not provided in strict accordance with a notice deadline set forth in the Contract Documents; provided, however, each party shall provide the other with reasonable notice of any Claim that they may have against the other. No failure of Owner to give a notice timely shall result in a waiver or forfeiture of rights.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

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

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.4.1 Except as otherwise provided in the Agreement, in calculating the amount of any Claim recoverable by the Contractor, the following standards will apply:

- .1 No indirect or consequential damages will be allowed.
- .2 No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated losses of labor efficiency, or on a comparison of planned man-loading to actual man-loading, or any other analysis that is used to shown damages indirectly.
- .3 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong, Contractor's Fee applicable thereto, and interest, if applicable..
- .4 Except to the extent the Contract Documents expressly provide otherwise, no damages will be allowed for home office overhead or other indirect home office charges or any Eichlay formula calculation.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, prevented the execution of major items of work on normal working days, and impacted the critical path. "Adverse weather conditions" means severe weather which is beyond the normal weather recorded and expected for the locality and/or the season or seasons of the year. In the case of rain as the basis for an adverse weather conditions claim, rainfall needs to exceed one-half (0.5) inch during a normal working day. Rain days do not extend to subsequent days as "dry-out" days; they are limited to the actual date of the rainfall.

§ 15.1.5.3 Claims for additional time based upon causes other than adverse weather will not be granted unless (a) the event upon which the claim is predicated was not within the control of or caused by the Contractor or any Contractor-Related Party; and (b) the construction schedule cannot be revised so as to reasonably accommodate and absorb the event into the construction schedule within the remaining Contract Time.

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§ 15.1.5.4 No extension of time shall be made to the Contractor because of hindrances or delays from any cause that is the fault of Contractor or any Contractor-Related Person. Claims for extension of time may only be considered because of abnormal weather delays, or other hindrances or delays that are the fault of Owner, and the construction schedule cannot be revised so as to reasonably accommodate and absorb the event into the construction schedule within the remaining Contract Time. Commissioners Court approval shall be required for any extension of the Contract Time. No damage shall be paid for any delays. Contractor shall only be entitled to time extensions per the terms of the Contract Documents.

§ 15.1.5.5 Neither Saturdays nor Sundays shall be included in the Claim for additional time unless the Contractor furnishes to owner, PM and Architect proof that (a) Contractor's current Work schedule on file with the PM and Architect indicated that Contractor was scheduled to work on each Saturday or Sunday for which an extension is sought and that Contractor had, in fact, been complying with such construction schedule; or (b) Contractor had scheduled critical work to be performed on such Saturday or Sunday for which an extension of the Contract Time is sought and that such Work was delayed or had to be aborted because of adverse weather or other cause meeting the requirements in this Section 15.1.5.

§ 15.1.5.6 In the event the progress of the Work is delayed or interrupted by occurrences or events that entitle Contractor to request an extension of time pursuant to the terms of the Contract Documents, then the scheduled Substantial Completion date may not exceed a period of time equal to the length of such delay. Except to the extent a delay is expressly permitted elsewhere in the Contract Documents, an extension will only be considered provided that (a) within 7 days after the Contractor discovers such delay, Contractor delivers to Owner, PM and Architect a written notice of such delay stating the nature and cause thereof and (b) within 7 days following the expiration of any such delay Contractor delivers to Owner, PM and Architect a written request for extension of the scheduled Contract Time by reason of such delay, with such additional information required, and such request is approved by Commissioners' Court, which approval shall not be unreasonably withheld. No extension of the scheduled substantial completion date (or right on the party of Contractor to secure any such extension) pursuant to this Section shall prejudice any right Owner may have under this Contract, or otherwise, to terminate this Agreement as permitted by the Contract.

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor waives all Claims against the Owner for consequential damages arising out of or relating to this Contract.

(Paragraphs deleted)

Nothing contained in this Section shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the Contract Documents.

§ 15.2 Omitted

(Paragraphs deleted)

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be submitted to non-binding mediation.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall not be administered by the American Arbitration Association. A request for mediation shall be made in writing, delivered to the other party to the Contract..

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Hidalgo County, Texas. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

(Paragraphs deleted)

Additions and Deletions Report for **AIA® Document A201™ – 2007**

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 12:43:47 on 03/23/2018.

PAGE 1

Hidalgo County Courthouse

...

County of Hidalgo, Texas
Hidalgo County Purchasing Department
2812 S. Business Hwy 281
Edinburg, Texas 78539

THE CONSTRUCTION MANAGER:
(Name, legal status and address)
Morganti Texas, Inc.
10590 Westoffice Drive, Suite 150
Houston, Texas 77042

The Construction Manager is referred to in the Modified AIA Document A201-2007 as the "**Contractor.**"

THE PROGRAM MANAGER:
(Name, legal status and address)
Jacobs Project Management Com.
911 Central Parkway North, Suite 425
San Antonio, Texas 78232

The Program Manager is referred to in the Modified AIA Document A201-2007 as the "**Program Manager**" or "**PM.**"

THE ARCHITECT:
(Name, legal status and address)
HDR Architecture, Inc.
8750 N. Central Expressway, Suite 100
Dallas, Texas 75231

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The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract

Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements. Section 1.1 of the Modified A133-2009 Agreement of which these General Terms and Conditions are a part.

...

The Contract Documents form the Contract for ~~Construction~~ Construction (herein, "Contract" or "Contract Documents"). The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, ~~(2) between the Owner and a Subcontractor or a Sub-subcontractor, consultants or between the PM or PM's consultants or, (2) between the Owner and any Subcontractor or a Sub-subcontractor (except as provided in 5.4), (3) between the Owner and the Architect or the Architect's consultants or between the PM or PM's consultants or (4) between any persons or entities other than the Owner and the Contractor.~~ The Architect and PM shall, however, be entitled-entitled, respectively, to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties:their performance.

...

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. The Work includes all labor, parts, supplies, skill, supervision, transportation, services, storage and other facilities and things necessary, proper or incidental to the carrying out and completion of the terms of the Contract Documents and all other items reasonably inferable from the Contract Documents as needed to produce, construct and fully complete the Work items shown by the Contract Documents.

...

The ~~Drawings~~ "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.

...

The ~~Specifications~~ "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.

...

~~Instruments of Service~~ "Instruments of Service" are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER/CONTRACTOR-RELATED PERSON

A "Contractor-Related Person" means Contractor's Subcontractors of any tier, suppliers, consultants, and their employees, agents and representatives and any other persons or entities performing portions of the Work for or on behalf of them and all other persons for whom Contractor is legally liable with respect to this Project.

§ 1.1.9 PROGRAM MANAGER

The Owner retained the Program Manager ("PM") to carry out some of the functions of the administration of the Owner's construction program. The Contractor shall cooperate with the PM and Architect in the performance of their respective functions. The management and reporting systems used by the Owner or Program Manager may be changed by Owner during the Project.

§ 1.1.10 KNOWLEDGE

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2. terms "knowledge," "recognized" and "discover," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor actually knows, recognizes or discovers. The expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill and diligence required of a contractor experienced in working on projects similar to the Project.

§ 1.1.11 BUSINESS DAY

The term "business day" is a day the Owner's Administration Building is scheduled to be open for normal business purposes, unless closed by the Owner for inclement weather or other reason. A business day does not include a day on which the Owner's Administration Building is open only for the purposes of conducting candidate filing, early voting, elections, or other special events.

§ 1.1.12 ANTICIPATED WEATHER DAYS

An allowance Anticipated Weather Days, established as anticipated Work Days lost due to weather days, shall be included in Contractor's proposed completion time. Only lost weather days in excess of Anticipated Weather Days shall be considered by Owner for time extensions based upon weather.

§ 1.1.13 CALENDAR DAY

A calendar day is a day on the Gregorian Calendar. The Contract Time is established in calendar days. Extensions of time granted, if any, will be converted to calendar days. Unless otherwise stated, all references to "day" or "days" shall mean Calendar Days.

§ 1.1.14 HOLIDAYS

Owner-approved holidays for Contractor's Work are limited to New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

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§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. Notwithstanding the foregoing, in the event of inconsistencies within or between parts of the Contract Documents or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall (1) provide the better quality or greater quantity of Work or (2) comply with the more stringent requirement. With regard to inconsistencies in the Drawings, given dimensions shall take precedence over scaled measurements, and large scale Drawings over small scale Drawings. The terms and conditions of this paragraph shall not relieve the Contractor of any of the obligations set forth in Section 3.2 and Section 3.7. Without limiting the foregoing, should discrepancies appear, Contractor shall not proceed with the Work without clarification from the Architect. Contractor shall request clarification in a reasonable time to avoid delays and increases in the Contract Sum. Owner shall respond in a reasonable time.

§ 1.2.1.1 Except as otherwise provided in the Agreement, the most recently issued document takes precedence over previously issued forms of the same document. If Contractor discovers that an item is shown one place in the Drawings, but not another, or is called for in a schedule or the Specifications, but not shown on the Drawings, such discrepancy shall be promptly brought to the attention of the Owner and Architect. Existing conditions take precedence over Drawings and Specifications for dimensions and such dimensions shall be verified by Contractor.

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§ 1.2.4 Any material or system specified by reference to the number, symbol, or title of a specific standard, such as a commercial standard, a federal specification, a trade association standard, or other similar standard, shall comply with

the requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date of the Contract Documents, except as limited to type, class, or grade or modified in such reference.

§ 1.2.5 The standards referred to, except as modified in the Specifications, shall have full force and effect as though printed in the Specifications. These standards are not fully set out in the Contract Documents for the reason that the manufacturers and trades involved are assumed to be familiar with the requirements.

§ 1.2.6 When specific products, systems or items of equipment are referred to in the Contract Documents, any ancillary devices necessary for proper functioning shall also be provided, but not including any manufacturers' options on any particular device. When standards, codes, manufacturer's instructions and guarantees are required by the Contract Documents with no edition specified, the current edition as of the date of the Contract Documents shall apply. Unless otherwise stated in the Contract Documents, references to standards, codes, manufacturer's instructions and guarantees shall apply in full, except they do not supersede more stringent standards set out in the Contract Documents, and any exclusions or waivers that are inconsistent with the Contract Documents do not apply.

§ 1.2.7 DISCOVERY OF ERRORS OR CONFLICTS

The Contractor shall make no changes in the Work inconsistent with the Contract Documents and anything reasonably inferable therefrom without a duly executed Change Order. If the Contractor, either before commencing the Work or in the course of performing the Work finds (1) that the Drawings and Specifications are at variance with one another, (2) that the Work has not been sufficiently detailed or explained in the Drawings and Specifications, (3) any discrepancy between the Drawings and/or Specifications, and the physical conditions on the site, or (4) any error or omission in any of the Drawings or Specifications or in any survey, or a misunderstanding arises regarding the real meaning of the Drawings or Specifications, the Contractor shall promptly notify the Owner, PM and the Architect in writing of such variance, insufficiency, discrepancy, error, omission or misunderstanding (collectively, "**Design Errors**"). If the Contractor observes that any portion of the Drawings and/or Specifications are at variance with any applicable law, ordinance, regulation, order or decree (collectively, "**Conflicts**"), the Contractor shall promptly notify the Owner, with a copy to the PM and Architect, in writing of such Conflict. If the Contractor observes any Error in work done by others affecting the Work, Contractor shall promptly notify the Owner, PM and the Architect in writing of such Error. The Owner, upon receipt of any such notice, shall have the issue promptly investigated and give appropriate written instructions to the Contractor. Until such instructions are given, any Work done by the Contractor, either directly or indirectly, after the Contractor's discovery of such Error or Conflict but before receiving clarifying instructions, will be at the Contractor's own risk, and the Contractor shall bear all costs and loss arising there from. Contractor shall include in any requests for information or clarification from the Owner, PM or the Architect the reasonable time period within which a response from the Owner, PM or the Architect is required in order for Contractor to meet the critical path set out in the construction schedule of and the extension of time and delay costs anticipated to be incurred by Contractor due to the Error or Conflict, to the extent quantifiable.

Terms capitalized in these Modified A201-2007 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.

...

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.

...

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

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§ 1.5.3 Contractor hereby grants Owner a paid-up, royalty-free non-exclusive license to use any and all drawings, specifications, submittals and other documents prepared or produced by or for Contractor or any Contractor-Related Person. This license shall survive termination of the Agreement. Additionally, all subcontracts between Contractor and its Subcontractors shall expressly grant Owner an exclusive license and shall require all sub-subcontracts to contain similar provisions. , from both itself and its Subcontractors.

...

§ 1.6.1 Contractor and its Subcontractors may request copies of the Architect's Drawings in electronic format (hereinafter referred to as "Drawing Files") from the Architect, through the PM, in connection with the design and construction of the Project for use as backgrounds for submittals or drawings prepared by Contractor or its Subcontractors. The Contractor or Subcontractor shall obtain a copy of the signed and sealed drawings before any use or reuse of the Drawing Files on this Project. In the event of any inconsistency between the information in the signed and sealed Drawings and the information in the Drawing Files, the signed and sealed drawings shall prevail. The Contractor and any Subcontractor using such Drawing Files agree that Architect and the Owner shall not be responsible or liable to such party to the extent that information in the Drawing Files is inconsistent with information in the latest version of the sealed Drawings issued for construction. The Architect, as a condition to providing Drawing Files to Contractor or its Subcontractors, may require the requesting party to acknowledge these terms and expressly agree to additional terms and conditions. Any and all use or reuse of Drawing Files by Contractor or any Subcontractor shall be at the sole risk of that party. Contractor and any Subcontractor using such Drawing Files agrees that the Owner, PM and Architect shall have no liability to such party for such use or reuse of Drawing Files, all of which are produced "AS IS." The Owner, PM and Architect have no duty to keep Contractor or any Subcontractors informed of, or provide any, updates of revisions to the Drawing Files. To the fullest extent permitted by applicable law, Contractor shall indemnify and hold harmless and release and waive all claims against the Owner Parties, as defined below, and the PM and Architect from all claims, damages, costs, causes of action and expenses, including without limitation attorney's and experts' fees and costs of litigation ("Claims"), arising from any use or reuse of the Drawing Files by the Contractor or any Subcontractors.

§ 1.7 Contractor may submit for consideration proposed substitutions of materials, equipment or processes from those set out in the Contract Documents. Submittals of proposed substitutions must be made in writing at such time as not to delay the Work and should contain sufficient information to allow the Architect and Owner to determine if the proposed substitution is in fact equal or better than the requirements of the Contract Documents. Contractor shall bear the risk of any delay in performance caused by submitting substitutions. Also refer to 3.4 and other sections herein related to substitutions.

...

§ 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. ~~has only such authority as granted by the Commissioners' Court of the Owner. Except as otherwise provided in Section 4.2.1, neither the PM nor Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.~~

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein. ~~presence of the Owner (or its representatives), PM or Architect at the Project site does not imply acceptance or approval of the Work.~~

§ 2.1.3 The Contractor stipulates and agrees that the Owner has no duty to discover any design errors or omissions in the Construction Documents, and has no duty to notify Contractor of same. By entering into the Contract, Owner does not warrant the adequacy and accuracy of any Construction Documents.

~~§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor. [Omitted]~~

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§ 2.2.3 The Owner shall furnish geotechnical information and surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall review this information and shall promptly inform Owner and PM of any concerns it has, errors it observed and additional information reasonably required for Contractor's execution of the Work. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner-Owner, except with respect to certain survey information described below and except to the extent of known errors or concerns not properly addressed, but shall exercise proper precautions relating to the safe performance of the Work. The Contractor shall not be entitled to rely upon the accuracy in surveys of non-dimensioned information and information on subsurface utilities including, without limitation, the locations of utility lines, cables, pipes or pipelines. The Contractor shall field verify the locations of such utilities and perform the Work in a manner that will not cause injury to them. The Contractor shall be responsible for and repair or have repaired any damage to such utilities caused by failing to take such precautions.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services. The Contractor acknowledges, however, that the Owner is a public entity and often cannot obtain or provide information as promptly as private entities. The Contractor shall submit requests for such information with ample lead time in order for the Owner to respond. The Contractor waives any claims against Owner for not timely providing information requested if the Contractor has not timely requested such information or left inadequate time for Owner to respond to any such request.

...

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or ~~repeatedly~~ fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3. The Contract Time shall not be extended and the GMP shall not be increased due to the Work being stopped pursuant to this Section.

...

~~If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.~~ § 2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the PM and Architect's additional services made

necessary by such default, neglect or failure. The amounts charged by the Owner shall be reasonable and necessary. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 2.4.2 After the Work is complete, the Owner may make emergency repairs to the Work if the Contractor does not promptly respond to a notice of a condition requiring repairs. Contractor shall be responsible to Owner for this cost if the reason for the repairs is defects in Contractor's Work. If payments then or thereafter due the Contractor are not sufficient to cover such costs by offsets made by Owner, the Contractor shall pay the difference to the Owner.

§ 2.5.2 Owner has the authority to reject Work which does not conform to the Contract Documents. Whenever, in its reasonable opinion, Owner considers it necessary or advisable for implementation of the requirements of the Contract Documents (which, for the purposes of this Agreement, includes both the express requirements and those requirements which are reasonably inferable from the Contract Documents), Owner will have the authority to require special inspection or testing of the Work in accordance with Section 13.5.2 whether or not such Work is then fabricated, installed or completed. However, neither the Owner's authority to act under this Section 2.5.2, nor any decision made by the Owner, either to exercise or not to exercise such authority, shall give rise to any duty or responsibility of the Owner to the Contractor, any Subcontractor, Sub-subcontractors or supplier, any of their agents, representatives or employees, or any other person performing any of the Work.

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

...

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

§ 3.1.4 The Contractor represents and warrants the following to the Owner (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to the Owner to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work:

- .1 that it is financially solvent, able to pay its debts as they mature, and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;
- .2 that it is able to furnish the tools, materials, supplies, equipment and labor required to timely complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- .3 that it is authorized to do business in the State of Texas, and it and all its trade contractors, subcontracts, suppliers and any consultants are properly licensed by all necessary governmental, public and quasi-public authorities having jurisdiction over it, the Work, or the site of the Project to perform the Work required by the Contract; and
- .4 that the execution of the Contract and its performance thereof are within its duly-authorized powers.

...

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations

with requirements of the Contract Documents. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the unconcealed conditions and limitations under which the Work is to be performed, including, without limitation (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment, (5) all applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities relating to Contractor's means, methods, techniques and sequences. With the exception of pre-existing hazardous materials, Owner assumes no responsibility or liability for the safety of or safety programs for the Project site or any improvements located on the site. Contractor shall be solely responsible for providing all safety programs and ensuring a safe place for the performance of the Work. Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Contractor-Related Person to comply with the requirements of this Section. Neither any oral representation by nor oral agreement with any officer, agent, or employee of Owner, PM or Architect before or after execution of this Agreement shall affect or modify any of Contractor's obligations hereunder. Contractor is not aware of any facts that make misleading or inaccurate in any material respect any information Owner, PM or Architect has furnished to Contractor which would have a material, adverse effect on the Contract Time or Contract Sum, and if, during the course of the performance of the Work, Contractor learns of any such facts, it will so advise each of said parties.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, shall and warrants that it has or will, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it, also as required by Section 2.2.3. Before ordering any materials or doing any Work, Contractor shall verify all measurements at the site and shall be responsible for the correctness of same. Contractor shall not be entitled to additional compensation or an extension of the Contract Time arising from the Contractor's failure to visit the site and take the measurements required by the Contract prior to commencing Work. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Owner, PM and Architect in writing any errors, deficiencies, inconsistencies or omissions discovered by or made known to the Contractor as Contractor. Such inquiries shall be made through a request for information ("RFI") in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. It is the Contractor's duty, however, to seek clarifications through RFI's of any condition in the Work about which it has any uncertainty before commencing Work at such conditions. The Contractor shall submit follow-up RFI's if prior responses to the RFI do not provide the information needed.

§ 3.2.2.1 The Contractor shall not submit RFI's when the information sought can be ascertained from the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Architect for evaluation and response to the Contractor's requests for information, where such information was available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation. If, in the reasonable opinion of the Architect, the Contractor does not make reasonable effort to comply with any of the above requirements of the Contract Documents and this causes the PM or the Architect or its Consultants to expend an unreasonable amount of time in the discharge of the duties imposed by the Contract Documents, then the Contractor shall bear the cost of compensation for the Architect's additional services made necessary by such failure.

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

§ 3.2.4 If the Contractor has knowledge that any of the products or systems specified will perform in a manner that will limit the Contractor's ability to satisfactorily perform the Work or to honor any warranty, or will result in a limitation of or interference with the Owner's intended use, then the Contractor shall promptly notify the Owner, PM and Architect in writing, providing substantiation for its position. If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and

damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.2.5 Prior to performing any Work, and only if applicable, Contractor shall locate all utility lines as shown and located on the plans and specifications, including telephone company lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, but not limited to, all buried pipelines and buried telephone cables, and shall perform any Work in such a manner so as to avoid damaging any such lines, cables, pipes, and pipelines. In addition, Contractor shall independently determine the location of same. Contractor shall be responsible for any damage done to such utility lines, cables, pipes and pipelines during its Work, and shall be responsible for any loss, damage, or extra expense resulting from such damage. Repairs shall be made immediately to restore all service. Any delay for such break shall be attributable to Contractor. In addition, and only if applicable, Contractor shall review the appropriate AHERA and hazardous materials surveys for the Project, and shall notify all Subcontractors and Sub-subcontractors of the necessity to review said surveys. Contractor shall perform any Work in such a manner as to avoid damaging, exposing, or dislodging any asbestos containing materials that are clearly identified and located in AHERA and other hazardous material surveys. Before performing any portion of the Work, the Contractor shall fully investigate all physical aspects of the Project Site and verify all dimensions, measurements, property lines, grades and elevations, existing improvements, and general suitability of existing conditions at the Project site.

§ 3.2.6 The Contractor shall arrange meetings prior to commencement of the Work of all major Subcontractors to allow the Subcontractors to demonstrate an understanding of the Construction and Contract Documents to the PM and Architect and to allow the Subcontractors to ask for interpretations, when necessary. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including without limitation:

- .1 The location, condition, layout, drainage and nature of the Project site and surrounding areas;
- .2 Generally prevailing climatic conditions;
- .3 Anticipated labor supply and costs;
- .4 Availability and cost of materials, tools and equipment; and
- .5 Other similar issues.

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

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

responsibility, Contractor shall enforce alcohol-free, drug-free, tobacco-free, harassment-free and weapon-free policies and zones, which will require compliance with those policies and zones by Contractor and any Contractor-Related Person. Failure of an individual to adhere to these standards of conduct shall result in the immediate removal as permitted by law of the offending employee from all construction Work on any of Owner's property. Repeated violations of these rules can result in the immediate termination of the Contract by Owner for cause.

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§ 3.3.4 Laying Out and Constructing the Project

Contractor shall employ an experienced and competent licensed surveyor or civil engineer to establish permanent benchmarks to which easy access may be had during the progress of the Work, determine all lines and grades, and verify same from time to time during the progress of the Work.

§ 3.3.5 To the extent that any portion of the Work requires a trench excavation exceeding five (5) feet in depth, in accordance with Texas Health and Safety Code Section 756.023(a), Contractor shall fully comply, and shall require any applicable subcontractor to comply, with:

- .1 The Occupational Safety and Health Administration standards for trench safety in effect for the Construction of the Work;
- .2 The special shoring requirements, if any, of the Owner; and
- .3 Any geotechnical information obtained by Owner for use by the Contractor in the design of the trench safety system.
- .4 Trench excavation safety protection shall be a separate pay item, and shall be based on linear feet of trench excavated. Special shoring requirements shall also be a separate pay item, and shall be based on the square feet of shoring used.

§ 3.3.6 The Contractor shall review Subcontractor safety programs, procedures, and precautions in connection with performance of the Work. However, the Contractor's duties shall not relieve any Subcontractor(s) or any other person or entity (e.g., a supplier), including any person or entity with whom the Contractor does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state, and local laws, rules, regulations, and ordinances which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. The foregoing notwithstanding, the requirements of this Paragraph are not intended to impose upon the Contractor any additional obligations that the Contractor would not have under any applicable state or federal laws, including, but not limited to, any rules, regulations, or statutes pertaining to the Occupational Safety and Health Administration.

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, qualified, careful, and efficient workers and labor eligible to work in accordance with state and federal law, 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.

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§ 3.4.2.1 After the Guaranteed Maximum Price Amendment is executed, if the Contractor seeks to substitute a material or product of a different brand or manufacturer in lieu of that specified in the Contract Documents, it shall submit a written request to the Owner, PM and Architect for approval of such proposed substitution pursuant to this Section and Section 1.7 herein. Each request for substitution shall be accompanied by complete descriptive literature, performance data, and cost information with regard to both the specified item and the proposed substitution, plus any samples as may be required by the Owner, PM or Architect. Each proposed substitution shall require the written approval of the Owner, PM or Architect before its incorporation into the Work. The Contractor shall submit requests for substitution as soon as practicable after the need for the substitution is determined to allow for adequate consideration of such request and to minimize delay in the progress of the Work. Owner shall promptly act on such request so as to endeavor to minimize delay in the progress of the Work. Contractor shall bear the risk of any delay in

performance caused by submitting requests for substitutions. The Owner may condition approval of the substitution on Contractor's proving clearly and certifying that the substitution is equal in performance characteristics to the requirements of the Contract Documents, equally compatible with existing installations and complementary to the design for the Work. The Owner may reject any proposed substitution in its sole discretion.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. Contractor and all Contractor-Related Persons. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. TO THE MAXIMUM EXTENT ALLOWED BY LAW, THE CONTRACTOR RELEASES, INDEMNIFIES, DEFENDS AND HOLDS HARMLESS THE OWNER FOR CONTRACTOR'S FORCES' NON-COMPLIANCE WITH OWNER'S DRUG-FREE, ALCOHOL-FREE, WEAPON-FREE, HARASSMENT-FREE, AND TOBACCO-FREE ZONES, CONTRACTOR'S FORCES' NON-COMPLIANCE WITH CRIMINAL LAW, OR CONTRACTOR'S OR CONTRACTOR'S FORCES' NON-COMPLIANCE WITH IMMIGRATION LAW OR REGULATIONS. Any individual found by Owner to have violated these restrictions is subject to permanent removal from the Project, at Owner's request. Contractor shall place similar language in its subcontract agreements, requiring its Subcontractors and Sub-subcontractors to be responsible for their own forces and Contractor shall cooperate with the Owner to ensure Subcontractor and Sub-subcontractor compliance.

§ 3.4.8 PREVAILING WAGE RATES

§ 3.4.8.1 In accordance with and to the extent required by applicable law, including without limitation Texas Government Code Section 2258 et seq. and Texas Labor Code Section 62.051 et seq., Contractor, Contractor's Subcontractors and Sub-subcontractors shall pay all workers not less than the general prevailing rate of per diem wages for work of a similar character where the Project is located, as detailed in the "Minimum Wage Schedule" provided herein. Wages listed are minimum rates only. However, no claims for additional compensation above the Contract Sum shall be considered by the Owner because of payments of wage rates in excess of the applicable rate provided herein.

§ 3.4.8.2 Contractor shall be liable to Owner in the sum of \$60 (which may be offset of sums thereafter due and payable to Contractor) for each laborer, worker or mechanic employed for each Calendar Day or part of the day that the worker is paid less than the wage rates stipulated in the Contract Documents or as otherwise required by applicable law. It is agreed that the sum of \$60 per day is a reasonable estimation of the damages that Owner will incur as a result of Contractor's failure to comply (such damages being difficult to ascertain) with this Section 3.4.8 and is not being assessed as a penalty.

§ 3.4.8.3 Owner reserves the right to receive and review payroll records, payment records, and earning statements of employees of Contractor, and of Contractor's Subcontractors and Sub-subcontractors.

§ 3.4.8.4 In executing the Work under the Contract Documents, Contractor shall comply with all applicable state and federal laws, including but not limited to, laws concerned with labor, equal employment opportunity, safety and minimum wages.

§ 3.4.8.5 Prevailing Wage Rates are as set forth on Exhibit I of the A133-2009 Agreement. If no schedule is attached then the parties shall use the wage rate determined by the US Department of Labor in accordance with the Davis-Bacon Act, 40 USC Section 276a, which can be accessed on the internet at www.gpo.gov/davisbacon/.

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

§ 3.5.1 The Contractor warrants to the Owner, PM and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor

further warrants that Contractor shall perform the Work in a good and workmanlike manner, continuously and diligently in accordance with the Contractor's standard of care stated in the Contract, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship, in which case the standard shall be the higher standard. All material shall be installed in a true and straight alignment, level and plumb; patterns shall be uniform; and jointing of materials shall be flush and level, unless otherwise directed in writing by the Architect. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements shall be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, PM or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 The Contractor agrees to assign to the Owner at the time of final completion of the Work or termination of this Agreement, whichever is earlier, any and all manufacturer's, subcontractors' and suppliers' warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties required by Contract Documents or otherwise provided. The Contractor shall obtain and deliver to owner of warranty documentation necessary for owner to enforce such warranties. Contractor retains the non-exclusive right to enforce directly any manufacturer's warranties. Contractor shall request that each trade contractor, Subcontractor or supplier making bids or proposals include with its bid or proposal an Add/Alternate to provide the longest available manufacturer's or supplier's warranty, or if longer than that, take all required actions to obtain the longest available manufacturer's or suppliers' warranties required by the Contract Documents, unless instructed otherwise by Owner in writing. Upon selection of the successful bidders, the Owner shall advise Contractor whether the Owner desires to purchase any such longer warranty, and the cost of such warranty shall be included in the Guaranteed Maximum Price.

§ 3.5.3 The warranties of Contractor provided in Paragraphs 3.5 shall in no way limit or abridge the warranties of the suppliers of equipment and systems which are to comprise a portion of the Work. All such warranties shall be in form and substance as required by the Contract Documents. Contractor shall take no action or fail to act in any way that results in the termination or expiration of such third party warranties or that otherwise results in prejudice to the rights of Owner under such warranties. Contractor agrees to provide all notices required for the effectiveness of such warranties and shall include provisions in the contracts with the providers and manufacturers of such systems and equipment whereby Owner shall have a direct right, but not a duty, of enforcement of such warranty obligations.

§ 3.5.4 The form of warranty to be issued by each first tier Subcontractor and supplier shall be submitted to the Owner, PM and Architect for review and approval. Contractor shall maintain a complete and accurate schedule of the dates upon which any warranty will expire. Contractor shall provide a copy of such schedule to Owner, PM and Architect.

§ 3.5.5 Contractor shall, in addition to the other prerequisites to achieving final completion:

- .1 Obtain documentation of warranties making the date of beginning of the warranties the Date of Final Completion, unless an earlier date is required by use of operating equipment before final completion;
- .2 Verify that the documents are in proper form and contain full information;
- .3 Co-sign warranties when required;
- .4 Retain warranties and bonds for simultaneous submissions to the Architect;
- .5 Bind all warranties in commercial quality binders;
- .6 Include a Table of Contents, with each item identified by the number and title of the specification section under which the product is specified; and
- .7 Separate each warranty with index tab sheets keyed to the Table of Contents listing.

§ 3.5.6 The Contractor shall certify to Owner that the Project has been constructed in conformance with the Construction Documents, as modified from time to time pursuant to the terms of the Contract. Contractor shall fully complete a "Certification of Project Completion" as required by 19 Texas Administrative Code Section 61.103(c)(3)(F).

§ 3.5.7 When deemed necessary by the Owner and prior to installation of any item specifically made subject

to a performance standard or regulatory agency standard under any provision of the Contract Documents. Contractor shall furnish proof of conformance to the PM and Architect. Proof of conformance shall be in the form of: an affidavit from the manufacturer certifying that the item is in conformance with the applicable standards; an affidavit from a testing laboratory certifying that the product has been tested and is in conformance with applicable standards; or such further reasonable proof as is required by the Architect.

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. Owner is an exempt entity under the tax laws of the State of Texas. The Owner represents that this Project is eligible for exemption from the State Sales Tax on tangible personal property and material incorporated in the Project, provided that the Contractor fulfills the requirements of the Limited Sales, Excise and Use Tax Rules and Regulations. For the purpose of establishing exemption, it is understood and agreed that the Contractor may be required to segregate materials and labor costs at the time the Contract is awarded, and will accept a Certificate of Exemption from the Owner. Contractor shall obtain Certificates of Resale from suppliers. Failure of Contractor or any Contractor-Related Person to obtain Certificates of Resale from their suppliers shall make the Contractor or any Contractor-Related Person responsible for absorbing the tax, without compensation from Owner. Contractor shall pay all necessary local, county and state taxes, income tax, compensation tax, social security and withholding payments as required by law. Contractor shall release, defend, indemnify and hold harmless Owner from any and all claims and demands made as a result of the failure of Contractor or any Subcontractor to comply with the provisions of any or all such laws and regulations.

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§ 3.7.1.1 The Contractor shall arrange and pay for all temporary utility charges, tap charges, and water meter charges. After consultation with the Owner and PM, the Contractor shall also obtain all permits and approvals, and pay all fees and expenses, if any: associated with National Pollutant Discharge Elimination System (NPDES) regulations administered by the Environmental Protection Agency (EPA) and local authorities, if applicable, that require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for the Project; and obtain all permits and approvals, and pay all fees and expenses, if any, associated with Storm Water Pollution Prevention and Pollution Control Plan (SWPPP) regulations administered by the Texas Commission on Environmental Quality (TCEQ) and local authorities. Contractor's obligations under this section may require it to obtain or perform engineering services during the pre-construction phase to prepare proper drainage for the construction sites. The Contractor shall obtain any permits and approvals for drainage alterations made by Contractor during the construction process. Reimbursable expenses shall not include any fines or penalties assessed against the Contractor, any Contractor-Related Person or the Project. Reimbursement of such fees shall be in accordance with Article 6 of the Modified A133-2009 Agreement.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work. The Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the city or by any other public or private body with jurisdiction over the Project. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary back-up material and furnish the surety with any required personal undertakings.

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

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the ~~Owner~~ Owner, PM and the Architect before conditions are disturbed and in no event later than ~~21~~three (3) business days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, ~~will~~may recommend an equitable adjustment in the Contract Sum or Contract Time, or both. The Owner's Contingency (if any) may, in Owner's sole discretion, be utilized to cover increased costs, if any. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in

the terms of the Contract is justified, the Architect shall promptly notify the ~~Owner~~ Owner, PM and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

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§ 3.7.6 The Contractor shall be responsible for timely notification to and coordination with all utility companies regarding the provision of all necessary services to the Project. The Contractor shall inform the Owner, PM and Architect at once when the Owner's participation is required. Obtaining connections for permanent utilities and payment for temporary utilities services required for the Work are the responsibility of the Contractor unless otherwise agreed.

...

- .3 Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change ~~Order~~ Order, to the extent Owner's Contingency (if any) within the Contract Sum is available to cover the cost. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness. promptness subject to the Contractor providing adequate time for the Owner to make such selection.

§ 3.8.4 When performing Work under allowances, Contractor shall solicit and receive not less than three written proposals or bids, and the selection shall be made, as required by 2269.255 and 2269.256 of the Texas Government Code.

§ 3.8.5 Contractor shall keep separate and adequate records of all allowances and shall submit such records to Owner no less than on a monthly basis.

...

§ 3.9.1 The Contractor shall employ a competent ~~superintendent~~ superintendent(s), project manager(s) and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

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

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

§ 3.9.4 At all times during the construction Work and through final completion, Contractor shall assign to the Project a project manager assigned to the Project through final completion, approved by Owner and shall keep on the job the full-time through final completion a superintendent approved by Owner, and neither the project manager nor the superintendent shall be removed or transferred from the Work without Owner's consent, which shall not be unreasonably withheld. However, such obligation to furnish the superintendent shall not be construed (a) to preclude the promotion within Contractor's organization of any person assigned to the Work or (b) to give rise to any liability of Contractor if any person assigned to the Work leaves Contractor's employ. If Owner reasonably determines that any

employee of Contractor or any Contractor-Related Person is uncooperative, careless, not qualified to perform the Work assigned to him or otherwise unsuitable, and Owner and Contractor cannot, after a diligent and good faith attempt, agree what action should be taken with respect to the removal or reassignment of such employee, the Contractor shall promptly and lawfully remove such employee from the Work and replace such employee. At all times during the construction Work and through final completion, Contractor shall appoint a resident individual (approved by Owner, acting reasonably) authorized to act on behalf of Contractor and with whom Owner may consult at all reasonable times, and who shall be authorized to receive the instructions, requests and decisions of Owner. All of Contractor's and Subcontractors' personnel shall comply with all applicable health, safety, and loss prevention rules of applicable authorities and all rules, policies, procedures, and requirements of the Owner. Contractor shall, at its own expense, remove from the Work any person who fails to comply with such rules and instructions in any material respect. Prior to the commencement of the Work, Contractor shall deliver to Owner for Owner's approval an organization chart setting forth the job titles, names and responsibilities of Contractor's personnel who will be assigned to the Work.

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§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The construction schedule shall be furnished in a detailed precedence-style critical path management or Primavera-type format (P6) satisfactory to the Owner PM, and Architect that shall include a graphic representation of all activities and events that will occur during the performance of the Work and set forth dates and milestones that are critical in ensuring the timely completion of the Work. Upon approval by the Owner, PM and Architect, the construction schedule so provided shall become a part of the Contract Documents. The accepted construction schedule shall be updated to reflect actual conditions of the site. A detailed, critical path schedule format shall be used for the construction schedule with thorough updates to the construction schedule prepared and distributed to Owner and Architect at least monthly. The construction schedule and all updates should address submittal activities as well as actual field construction activities.

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

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect. Owner, PM and Architect, provided such schedules are consistent with and do not exceed the time limits under the Contract Documents.

§ 3.10.4 The Contractor shall hold weekly progress meetings at the Project Site, or at such other time and frequency as are acceptable to the Owner and PM. Progress of the work shall be reported at said meetings with reference to Contractor's construction schedule. The Contractor shall submit to the PM and Architect with each monthly application for payment, an XER or equivalent native format copy of the progress schedule showing all modifications required, and shall take whatever corrective action is necessary to assure that the Project completion schedule is met at no additional cost to Owner, except as allowed herein. In the event that Contractor shall fall behind schedule at any time, Contractor shall develop and deliver a recovery plan to the Owner and PM with a recovery schedule and a program describing the additional manpower, overtime, material expediting, resequencing of the Work and other steps Contractor shall take to meet the requirements of the Contract. Contractor shall not be entitled to compensation from the Owner or any increase in the Contract Sum for the schedule recovery efforts. No approval or consent by the Owner of any plan for resequencing or acceleration of the Work submitted by Contractor shall constitute a waiver by Owner of any damages or losses which Owner may suffer by reason of such resequencing or the failure of Contractor to meet the Substantial Completion Date or the Final Completion Date

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The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Owner, PM and Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

...

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. References herein to the "Architect" with regard to submittals may include such other designated design professionals retained by Owner. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect and PM, if requested by the Owner, to the Owner, all Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the PM and Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Owner, PM Architect or of separate contractors. The form, quantity and recipients of such material shall be established by the PM.

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

...

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

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

review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents. Documents, however, Contractor shall comply with the requirements of Section 3.2.1 and Section 3.2.2 above and shall notify Owner, PM and Architect if it believes that the performance or design criteria required by the Contract Documents are inadequate.

§ 3.12.14 The Contractor represents and warrants that to the best of Contractor's knowledge, all such submittals shall be prepared by persons and entities possessing the necessary expertise and experience in the trade for which the submittals, or by duly licensed professionals where required for performance specifications.

§ 3.12.15 Shop Drawings and other submittals may be transmitted electronically via the Project's technology platforms, to the extent they can be transmitted in such a manner. Physical samples are excluded from this provision.

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The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. § 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, instructions of the Owner or PM and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 Contractor shall employ reasonable measures to protect construction materials and equipment stored at the Project site from weather, theft, damage and all other adversity.

§ 3.13.3 Contractor and its subcontractors shall not erect any sign on the Project site without the prior written consent of the Owner.

§ 3.13.4 Contractor shall ensure that the Work, at all times, is performed in a manner that affords Owner, PM and Architect reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed in such a manner that public areas adjacent to the Site of the Work shall be free from all debris, building material, over-spray, dust (within the Contractor's control) and equipment likely to cause hazardous conditions or a nuisance. Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of any area or building adjacent to the site of the Work.

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§ 3.14.3 No cutting of structural elements will be permitted unless specifically approved in writing by Architect. Fitting and patching shall only be done with new products, and shall only be performed by those skilled in the performance of the original Work. Visible patching that does not match its surroundings shall be corrected by any means necessary.

§ 3.15.1 The Contractor shall ~~shall~~, on not less than a daily basis, keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. Contractor shall provide on-site containers for the collection of waste materials, debris and rubbish, and shall periodically remove waste materials, debris and rubbish from the Work site and dispose of all such materials at legal disposal areas away from the site. All cleaning operations shall be scheduled so as to ensure that contaminants resulting from the cleaning process will not harm or deface surfaces or travel off the Project site. Immediately after unpacking materials, all packing case lumber or other packing materials, wrapping or other waste shall be collected and properly disposed of. Care shall be taken by all workers not to mark, soil or otherwise deface any finish. In the event that any finish becomes defaced in any way by mechanics or workers, the Contractor shall clean and restore such surfaces to their original conditions. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

...

§3.15.3 The Contractor shall be responsible for the protection of the Work. Prior to the Architect's inspection for Substantial Completion, the Contractor shall clean exterior and interior surfaces exposed to view; remove temporary labels, stains, putty, soil, paint and foreign substances from all surfaces, including glass and painted surfaces; polish transparent and glossy surfaces; clean equipment and fixtures to a sanitary condition; replace air filters in mechanical equipment; clean roofs, gutters, and downspouts; remove obstructions and flush debris from drainage systems; clean site; sweep paved areas and rake clean other surfaces; remove trash and surplus materials from the site; clean and polish all floors; clean and polish all hardware; and repair all Work damaged during cleaning.

§ 3.15.4 After construction is complete, Contractor shall: (1) employ skilled workers for final cleaning; (2) remove grease, mastic adhesive, dust, dirt, stains, fingerprints, labels and other foreign materials from all sight-exposed interior and exterior surfaces; (3) wash and shine glazing and mirrors; (4) polish glossy surfaces to a clear shine; (5) vacuum clean carpeted and similar soft surfaces; (6) clean (damp mop with clean mop and water) resilient and hard surface floors, repeating as necessary until no visible residue remains on floors; clean plumbing fixtures to a sanitary condition; (8) clean surfaces of all equipment and remove excess lubrication; (9) clean permanent filters and replace disposable filters in ventilating systems if units were operated during construction and clean ducts, blowers and coils; (10) clean light fixtures; (11) remove waste, foreign matter and debris from roofs, gutters, area ways and drainage ways; (12) remove waste, debris and surplus materials from the site; (13) remove stains, spills and foreign substances from paved areas; and (14) clean exterior concrete and paved surfaces and clean the grounds.

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

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

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§ 3.18.1 TO THE FULLEST EXTENT PERMITTED BY LAW THE CONTRACTOR SHALL ~~indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against~~ **INDEMNIFY, DEFEND (TO THE MAXIMUM EXTENT PERMITTED BY LAW) AND HOLD HARMLESS THE OWNER, AND ITS COMMISSIONERS, OFFICIALS, AGENTS AND EMPLOYEES ("OWNER PARTIES") FROM AND AGAINST:**

.1 ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES, EXPERTS' FEES AND COSTS OF LITIGATION ARISING, OR ALLEGED TO ARISE, FROM ANY OF THE FOLLOWING (THE "INDEMNIFIED MATTERS"):

(A) THE ACTS OR OMISSIONS, INCLUDING THE ONGOING OR COMPLETED OPERATIONS, OF CONTRACTOR AND ANY CONTRACTOR-RELATED PERSON;

(B) NEGLIGENCE, NEGLIGENT MISREPRESENTATION, FRAUD, BREACH OF FIDUCIARY DUTY, WILLFUL, RECKLESS, OR CRIMINAL MISCONDUCT, OR ANY ACTIONS OF CONTRACTOR AND ANY CONTRACTOR-RELATED PERSON BEYOND THE SCOPE OF WORK;

(C) DEFAULT BY CONTRACTOR UNDER THIS AGREEMENT;

(D) FAILURE BY CONTRACTOR OR ANY CONTRACTOR-RELATED PERSON TO MAINTAIN INSURANCE REQUIRED TO BE MAINTAINED BY IT PURSUANT TO THIS AGREEMENT;

(E) CONTRACTOR'S OR ANY CONTRACTOR-RELATED PERSON'S VIOLATION OF ANY ORDINANCE, REGULATION, STATUTE OR OTHER LEGAL REQUIREMENTS; OR

(F) RELEASE OR DISTURBANCE OF HAZARDOUS MATERIALS OR SUBSTANCES THAT OCCURS IN OR FROM THE PROPERTY AND ARISES FROM CONTRACTOR'S OR A CONTRACTOR-RELATED PERSON'S ACTIVITIES OR OPERATIONS OR THE REMEDIATION OF SUCH RELEASE OR DISTURBANCE ARISING OUT OF OR RESULTING FROM PERFORMANCE OF THE ~~Work~~ WORK;

PROVIDED THAT SUCH CLAIM, DAMAGE, LOSS OR EXPENSE IS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO OR DESTRUCTION OF TANGIBLE PROPERTY (OTHER THAN THE WORK itself), but only to the extent caused ~~ITSELF~~ CAUSED IN WHOLE OR IN PART BY THE NEGLIGENT ACTS OR OMISSIONS OF THE Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. CONTRACTOR OR ANY CONTRACTOR-RELATED PERSON;

.2 REGARDLESS OF:

(A) WHETHER THE CLAIM IS ALSO CAUSED IN PART BY THE ORDINARY, ACTIVE OR PASSIVE, JOINT, CONCURRENT OR COMPARATIVE NEGLIGENCE OF SUCH OWNER PARTY;

(B) WHETHER LIABILITY WITHOUT FAULT OR STRICT LIABILITY IS IMPOSED UPON OR ALLEGED AGAINST THE OWNER PARTY; AND

(C) THE SCOPE OF ANY PERSON'S INSURANCE AND IS INDEPENDENT OF INSURANCE;

.3 BUT WILL NOT BE ENFORCED TO THE FOLLOWING EXTENT ("EXCLUDED MATTERS"):

(A) OF OWNER'S BREACH OF THIS CONTRACT; OR

(B) A LOSS IS CAUSED IN WHOLE OR IN PART BY THE MISCONDUCT OR NEGLIGENCE OF AN OWNER PARTY.

IF LOSSES, DAMAGES, LIABILITIES AND EXPENSES ARISE OUT OF THE CONCURRENT NEGLIGENCE OF BOTH OWNER AND CONTRACTOR OR THE RESPECTIVE PARTIES FOR WHOM EACH IS RESPONSIBLE, CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS OWNER ONLY TO THE EXTENT OF CONTRACTOR'S OWN NEGLIGENCE OR THOSE FOR WHICH IT IS RESPONSIBLE HEREUNDER OR UNDER APPLICABLE LAW; PROVIDED, HOWEVER, CONTRACTOR SHALL PROVIDE OWNER AND/OR THE OWNER PARTIES WITH A COMPLETE DEFENSE OF SUCH CONCURRENT NEGLIGENCE CLAIM UNTIL THE CLAIM IS SETTLED OR A FINAL JUDGMENT IS ENTERED ON SUCH CLAIM, AT WHICH TIME OWNER AND/OR ITS INSURANCE CARRIER(S) SHALL REIMBURSE CONTRACTOR AND/OR ITS INSURANCE CARRIER(S) FOR DEFENSE COSTS PROPERLY ALLOCATED TO OWNER AND/OR THE OWNER PARTIES. CONTRACTOR'S INDEMNITY HEREIN IS EXPRESSLY INTENDED TO CONSTITUTE A WAIVER OF ANY IMMUNITY IT MAY HAVE UNDER THE LAW TO THE EXTENT NECESSARY TO PROVIDE OWNER AND OWNER PARTIES WITH A COMPLETE INDEMNITY FOR THE NEGLIGENCE OF CONTRACTOR OR CONTRACTOR'S EMPLOYEES, TO THE EXTENT OF THEIR NEGLIGENCE.

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§ 3.18.3 Expenses recoverable by the Owner Parties as part of the Contractor's indemnity obligations under this Section 3.18 shall include, without limitation, reasonable attorney's fees, experts' fees and any other costs incurred by such Owner Parties in a legal proceeding brought against the Contractor to enforce this Section 3.18.1. The provisions contained Section 3.18 shall survive the expiration or earlier termination of this Agreement, the final completion of the Work, and any other services to be provided pursuant to the Contract Documents.

§ 3.18.4 The Contractor shall promptly advise Owner in writing of any action, administrative or legal proceeding or investigation as to which this indemnification may apply, and Contractor, at Contractor's expense, shall as permitted

by law assume on behalf of the Owner Parties and conduct with due diligence and in good faith the defense thereof (to the maximum extent permitted by law) with counsel satisfactory to Owner; provided, however, that Owner and the other Owner Parties shall each have the right, at their option, to be represented therein by legal counsel of their own selection and at their own expense. In the event of failure by the Contractor to fully perform in accordance with this Indemnification paragraph, the Owner Parties, at their option, and without relieving Contractor of its obligations hereunder, may so perform, but all costs and expenses so incurred by the Owner Parties in that event shall be reimbursed by Contractor to such Owner Parties, together with interest on the same from the date any such expense was paid by such Owner Parties until reimbursed by Contractor, at the rate of interest provided to be paid an judgments under the laws of the State of Texas.

§ 3.18.5 TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR WAIVES ALL CLAIMS ATTRIBUTABLE TO BODILY INJURY, SICKNESS, DISEASE OR DEATH, OR TO INJURY TO, USE OR DESTRUCTION OF TANGIBLE PROPERTY AGAINST OWNER AND ALL OWNER PARTIES ARISING IN CONNECTION WITH THIS AGREEMENT, ITS PERFORMANCE OR INTERPRETATION OR WITH RESPECT TO THE PROJECT OR WORK THE AGREEMENT REQUIRES REGARDLESS OF WHETHER ANY SUCH CLAIMS ARE CAUSED, OR ARE ALLEGED TO BE CAUSED, BY ANY NEGLIGENCE, NEGLIGENT MISREPRESENTATION, BREACH OF CONTRACT OR BREACH OF ANY OTHER DUTY OR OBLIGATION OF OWNER OR ANY OWNER PARTIES.

§ 3.19 DELIVERY OF DOCUMENTS*

Contractor shall furnish Owner with such documents, instruments and certificates as may reasonably be required by Owner, PM or Architect with respect to the construction of the Project and the payment of the costs thereof. Without limiting the generality of the foregoing, Contractor shall furnish:

- .1 a breakdown of the cost of each category of the Work included in the construction of the Project certified by Contractor to be true and complete in the form of a cost certificate;
- .2 an projected disbursement schedule in form and content acceptable to Owner setting forth the dates on which Contractor expects to request payment and specifying the portions of the Work, materials and other costs to be covered by such requests for payment ("**Disbursement Schedule**"). Such Disbursement Schedule is a projection provided for Owner's convenience only. Construction Manager does not guarantee or warrant that it will strictly adhere to such Disbursement Schedule;
- .3 the site development and construction drawings approved by all applicable governmental authorities (bearing stamps or other evidence of such government authorities' approval) issued to Contractor;
- .4 for each trade or division of the Work, under the direction of the Contractor, a complete and accurate record of all changes or deviations from the Contract Documents. The Contractor shall prepare or cause to be prepared drawings certifying the as-built conditions of the entire Work and specifically defining the variations, if any, from requirements of the Contract Documents (referred to herein as the "**As-Built Drawings**"). All such changes shall be neatly and correctly shown on the drawings affected, or in the specifications, with appropriate supplementary notes. The record set of prints of Drawings, Shop Drawings and Specifications shall be kept at the site for inspection of Architect, PM and Owner. The Contractor's As-Built, along with such other Drawings, Shop Drawings and Specifications kept by the Contractor at the site, shall be delivered to Owner in good condition at or before final completion and as a condition precedent to final payment.
- .5 certificates that the Work has, to date, been constructed in accordance with the Contract Documents, and
- .6 temporary and final certificates of occupancy, as a condition precedent to final payment.

*As-builts are to be delivered at completion in both hard copy and CADD format.

§ 3.20 INSPECTIONS

Contractor shall use diligent efforts to cause all necessary governmental inspections and approvals of the Work to be performed on a timely basis. No inspection performed or failed to be performed by Owner, PM or Architect shall

constitute a waiver of any of Contractor's obligations hereunder or be construed as an approval or acceptance of the Work or any part thereof.

§ 3.21 SAFETY

Contractor shall take reasonable precautions to prevent damage, injury or loss to (1) all persons involved with the Work and other persons who may be affected by the Work, (2) all the Work and all materials and equipment to be incorporated therein, including those in storage on or off site under the care, custody or control of Contractor or any Subcontractor, Sub-subcontractor or supplier, and (3) the Owner's personal and real property and other property at the Work site or adjacent thereto, including without limitation, fixtures, carpets and other related items. Contractor shall at all times take such precautions as may be reasonably necessary to shore, brace, secure and protect the Work. Contractor shall further post necessary danger signs and other warnings against hazards, promulgate and enforce safety codes and rules. Contractor shall particularly be responsible for compliance with all applicable state and federal safety laws, ordinances, rules, regulations and lawful orders of all governmental authorities and other persons or entities having jurisdiction which pertain to the Work.

§ 3.22 MATERIALS

Any material specified by reference to the number, symbol or title of a specific standard such as that of the American Society for Testing Materials ("ASTM"), a product or commercial standard, federal specification or other similar standards, shall comply with the requirements of the dated revisions stated in the Specifications, or where the Specifications contain no revision date, shall unless otherwise specified comply with the requirements of the latest revisions thereof and any supplement or amendment thereto, in effect on the date of Owner's receipt of the GMP. The standards referred to, except as specifically modified in the Specifications, shall have the same force as if they were printed verbatim within the Specifications.

§ 3.23 MANUFACTURER'S INSTRUCTIONS

Where it is required in the Specifications that materials, products, processes, equipment or the like be installed or applied in accord with manufacturer's instructions, directions or specifications or words to this effect, it shall be construed to mean that said application or installation shall be in strict accord with current printed instructions furnished by the manufacturer of the material concerned for use under conditions similar to those at the site.

§ 3.24 MONTHLY REPORTS*

The Contractor shall perform the Work in general accordance with the most recent schedules submitted to and approved by the Owner, PM and Architect. On or before the first day of each calendar month, the Contractor shall provide a written monthly report in PDF format to each of the Owner, PM and the Architect on the progress of the entire Work (the "Monthly Report"), which includes a narrative noting major activities (both those in progress and those completed) during the preceding month, as well as those activities planned for the following month. An XER file of the latest progress schedule, as compared to the baseline schedule, shall be included in the report. Delays and disruptions incurred during the preceding month shall be noted in such Monthly Report, along with the Contractor's proposal for making up any lost time to ensure that the Work is satisfactorily completed within the Contract Time (as defined in Section 8.1.1). Each Monthly Report shall include a Change Order log, an updated construction schedule (electronic with hard copies in the computer application format), the progress of pending decisions with impacts on the construction schedule, a Request for Information ("RFI") log, a submittal log, project progress photos, and a log of accidents and other incidents involving the safety of persons on or about the Project site. Owner's obligation to release the progress payment for any given month shall be conditioned upon Owner's receipt of a complete and accurate Monthly Report for such previous month. On or before the first day of each calendar quarter, the Contractor shall provide the Owner with a detailed accounting ledger indicating amounts actually paid by Contractor pursuant to the previous calendar quarter's Applications for Payment and accounting for any underpayment or overpayment by Owner on the previous calendar quarter's Progress Payments (the "**Quarterly Accounting Report**"). The Contractor shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Contractor shall identify variances between actual and estimated costs and report the variances to the Owner and Architect in each Quarterly Accounting Report.

*Master schedule is to be updated monthly and included in Contractor's Monthly Report. Monthly report is to include status of any LEED reports required from Contractor.

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

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

§ 4.1.4 Except as expressly provided herein, the Contractor shall not be relieved of Contractor's obligation to perform the Work in strict accordance with the Construction Documents and Contract Documents by the duties, responsibilities or activities of the PM or Architect.

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§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, 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 Owner, PM and Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner, PM and Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

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

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

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

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

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

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

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

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

...

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

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

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

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§ 4.2.15 Notwithstanding any other provision of this Agreement to the contrary, the Architect (or such other design professional designated by the Owner) shall not have the authority to order or approve any material deviation from the Contract Documents, whether or not such deviation affects the Contract Sum or other Substantial Completion Date (as defined herein). In the event any such deviation is sought, prior written approval from Owner must be obtained.

...

§ 5.2.1 ~~Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.~~ All subcontractors shall be procured in accordance with Texas Government Code Chapter 2269, and the requirements of this Contract. The Contractor shall be fully responsible for the performance of its subcontractors, including those recommended or approved by the Owner.

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

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

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

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

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

§ 5.3.2 Contractor shall receive, review and approve all requests for payment from Subcontractors and material suppliers performing work and providing materials in the construction of the Project before submitting such requests for payment to Owner, PM or Architect, and Contractor shall pay such Subcontractors and material suppliers within 10 days after receipt of payment from Owner except only for any amounts that Contractor is entitled to retain for retention or for incomplete or unsatisfactory Work or other claims under a Subcontract or purchase order.

§ 5.3.3 Contractor shall furnish the Owner or PM with copies of all executed subcontracts and with a list of all the Subcontractors and major suppliers on the Project. Each subcontract or supply agreement shall contain provisions that:

- .1 require that the Contract forms a part of such Subcontract to the extent applicable to the Work of the Subcontractor;
- .2 require that the Work performed pursuant to such subcontract be performed in accordance with the requirements of the Contract Documents (both express requirements and those that are reasonably inferable from the Contract Documents);
- .3 require submission of Applications for Payment in a form reasonably approved by Owner, together with a reasonably detailed schedule of a values and other supporting documentation required by Owner;
- .4 require each Subcontractor and supplier to maintain insurance coverage as provided in the subcontract or other applicable agreement and to file certificates of such coverage with Contractor;
- .5 require each Subcontractor and supplier to furnish to Contractor in a timely fashion all information necessary for the preparation and submission of the Monthly Reports and Quarterly Reports required herein; and
- .6 require that each Subcontractor and supplier continue to perform under its subcontract if the Contract is terminated for cause and if Owner takes an assignment of the subcontract or supply agreement and requests the Subcontractor or supplier to continue such performance.

§ 5.3.4 Contractor shall require Subcontractors of any tier and suppliers to submit a payment application schedule of values to the Owner and PM for the Owner's approval before the Work commences. Such schedule of values must be consistent with the schedule of values required by Section 9.2 hereof and the Agreement, and must fairly estimate the percentage of the Subcontractor's, Sub-subcontractor's or supplier's work that will be completed (or materially delivered) each application date. The percentage of the total cost reflected in any tier of Subcontractors' and suppliers' bid to be requested on each payment application date shall not exceed the percentage of the Work completed (or materials delivered) prior to the submission of such request for payment, less the percentage of the total cost reflected in prior applications for payment. The Contractor shall obtain the Owner's approval of such schedule of values before the Contractor submits the first Application for Payment to the Owner.

§ 5.3.5 The Owner, PM and Architect shall be obligated to pay or to insure the payment of any monies to subcontractors due to any non-payment to the Contractor or non-payment of subcontractors by the Contractor.

§ 5.3.6 The Contractor shall require any potential subcontractor to disclose to the Contractor any ownership interest or familial relationship between the Contractor, Architect, PM or any Owner Party and the potential subcontractor prior to entering into a subcontract. Contractor shall report to Owner and PM all such disclosures and the Owner shall have the right, in its sole discretion, to reject any such affiliated subcontractor.

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When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the ~~subcontract~~ subcontract that accrue subsequent to Owner's exercise of this right of conditional assignment. Such assignment shall not constitute a waiver by Owner of its right against Contractor, because of defaults, delays, and defects for which a Subcontractor or supplier may also be liable. Contractor shall defend, indemnify and hold Owner harmless from any loss or damages caused by failure or refusal of any Subcontractor to comply with any provision of the Contract Documents.

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than ~~30~~90 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension. Such assignment shall not constitute a waiver by Owner of its rights against Contractor, including, but not limited to, claims for defaults, delays or defects for which a Subcontractor or supplier may also be liable.

...

§ 5.4.4 Contractor will assign to the Owner all express and implied Subcontractor warranties at the earlier of the Owner's termination of the Contract or substantial completion of the entire Work.

§ 5.4.5 Owner, or its follow-on contractor as applicable, shall only be responsible for compensating Subcontractors and suppliers for Work performed or material furnished from and after the date on which the Owner gives written notice of its acceptance of the subcontract agreement assignment. Owner shall not be responsible for any Work performed or materials furnished by subcontractors prior to the date of Owner's written notice of acceptance.

...

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

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§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner, PM and Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

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

...

§ 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 change in the Contract Sum and/or Contract Time will be allowed for a change in the Work unless prior to performing the changed Work the Contractor has provided the Owner in writing with a proposal for any increase in the Contract Sum and/or increase in Contract Time caused by the change in Work. No response to a Request for Information to the Architect or a field directive from the Architect or Owner shall be recognized as having any impact upon the Contract Sum or the Contract Time, and Contractor shall have no Claim therefore, unless Contractor shall, within 30 days of receipt (or otherwise as soon as practicable) and prior to complying with such response or field directive submit a preliminary Change Proposal to the Owner.~~

~~§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; or Allowance Expenditure Authorization (as hereinafter defined) shall be based upon agreement between the Owner and Contractor; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.~~

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

§ 7.1.4 The Contractor, upon receipt of written notification by the Owner, PM or the Architect of a proposed item of change in the Work, shall prepare as soon as possible a proposal for the change ("Change Proposal") in such form or forms as directed by the Owner, PM or the Architect and in accordance with the following:

- .1 Each Change Proposal shall be numbered consecutively and shall include material's costs, labor costs, fees, overhead and profit. The Change Proposal shall specify all costs related to the proposed Change in the Work, including any disruption or impact on performance.
- .2 The Subcontractors' itemized accounting shall be included with the Change Proposal.
- .3 If a Change Proposal is returned to the Contractor for additional information or if the scope of the proposed change in the Work is modified by additions, deletions or other revisions, the Contractor shall revise the Change Proposal accordingly and resubmit the revised Change Proposal to the Owner, PM and Architect.
- .4 A revised Change Proposal shall bear the same Change Proposal number but shall indicate a sequential revision number.
- .5 If a Change Proposal will be funded by an Allowance within the Contract Sum, upon written approval of a Change Proposal by the Owner, the Contractor will prepare an Allowance Expenditure Authorization authorizing such change in the Work. If funds are required in excess of the Contract Sum, Contractor will prepare a Change Order authorizing such change in the Work on such form as directed by the Owner.
- .6 The Contractor shall request extensions of Contract Time due to change in the Work only at the time of submitting its Change Proposal. Contractor's failure to do so shall represent a waiver of any right to request a time extension.
- .7 The Contractor shall maintain such Allowance Expenditure Authorization and Change Order log (with Change Proposals) in such form as directed by Owner.

§ 7.1.5 Except as permitted in the Agreement with regard to amounts to which Owner is entitled to payment or offset arising from Contractor's breach or default hereunder, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order Modification. No course of conduct or dealings between the parties, nor express or implied acceptance of unauthorized alterations or additional to the Work, and no claim that the Owner has been unjustly enriched by any such alternations or additions to the Work whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim of any increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents. Contractor shall obtain the Owner's written authorization before proceeding with any change in the Work. The PM and Architect are not authorized to give instructions to the Contractor that will increase the cost or price of the Work to the Owner unless the PM or Architect has separate specific written authorization from Owner to do so. Prior to instituting Work requested by the PM or Architect that may result in an increase in the cost or price to Owner above the previously approved Contract Sum, Contractor must verify with the Owner that the PM and Architect is authorized to order the Work costing the additional amount. Any advice the PM or Architect gives the Contractor is not given as agent for or on behalf of Owner and shall in no way be construed as authorizing Contractor to perform extra Work.

§ 7.1.6 The total subcontractor mark-up for overhead, profit and fee for work performed by the subcontractor's own forces shall not exceed 10% of the cost of the Change in the Work. The total subcontractor mark-up for overhead, profit and fee for supervision of work performed by a sub-subcontractors' forces shall not exceed 5% of the cost of the Change in the Work. In no event shall total markup for overhead, profit and fee in any work which involves a subcontractor or one or more Sub-subcontractors, regardless of who performs the work, exceed 15% of the total cost of the Change in the Work.

The Contractor will not be allowed an overhead, profit and fee mark-up when changes in the Work are funded by one of the Allowances within the Contract Sum as any such markups are assumed to already be included in the Contractor's Fee.

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§ 7.2.2 An Allowance Expenditure Authorization (herein so called) is a written instrument prepared by the Architect and signed by the Owner, PM, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The reallocation of money from/to an allowance or contingency to/from the Cost of Work

§ 7.2.3 Contractor stipulates that acceptance of a Change Order and Allowance Expenditure Authorization by the Contractor constitutes full accord and satisfaction for any and all Claims, whether direct or indirect, arising from the subject matter of the Change Order.

§ 7.2.4 In no event shall a single change, or the aggregate of all changes, result in the total costs, reimbursements and fees exceeding the Contract Sum or the Guaranteed Maximum Price unless agreed to in writing by Owner prior to the commencement of such modified or changed Work.

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

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

§ 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~~ methods, all subject to the limitations of Section 7.1.6:

...

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

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§ 7.3.7 If the Contractor does not respond promptly ~~nor object in writing to the Owner and Architect~~ within 10 calendar days after receipt of the Construction Change Directive, such Directive shall be deemed accepted by the Contractor and shall be effective and recorded as a Change Order, or Allowance Expenditure Authorization if funded within the Contract Sum. ~~If Contractor disagrees with the method for adjustment in the Contract Sum, the Architect shall determine and timely and properly objects, the method and the adjustment shall be determined on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, subject to such provisions for adjustments to the Contract Sum as provided in the Contract Documents and as further limited immediately below including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the ~~Architect~~ 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: to the following costs, to the extent such costs are actually incurred by the Contractor and are reasonable, subject to the limitations of Section 7.1.6:~~

...

- .2 Costs of materials, supplies and equipment, including cost of ~~transportation, whether incorporated or consumed~~; transportation used in performing the Change in the Work;

...

- .4 Costs of additional premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

The Contractor shall keep and present in such form as the Owner or PM may prescribe, an itemized account of the items listed above, together with appropriate supporting documentation.

...

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. ~~The Architect-Owner will make an interim determination per 7.3.7 for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's costs. 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.

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

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The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor. Contractor shall carry out such written orders promptly. Minor changes in the Work shall not include changes that involve the material change to outward appearance of the structure, color schemes, floor plans, building materials or mechanical equipment.

...

§ 8.1.2 The date of commencement of the Work is the ~~date established in the Agreement.~~ first business day following the Contractor's written notice to proceed. The notice to proceed shall not be issued until Guaranteed Maximum Price Amendment has been signed by the Contractor and the Owner, and the Owner, PM and Architect have received and approved as to form all required payment and performance bonds and insurance as required by Article 11.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8. The date of Final Completion is the date certified by the Architect in accordance with Paragraph 9.10. Unless otherwise agreed in writing by Owner, Contractor agrees that Final Completion shall occur not more than 30 days after the date of Substantial Completion.

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§ 8.3.1 If the ~~Contractor~~ Contractor's critical path is delayed at any time in the commencement or progress of the Work by an act or neglect of the ~~Owner-Owner, PM or Architect, or of an employee of either, them, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect-Owner or PM determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.~~ Owner may determine. Contractor agrees to include a contingency of 20 business days, in addition to the required Weather Days, at the end of the schedule, and prior to Substantial Completion, to account for any possibly delays and will not be entitled to a delay claim or time extension unless said contingency is exceeded.

§ 8.3.1.1 If the Contractor becomes entitled to time extensions that would result in the Contract Time being extended, the Contractor will, upon the Owner's request, expeditiously develop and deliver to Owner, a recovery plan consistent with the requirements of the Agreement. In its subcontracts, Contractor will obtain commitments from its

Subcontractors to the obligation to expeditiously develop recovery schedules and budgets, if needed. The Owner may either elect to institute the plan for accelerated performance or extend the Contract Time.

§ 8.3.1.2 The Owner's consideration of extension of the Contract Time by Change Order shall be based on the following:

- .1 Claims for extension of time must be made in writing on or before the due date of Contractor's Application for Payment covering the period in which the delay began. In the case of a continuing cause of delay, only one claim is necessary.
- .2 Claims for extension of time shall be stated in whole or half Calendar Days, as applicable. The actual date on which the delay(s) occurred must be stated in the claim.
- .3 In case of claims for extension of time because of unusual inclement weather, such extension of time will be granted only if such unusual inclement weather prevented the execution of Work on normal working days. Unusual inclement weather as used herein means unusually severe weather which is beyond the normal weather recorded and expected for the locality of the Work and/or the season or seasons of the year. Normal weather conditions shall be determined based upon information compiled from the records of the U.S. Weather Bureau Station at the location of the Work. If unusually inclement weather conditions are the basis for a claim for additional time, such claim shall be documented by data substantiating such conditions, the fact that the same could not have been reasonably anticipated, and the fact that they had an adverse effect on the scheduled construction.
- .4 Any claim for extension of time for strikes or lockouts shall be supported by a statement of facts concerning the strike, including the dates, the craft concerned, the reason for the strike, efforts to resolve the dispute, and the efforts of the Contractor to minimize the impact of the strike upon progress of the Work.
- .5 Any claim for extension of time for delays in transportation shall be supported by a statement of facts demonstrating that the delays are beyond the Contractor's control, and reciting the Contractor's efforts to overcome such delays.

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§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents. To the fullest extent permitted by law, this Section 8.3 precludes recovery of damages for delay, and the sole remedy shall be an extension of any delay to the critical path commensurate with the delay.

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The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. Subject to the provisions of Section 9.5.1, Owner shall have the right to withhold payment due Contractor hereunder to the extent allowed by Section 9.5.1 or as otherwise required by applicable law. However, Owner shall not be entitled to withhold more than the sum of (a) the amount that Owner reasonably estimates is necessary to cure any such default or failure of performance by Contractor, and (b) the amount of damages incurred by Owner as a result of such default or failure of performance by Contractor, subject to any limitation or waiver of damages or costs set forth herein.

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Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Owner, PM and Architect, before the first Application for Payment, a schedule of values fairly allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used Owner, PM or Architect may require. The schedule of values shall be developed in such detail as the Owner may reasonably require. Once approved by the Owner and updated for changes in the Work, the schedule of values shall be used only as a basis for reviewing the Contractor's Applications for Payment for Payment and is not to be taken as evidence of market or other value. The schedule of values and any modifications or amendments thereto shall not overvalue early

job activities. Contractor's Fee and general conditions costs shall be set out as separate line items. The schedule of values shall follow the trade divisions of the Specifications so far as practicable. Any modifications or amendments thereto after execution of the Guaranteed Maximum Price Amendment and completion of the "buy out" process must be approved by the Owner, with which approval will not be unreasonably withheld. Contractor shall revise its original schedule of values or cost breakdown from time to time at the reasonable request of the Owner or as circumstances otherwise may require. Such schedule of values and any supplements or amendments thereto shall be subject to the prior written approval of Owner, PM and Architect, which approval will not be unreasonably withheld. Unless otherwise agreed by the Owner, in writing, the schedule of values shall be on an AIA Document G703 (most recent edition) or such other form as may be required or approved, in writing, by the Owner and the first schedule of values submitted shall be accompanied by such other information as the Owner may reasonably require to substantiate its accuracy including, if applicable, a detailed breakdown of that portion of the Cost of the Work to be performed by the Contractor using its own force .

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§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Procedures and requirements for payments under the Contract Documents are provided in Article 3 of the Modified A133-2009 Agreement. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

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§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. Without limiting the foregoing, the following conditions shall be met for all materials and equipment stored off the site, for which the Contractor is requesting payment:

- .1 The location must be agreed to, in writing, by the Owner and Surety.
- .2 The location must be a bonded warehouse.
- .3 The Contractor's Surety must agree, in writing, to the amounts included in each Application for Payment.
- .4 The Contractor must bear the cost of the Owner's and Architect's expenses related to visiting the off-site storage area and reviewing the stored contents. Contractor acknowledges that Architect's time is an additional service and shall compensate Architect directly for same.
- .5 Payment shall not include any charges for overhead or profit on stored materials.
- .6 Payments for materials or equipment stored on or off the site shall be conditioned upon submission by the Contractor of bills of sale or such other procedures satisfactory to the Owner to establish the Owner's title to such materials or equipment or otherwise protect the Owner's interest, including applicable insurance (naming the Owner as insured and naming the specific materials or equipment stored and their location) and transportation to the site for those materials and equipment stored off the site. Under no circumstances will the Owner reimburse the Contractor for down payments, deposits, or other advance payments for materials or equipment until the materials or equipment are delivered to Owner's site. Failure to follow these procedures shall result in nonpayment for storage of or insurance on stored materials and equipment. Failure to follow these procedures shall also result in nonpayment of materials and equipment until said materials and equipment are incorporated into the Work.

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

INDEMNIFY AND HOLD OWNER HARMLESS FROM ANY CLAIMS, SECURITY INTERESTS OR ENCUMBRANCES FILED BY THE CONTRACTOR, SUBCONTRACTORS, OR ANYONE CLAIMING BY, THROUGH OR UNDER THE CONTRACTOR OR SUBCONTRACTOR FOR ITEMS COVERED BY PAYMENTS MADE BY THE OWNER TO CONTRACTOR.

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§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1. See Article 7 of the Modified A133-2009 Agreement.

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§ 9.4.3 The issuance of a Certificate for Payment shall constitute a recommendation to the Owner regarding the amount to be paid. This recommendation is not binding on the Owner if Owner knows of other reasons under the Contract Documents why payment should be withheld.

§ 9.5.1 The Architect may withhold a Certificate for Payment. Owner may withhold payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from the Owner for any reason permitted by the Contract Documents for any loss for which the Contractor is responsible, including including, without limitation, loss resulting from acts and omissions described in Section 3.3.2, because of

.1 defective Work not remedied; remedied, proper materials not furnished, clean-up not performed;

...

.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment; or equipment, transportation or shipping costs, taxes, fees or other obligations properly incurred in connection with the Work;

...

.7 repeated failure to carry out the Work in accordance with the Contract Documents--Documents;

.8 with respect to the final request for payment, failure to deliver all close-out documents required by the Contract Documents, including As-Builts or Record Drawings, written guarantees or warranties, operating instructions and maintenance manuals when requested, but in any event prior to the earlier of (a) one month after the issuance of the certificate of occupancy, or (b) submitting the Application for Payment for the final payment;

9. failure to obtain the approvals (including the release of applicable bonds), permits, certificates of occupancies required by any authority having jurisdiction;

10. failure to provide Owner with a revised construction schedule and recovery plan acceptable to Owner in accordance with the Agreement to address how the Contractor intends to timely achieve the Substantial Completion Date;

11. failure to timely provide Owner with accurate and complete Monthly Reports and Quarterly Reports, Project photographs and/or videotape and all of the other items required to be included in each Monthly Report or Quarterly Report; or

12. failure to provide Owner with accurate and complete evidence that Contractor and any Contractor-Related Person currently performing any portion of the Work or providing materials to the Project is carrying the insurance required by their respective agreements.

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~~§ 9.5.3 If the Architect withholds certification for Owner is entitled to withhold payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.~~

§ 9.5.4 If Contractor disputes any determination by Owner with regard to all or any part of an Application for Payment or a Certificate of Payment, Contractor shall nevertheless expeditiously continue to prosecute the Work but shall be entitled to make a Claim as provided in Article 15.

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

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Should Contractor neglect or refuse to cause to be paid when due any undisputed bill or charge legitimately incurred by it, Owner shall have the right, but not the obligation, to pay the bill directly, and Contractor shall immediately reimburse Owner for same. If Contractor does not reimburse Owner, Owner may offset the amount of the unpaid, undisputed bill against amounts owed by Owner to Contractor hereunder. Owner shall have the further right to pay such unpaid, undisputed bills due to any Subcontractor or supplier by joint check payable to Contractor and each such Subcontractor, Sub-subcontractor or supplier.

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

...

~~§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.~~Contractor shall pay promptly when due all lawful demands of Subcontractors, suppliers, laborers, workmen, mechanics, materialmen, and persons who furnish labor, materials, machinery or parts thereof, equipment, power tools, or any other supplies whatsoever for debts incurred in the furtherance of the performance of this Contract, and (provided Owner has paid Contractor in accordance with the Contract Documents) shall indemnify and save Owner harmless from all claims growing out of such demands. Upon request by Owner, PM or Architect, Contractor shall furnish satisfactory evidence that all such obligations have been paid, discharged, bonded around or waived or that such obligations relate to or arise outstanding payments due Contractor. In the event Contractor fails to do so, Owner may, at its election, after having served written notice on Contractor, either pay unpaid bills of which Owner has written notice or withhold from Contractor's unpaid compensation a sum of money equal to the claimed amount. When satisfactory evidence has been received by Owner that all such liabilities have been fully discharged, waived, release or bonded around, Owner shall resume payment in accordance with the terms of the Agreement. In no event shall the provisions of this Section be construed to impose any obligation upon the Owner to either Contractor or its surety. The provisions of this Section shall be deemed to be in addition to the provisions of state law relating to the matters dealt with therein, and in no event shall they be deemed to alter, amend, or change the same, nor as an attempt to do so.

...

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents. § 9.7.1 Subject to Article 7 of the Modified A133-2009 Agreement, if the Architect does not timely issue a Certificate for Payment or if the Owner does not timely pay the Contractor after the date established in the Contract Documents the amount certified by the Architect for payment, subject to Owner's right to withhold payment as set out in Section 9.5.1 above, or awarded by binding dispute resolution, then the Contractor may give written notice to the Owner, PM and Architect, and Owner shall have fourteen (14) business days after receipt of such notice to provide or obtain a Certificate for Payment. If Owner fails to provide or obtain the Certificate for Payment suspend the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to: (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

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§ 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; provided, however, as a condition precedent to Substantial Completion, the Owner has received a temporary certificates of occupancy and any other permits, approvals, license, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project (or if the same has not been delivered for reasons not the fault or responsibility of Contractor, nevertheless all Contractor's obligations necessary to the issuance of such certificates, permits, approvals, or licenses will have been performed). Without limiting the foregoing, Substantial Completion shall not occur until the Project has the appearance of completion in accordance with the Contract Documents, all systems, equipment, and components are working properly, except for minor adjustment, and any corrective or completion work required for final completion is minor in nature.

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

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

If, in Owner's, Architect's or PM's opinion, the Project is not sufficiently complete to warrant a substantial completion inspection, or if the list of items included in the Contractor's punch list is excessive for this type of project,

the Owner, Architect or PM may terminate the inspection until such time as either deem the project ready for inspection.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, ~~the Architect will prepare upon request by the Owner, the Contractor will prepare and execute~~ a Certificate of Substantial Completion that shall ~~establish the date of Substantial Completion, shall establish set out the agreed upon date of Substantial Completion and the~~ responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the ~~list accompanying the Certificate. punch list accompanying the Certificate not exceeding 30 days from the date of Substantial Completion.~~ Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided ~~in the Certificate of Substantial Completion in the Certificate of Substantial Completion if a different date is set out in the Certificate of Substantial Completion and if the Owner agrees to the different date pursuant to Section 9.8.5.~~

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

...

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Owner, PM and Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. ~~The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect. Contractor agrees that the Owner may place and install as much equipment and furnishings as is possible before completion or partial completion of portions of the Work.~~

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

§ 9.9.3 Unless otherwise agreed upon, partial ~~occupancy~~ occupancy, installation 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.

§ 9.9.4 In the event that Owner takes partial occupancy or installs furnishings and equipment prior to Substantial Completion of the Project, Owner shall request Contractor to obtain an endorsement to Contractor's Builder's Risk Policy to provide extended coverage for partial occupancy if Contractor's Builder's Risk Coverage required by Article 11 would not otherwise provide such coverage.

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§ 9.10.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner, PM and Architect will promptly make such inspection and, when the ~~Architect~~ Owner finds the Work acceptable under the Contract Documents and the Contract fully performed, Owner will make the final payment as provided by the Contract Documents. All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Owner as part of the final Application for Payment. The final payment will not be made by the Owner until all warranties and guarantees have been received and accepted by the Owner. Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the ~~Architect-Owner, PM and Architect~~, in addition to other information required to achieve Final Completion: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), ~~if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.~~ payment. (5) such documentation and assignments with regard to warranties as required by Section 3.5.1, Section 5.4.4 or otherwise in the Contract Documents; (6) such drawings and record documents as required by Section 3.19 or as otherwise required by the Contract Documents; (7) such operations and maintenance manuals, records, instructions, and data, as required by the Contract Documents; (8) keys, access cards, and any other items for access to and security of the premises; (9) such other close-out submittals or documentation required by the Contract Documents.

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

§ 9.10.4 The making of final payment shall not constitute a waiver of Claims by the Owner ~~except those arising from~~
.1 — ~~liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;~~
.2 — ~~failure of the Work to comply with the requirements of the Contract Documents; or~~
.3 — ~~terms of special warranties required by the Contract Documents.~~ Owner.

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§ 9.10.6 Except as otherwise provided in the Agreement, records of reimbursable expenses and costs incurred by the Contractor and for which payment is sought or received from Owner for Work performed or to be performed hereunder shall be made available to Owner for its reasonable review and examination. Such records shall be preserved by the Contractor and made available to the Owner for a period of at least 3 years after final completion of the Work.

§ 9.10.7 Upon satisfaction of these conditions, final payment is to be made after 31 days have elapsed since final completion without Owner or Contractor having received notice of claim of a Subcontractor or other person relating to the Work of non-payment for the Work performed or labor or materials furnished by such person; provided, however, if the Contractor has provided the Owner with (a) consent of surety, if requested by Owner, and (b) security legally sufficient to hold Owner and its property harmless from such claim, the Owner shall not withhold final payment on the basis of such claim. Final payment shall not be deemed a waiver by Owner of defects in construction or performance of the Work by Contractor or of any other breach of this Contract by Contractor.

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.1.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract including, without limitation, enforcement of Section 3.3.2 and compliance with all provisions of the "Manual of Accident Prevention in Construction," published by the Associated General Contractors of America, Inc., latest edition. Contractor will develop a Site Specific Safety Program and submit a written manual that defines the Site Specific Safety Program and how it will be implemented and managed.

§ 10.1.2 Contractor's employees and any Contractor-Related Person shall not perform any Work or services while under the influence of any amount of alcohol or controlled substance, or use, possess, distribute, or sell alcoholic beverages while on Owner's premises. No person shall use, possess, distribute, or sell illicit or non-prescribed controlled drugs or drug paraphernalia; misuse legitimate prescription drugs, or act in contravention of warnings on medication while performing the Work or on Owner's premises.

§ 10.1.3 Contractor shall comply with all applicable federal, state, and local drug and alcohol-related laws and regulations. Any and all weapons are banned from the Project site, whether or not the owner thereof has a permit.

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§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including all necessary and adequate fall protection, barriers and fencing, posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures reasonably necessary to protect the building in which the improvements are being constructed, including interior areas, and any improvements therein. Any damage to such property or improvements caused by, through or under the Contractor shall be promptly repaired by the Contractor.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall give the Owner, PM and Architect reasonable advance notice thereof and shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. No explosives or use of explosives is allowed on the project site.

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If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner.

§ 10.2.9 When all or a portion of the Work is suspended for any reason, the Contractor shall protect the Work, as reasonably necessary, from injury damage to persons or property.

§ 10.2.10 TEMPORARY FACILITIES

Contractor shall make temporary connections for all utilities necessary during construction and shall remove them after completion of Project. Contractor shall provide, at a location on the Project site approved by Architect, a suitable weather-tight field office with raised floors available for use by Contractor at all times. Contractor shall furnish such field office with electric lights, telephone and ample desk space for use by Contractor. Field office is to include a separate room/office for use by Architect, PM and Owner. Contractor shall provide and maintain sanitary facilities for workmen at the job in accordance with the laws of Texas and the code and ordinances of the City. Contractor shall completely remove such facilities when the Project is completed. In conjunction with, but not in lieu of the requirements of Section 10.2.3, the Contractor shall provide an appropriate fence around the entire construction area

for the duration of the Project as a minimum safety separation. This fence shall be equipped with vehicular and pedestrian gates with locks. The Contractor shall maintain the construction fences and gates in a state of good repair at all times for the duration of the Project. Gates shall be kept locked at all times when the Contractor's or any Contractor-Related Persons are not on the site. Any conditions of the construction fence and/or gates which the Architect, PM or Owner deems hazardous will be corrected promptly; provided, however, the Owner, PM and Architect shall have no duty to monitor any such hazardous conditions, as such activity is the Contractor's duty. If such conditions are not corrected promptly upon written notice, the Owner may correct the hazardous conditions and the cost of the corrective action will be deducted from the Contractor's payment.

§ 10.2.11 Contractor's obligations under Section 10.2 shall continue until final completion of the Project. Owner has taken 100% occupancy and all of Contractor's temporary facilities have been removed..

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§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. The Contractor shall not and shall not permit any hazardous materials to be brought to the Work site or used in the Work, except with respect to any materials expressly required by the Contract Documents that could have hazardous qualities in their pre-installation state. The Contractor shall follow all manufacturers' safety requirements when using such materials.

If the Contractor encounters a pre-existing 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 Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing. The term "hazardous materials" includes, without limitation, any flammables, explosive, radioactive materials, petroleum based materials exceeding applicable federal, state, or local regulatory limits, asbestos, toxic substances or related materials, including without limitation, substances defined as "hazardous wastes," "hazardous substances," "hazardous materials," "toxic substances" or "solid wastes" in the Comprehensive Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C.A. Section 9601 *et. seq.*; the Resource Conservation and Recovery Act, 42 U.S.C.A. Section 2601, *et seq.*; and any other applicable laws statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, an amendments and revisions thereto. Contractor shall obtain from manufacturers and furnish to Owner Material Safety Data Sheets (OSHA Form 20) for all materials incorporated into the Project by the Contractor; provided, however, that providing such material shall in no way relieve Contractor of its duties under Section 10.3.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the pre-existing material or substance reported by the Contractor and, in the event such pre-existing material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor, PM and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the pre-existing material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up. Notwithstanding the foregoing, in those instances in which Contractor had notice of or should reasonably have known of the presence of such materials through information reviewed by Contractor, Contractor shall not be entitled to a Claim for any delays, disruption or interference it encounters.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them Contractor and any Contractor-Related Person 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 an area affected by hazardous materials if in fact such material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is

attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity. Notwithstanding any provision of the Contract Documents to the contrary, any recovery from the Owner under this Section 10.3.3 and Section 10.3.6 hereof is limited to coverage available to Owner under Owner's Pollution Liability insurance, including any deductible required by such policy. The Owner shall purchase a Pollution Liability insurance policy for this Project with project-specific limits of \$2,000,000 each loss and a \$2,000,000 policy aggregate. Such policy shall be written on an occurrence basis and shall include contractual liability coverage. A certificate of insurance evidencing such coverage and copy of such policy shall be provided to Contractor prior to commencement of the Construction Phase. The Owner will maintain such Pollution Liability insurance until the Work is substantially complete. The policy will be endorsed to provide Contractor with at 30 days' notice of cancellation. **WAIVER: THE CONTRACTOR WAIVES ALL SUCH CLAIMS IN EXCESS OF SUCH LIMITATION, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, REGARDLESS OF WHETHER ANY SUCH CLAIMS, CAUSES OF ACTION, LOSS, DAMAGES, FEES OR EXPENSES THAT ARE THE SUBJECT OF SUCH TERMS ARE CAUSED, OR ARE ALLEGED TO BE CAUSED, BY ANY NEGLIGENCE, NEGLIGENT MISREPRESENTATION, BREACH OF CONTRACT OR BREACH OF ANY OTHER DUTY OR OBLIGATION OF OWNER, PM, ARCHITECT OR THEIR OFFICIALS, EMPLOYEES, AGENTS OR REPRESENTATIVES.**

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

~~§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the~~ **INDEMNITY**
THE CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OWNER PARTIES AGAINST:

- .1 ANY CLAIM AND FOR LOSS THE OWNER INCURS (1) FOR REMEDIATION OF A MATERIAL OR SUBSTANCE THE CONTRACTOR OR A CONTRACTOR-RELATED PERSON BRINGS TO THE site and negligently handles, SITE, OR (2) WHERE THE CONTRACTOR FAILS TO PERFORM ITS OBLIGATIONS UNDER Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence. 10.3.1 OR AS REQUIRED BY LAW OR REGULATION
- .2 REGARDLESS OF
 - (A) WHETHER LIABILITY WITHOUT FAULT OR STRICT LIABILITY IS IMPOSED UPON OR ALLEGED UPON CONTRACTOR OR AGAINST ANY OWNER PARTIES, AND
 - (B) THE SCOPE OF ANY PERSON'S INSURANCE AND ITS INDEPENDENT OF INSURANCE;
- .3 BUT WILL NOT BE ENFORCED TO THE FOLLOWING EXTENT ("EXCLUDED MATTERS"):
 - (A) OF OWNER'S PRIOR, MATERIAL BREACH OF AN ESSENTIAL TERM OF THIS CONTRACT; OR
 - (B) A LOSS IS CAUSED IN WHOLE OR IN PART BY THE WILLFUL MISCONDUCT OR NEGLIGENCE OF AN OWNER PARTY.

NOTWITHSTANDING THE FOREGOING LIMITATIONS ON INDEMNITY OBLIGATIONS, THE OBLIGATIONS OF THE CONTRACTOR WITH REGARD TO THOSE CLAIMS OR LOSSES ASSERTED AGAINST OR INCURRED BY AN OWNER PARTY DUE TO OR ARISING OUT OF (A) A FAILURE OR ALLEGED FAILURE BY THAT INDEMNIFIED PARTY TO SUPERVISE, MONITOR, OR CONTROL CONTRACTOR'S OR ANY SUBCONTRACTOR'S ACTIVITIES ON OR ABOUT THE SITE OR OTHERWISE IN RESPECT TO PERFORMANCE OF THE WORK, OR (B) A FAILURE OR ALLEGED FAILURE BY THAT OWNER PARTY TO ENFORCE THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT DOCUMENTS SHALL NOT BE REDUCED BY THE COMPARATIVE NEGLIGENCE OF THE OWNER PARTY ATTRIBUTABLE TO OR RESULTING FROM SUCH OWNER'S ALLEGED FAILURE TO SUPERVISE, MONITOR OR CONTROL ANY CONTRACTOR-RELATED PERSON OR ALLEGED FAILURE TO ENFORCE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT DOCUMENTS.

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In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7-7; provided the Contractor shall not be entitled to additional compensation or an extension of time if an emergency is caused by the negligence or breach of the Contract Documents or the failure of the Contractor's personnel to supervise adequately the Work of any Contractor-Related Parties.

§ 10.5 HAZARDOUS MATERIALS CERTIFICATION

The Contractor shall provide written certification that no materials used in the Work contain lead or asbestos materials in them in excess of amounts allowed by federal, state or local standards, laws, codes, rules and regulations; the Federal Environmental Protection Agency (EPA) standards; and/or the Federal Occupational Safety and Health Administration (OSHA) standards, whichever is most restrictive. The Contractor shall provide this written certification as part of submittals under the section in the Project Manual related to Contract Closeout.

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§ 11.0 Attached hereto as Exhibit A to the Modified A133-2009 Agreement are specifications for insurance and bonds to be obtained and maintained by the party identified in the Exhibit. The specifications are in addition to the requirements set out in this Article 11. In the event of any direct conflict between the specification in the Exhibit and the requirements set out in the below sections of Article 11, the specifications in Exhibit A to the Agreement control and amend and supersede the conflicting requirement set out in the below sections of Article 11. Commercial General Liability, Worker's Compensation, Automobile Liability and Excess/Umbrella insurance will be provided by or on behalf of all Subcontractors of any tier and suppliers. Contractor will maintain certificates and evidence of insurance from all Subcontractors of any tier and suppliers, enumerating, among other information, the waivers of subrogation in favor of and additional insured status of the Owner Parties (as herein defined), as required by this Agreement. Contractor will make such certificates and evidence of insurance available to Owner Parties upon request. The coverages and limits set forth in Exhibit to A are minimum requirements and not a determination as to all of the coverages and maximum limits that Contractor should carry. The failure of a party to demand full compliance by the other party with respect to the minimum coverages outlined in Exhibit to A will not constitute a waiver with respect to the other party's obligation to maintain such coverages.

The failure of Contractor or any Contractor-Related Parties to obtain and maintain the required insurance will constitute a material breach of, and default under, Contract Documents. If Contractor or any Contractor-Related Parties fail to remedy such breach within 5 days after notice from Owner, Owner may, in addition to any other remedy available to it, at the Owner's sole option, purchase such insurance, at the Contractor's expense. The Contractor will indemnify the Owner, its officers and employees against any Claims arising from the Contractor's failure to purchase and/or maintain the insurance coverages required by this Agreement.

§ 11.1.1 The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance in coverage types, amounts and features not less than that required by the insurance requirements in Contract Documents including, without limitation both Exhibit A of the Agreement and this Article 11, and as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor-Contractor-Related Person or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

...

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

period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or ~~allowed to expire~~ until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

§ 11.1.4 The Contractor shall cause the commercial liability, auto and umbrella liability coverage required by the Contract Documents to include (1) ~~the Owner, the Architect and the Architect's consultants as additional insureds~~ Owner Parties as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) ~~the Owner as an additional insured~~ Parties as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during arising after as to the Contractor's completed operations. All such liability policies carried and maintained by Contractor must be endorsed to be primary to any liability insurance policies carried by the additional insureds with respect to Contractor's operations hereunder. Waivers of subrogation shall be provided in favor of the additional insureds on general, auto, workers' compensation/employers, umbrella and all other liability policies carried and maintained by Contractor where allowed by law.

§ 11.1.5 If the Contractor fails to purchase and maintain, or require to be purchased and maintained, any insurance required under this Article 11 or the insurance requirements in the Agreement, Owner may, but shall not be obligated to, upon 5 days' written notice to the Contractor, purchase such insurance on behalf of the Contractor and shall be entitled to be reimbursed by the Contractor upon demand.

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

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

...

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

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without

duplication of coverage, theft, vandalism, malicious mischief, lightning, hurricane, hail, explosion, riot, civil commotion, smoke, damage caused by aircraft or land vehicles, damages to materials stored on or off site or in transit, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, increased cost of construction and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss. Such property insurance shall not cover any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring and similar items commonly referred to as construction equipment, which may be on the site and the capital value of which is not included in the Work, to the extent that such premiums are made part of the Contract Sum. The Contractor shall have adequately insured all such construction equipment. Any such policy obtained by the Contractor under this paragraph shall include a waiver of subrogation in accordance with the requirements of Section 11.3.7.

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

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

...

~~The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards however caused-caused, except as set forth in Section 15.1.6 hereof.~~

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

§ 11.3.5 ~~If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise. If, after final payment, Owner provides property insurance for the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.~~

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

§ 11.3.7 WAIVERS OF SUBROGATION/WAIVERS OF RECOVERY AND SUBROGATION

~~THE OWNER AND CONTRACTOR (THE "RELEASING PARTIES") WAIVE ALL RIGHTS AGAINST THE FOLLOWING PERSONS (THE "RELEASED PERSONS"): (1) EACH OTHER AND ANY OF THEIR subcontractors, sub-subcontractors, agents~~

SUBCONTRACTORS OF ANY TIER, SUB-SUBCONTRACTORS, COMMISSIONERS, OFFICIALS, AGENTS AND OFFICERS, DIRECTORS AND EMPLOYEES, EACH OF THE OTHER, AND (2) THE ARCHITECT, ARCHITECT'S CONSULTANTS, SEPARATE CONTRACTORS DESCRIBED IN ARTICLE 6, IF ANY, AND ANY OF THEIR subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered SUBCONTRACTORS OF ANY TIER, SUB-SUBCONTRACTORS, AGENTS AND EMPLOYEES, FOR LOSSES AND CLAIMS FOR DAMAGE TO THE WORK UNDER CONSTRUCTION, DAMAGE TO THE COMPLETED WORK, AND DAMAGE TO OR LOSS OF FIXTURES OR MATERIALS, EQUIPMENT OR OTHER PERSONAL PROPERTY TO THE EXTENT PAID BY PROPERTY INSURANCE OBTAINED PURSUANT TO THIS SECTION 11.3 OR OTHER PROPERTY INSURANCE APPLICABLE TO THE WORK, OR THAT WOULD HAVE BEEN COVERED BY INSURANCE IF THE RELEASING PARTY FAILS TO MAINTAIN THE PROPERTY COVERAGE REQUIRED OF IT BY THIS AGREEMENT EXCEPT SUCH RIGHTS AS THEY HAVE TO PROCEEDS OF SUCH INSURANCE HELD BY THE OWNER as fiduciary- OR CONTRACTOR IN GOOD FAITH. IN THE EVENT OF PROPERTY DAMAGE POTENTIALLY COVERED BY A PARTY'S PROPERTY INSURANCE POLICY, SUCH PARTY SHALL SUBMIT A CLAIM WITH ITS PROPERTY INSURANCE CARRIER AND USE COMMERCIALY REASONABLE EFFORTS TO SECURE PAYMENT FROM SUCH CARRIER BEFORE PURSUING ANY CLAIM AGAINST THE OTHER PARTY. SUBJECT TO SECTION 11.3.1.3, COSTS NOT COVERED BECAUSE OF DEDUCTIBLES OR SELF-INSURED RETENTIONS SHALL BE "PAID BY PROPERTY INSURANCE" FOR PURPOSES OF THIS SECTION 11.3.7. THE OWNER OR CONTRACTOR, AS APPROPRIATE, SHALL REQUIRE OF THE ARCHITECT, ARCHITECT'S CONSULTANTS, SEPARATE CONTRACTORS DESCRIBED IN ARTICLE 6, IF ANY, AND THE subcontractors, SUBCONTRACTORS OF ANY TIER, SUB-SUBCONTRACTORS, AGENTS AND EMPLOYEES OF ANY OF THEM, BY APPROPRIATE AGREEMENTS, WRITTEN WHERE LEGALLY REQUIRED FOR VALIDITY, SIMILAR WAIVERS EACH IN FAVOR OF other parties- THE RELEASED PERSONS ENUMERATED HEREIN. THE POLICIES SHALL PROVIDE SUCH WAIVERS OF SUBROGATION BY ENDORSEMENT OR OTHERWISE. A WAIVER OF SUBROGATION SHALL BE EFFECTIVE AS TO A PERSON OR ENTITY EVEN THOUGH THAT PERSON OR ENTITY WOULD OTHERWISE HAVE A DUTY OF INDEMNIFICATION, CONTRACTUAL OR OTHERWISE, DID NOT PAY THE INSURANCE PREMIUM DIRECTLY OR INDIRECTLY, AND WHETHER OR NOT THE PERSON OR ENTITY HAD AN INSURABLE INTEREST IN THE PROPERTY DAMAGED. THE RELEASES IN THIS SECTION WILL APPLY EVEN IF THE LOSS IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE, NEGLIGENT MISREPRESENTATION, BREACH OF CONTRACT OR OTHER LEGAL DUTY OR STRICT LIABILITY OF ANY RELEASED PERSON. THE RELEASES IN THIS SECTION SURVIVES COMPLETION OF THE WORK AND COMPLETION, TERMINATION OR EXPIRATION OF THIS AGREEMENT.

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

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

§ 11.3.10 The Owner-Contractor as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's-Contractor's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

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§ 11.4.1 The Owner shall have the right to require-requires the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. The performance bond shall also include an amount necessary to reimburse Owner its reasonable and necessary attorneys' and experts' fees and

litigation costs incurred in claims arising under the performance bond, and liquidated damages arising under the Contract Documents. The payment bond shall be in the statutorily required amount and form and issued by an issuer acceptable to Owner. The payment bond shall not be on an AIA bond form or such other form as Owner may require at the time of contracting. Any person, firm or corporation executing a performance or payment bond upon the Contractor's Work under the Agreement, shall be deemed to have consented in advance to any changes in the Work made by order of the Owner; any such changes shall in no way alter or impair the obligations of such person, firm or corporation executing such a bond. The amount of the bonds shall be written to increase with Change Orders. Contractor shall obtain and file with Owner bond increase riders for any increases in the Contract Sum as may be necessary to effectuate coverage for increases in the Contract Sum. Issuer must be at least a Best's Key Rating Guide A/VII company and listed on the United States Department of the Treasury's List of Acceptable Sureties and Reinsurers (the "T" list). The payment bond shall meet the requirements of Section 53.201 et seq. of the Texas Property Code. The surety company shall provide, if requested, information on bonding capacity and other projects under coverage and shall provide proof to establish adequate financial capacity for this Project. Should the bond amount be in excess of ten percent (10%) of the surety company's capital and surplus, then the surety company issuing the bond shall certify that the surety company has acquired reinsurance, in a form and amount acceptable to the Owner, to reinsure the portion of the risk that exceeds ten percent (10%) of the surety company's capital and surplus with one or more reinsurers who are duly authorized and admitted to do business in Texas and that amount reinsured by a reinsurer does not exceed ten percent (10%) of the reinsurer's capital and surplus. Contractor shall immediately notify the Owner and Architect in writing if there is any change in: the rating; insolvency or receivership in any State; bankruptcy; right to do business in the State; or status of Contractor's sureties at any time until Final Completion.

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§ 11.4.3 All bonds shall be originals. The Contractor shall require the attorney-in-fact who executes the required Bonds on behalf of the Surety to affix thereto a certified and current copy of the power-of-attorney. The name, address and telephone number of a contact person for the bonding company shall be provided including, without limitation the same contact information for any claim.

§ 11.4.4 Bonds shall guarantee the faithful performance of all of the covenants, stipulations, and agreements of the Contract. Bond shall be signed by an agent, resident in the State of Texas. If at any time during the continuance of the Contract, the Owner determines that the Contractor is unable to complete the Work in accordance with the Contract Documents, any of the Contractor's bonds become insufficient, the surety becomes insolvent, or the surety's rating drops below the required level, then the Owner shall have the right to require from the Contractor additional and sufficient sureties or other security acceptable to the Owner, which the Contractor shall furnish to the satisfaction of the Owner, within ten (10) days after notice to do so. These contractual remedies are in addition to all remedies available by law. In default thereof, all payment or money due to the Contractor may be withheld until the Contractor provides additional surety or security.

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

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

...

The Contractor shall promptly correct Work rejected by the Owner, PM or Architect or Work failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or

not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the PM's and Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. If prior to the date of Substantial Completion, the Contractor or Contractor-Related Person or anyone for whom they may be responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing and other building systems, machinery, equipment or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner.

§ 12.2.1.1 The Owner may make emergency repairs to the Work or take such other measures necessary under the circumstances, if the Contractor does not promptly respond to a notice of defect or non-conforming Work. Contractor shall be responsible to Owner for this cost if the reason for the repairs is attributable to the Contractor. If payments then or thereafter due to the Contractor are not sufficient to cover such costs, then the Contractor shall pay the difference to the Owner on demand.

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§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. ~~During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. Written notice shall not be required if Contractor has actual notice.~~ If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. Nothing herein shall be construed to negate or limit Contractor's obligations set forth in Section 3.18 above, including without limitation Contractor's duties to defend and indemnify the Owner Parties. Nothing contained in this Section 12.2 is intended to limit or modify any obligations under the law or under the Contract Documents, including any warranty obligations, expressed or implied.

§ 12.2.2.2 Any corrective Work performed under or pursuant Section 12.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section ~~12.2.12.2~~ shall be warranted to the same extent as the Work is warranted hereunder for the greater of the remainder of the applicable warranty period or 90 days from the date such corrective Work has been completed.

...

§ 12.2.6 Owner shall have the right to operate equipment before defects are corrected and warranties met and shall have the right operate rejected equipment until it is replaced without charge for depreciation, use or wear.

§ 12.2.7 Contractor shall replace, repair, or restore any parts of the Project or furniture, fixtures, equipment or other items placed therein (whether by Owner or any other party) that are injured or damage by any such parts of the Work that do not conform to the requirements of the Construction Documents or the Contract Documents or by defects in the Work.

§ 12.2.8 The provisions of this Section 12.2 apply to Work done by Subcontractors of the Contractor as well as Work done directly by employees of the Contractor. The provision of this Section shall not apply to corrective work attributable solely to the acts or omissions of any separate contractor of Owner (unless Contractor is acting in such capacities). The cost to Contractor of performing any of its obligations under this Section 12.2.7 to the extent not covered by insurance shall be borne by Contractor.

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~~ equitable, based on the difference in value between the installed work and that which is shown or specified in the drawings ("diminished value"). Such adjustment shall be effected whether or not final payment has been made.

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The Contract shall be governed by the law of the ~~place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern~~ Section 15.4.State of Texas, and where applicable, of the United States of America. Exclusive venue for any proceeding, claim or dispute arising out of the Work, the Project or the Contract Documents or their interpretation shall be in a District Court in Hidalgo County, Texas.

...

Written notice shall be deemed to have been duly served if delivered in person to the ~~individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; representative(s) designated in writing in the Contract Documents to receive notices, with copies where required; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice; return receipt requested or by courier service with signed receipt providing proof of delivery to the representative(s) designated in writing in the Contract Documents to receive notices, with copies where required.~~

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

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the ~~Architect will, upon written authorization from the Owner, Owner will,~~ instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the owner, PM and Architect of when and where tests and inspections are to be made so that the owner, PM and Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense. The Contractor also agrees that the cost of testing services required for the convenience of the Contractor in its scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work that are not the result of design deficiencies shall be borne by the Contractor.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the PM and Architect's services and expenses shall be at the Contractor's expense.

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

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Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located rate established in the Modified A133-209 Agreement.

...

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

§ 13.8 COSTS AND FEES. If any action at law or in equity is necessary to enforce or interpret the terms of the Contract Documents, the prevailing party shall be entitled to reasonable attorneys' fees, expert witness fees, costs, and necessary disbursements in addition to any relief to which it may be entitled.

§ 13.9 INTERPRETATION This Contract shall not be construed more or less favorable between the parties by reason of authorship or origin of language. Contractor agrees not to use the construction Documents in connection with any other construction that Contractor may be involved with. This provision shall survive the completion of the Work or the completion, termination or expiration of the Contract Documents.

§13.10 EQUAL OPPORTUNITY IN EMPLOYMENT

§ 13.10.1 The Contractor and the Contractor Related Persons shall comply with all laws prohibiting discrimination against any employee or applicant for employment because of race, religion, age, disability, sex, or national origin. The Contractor agrees to post in conspicuous places, available to employees and applicants, all legal notices setting forth the Contractors nondiscrimination policies and as required by law.

§ 13.10.2 The Contractor and the Contractor-Related Persons shall, in all solicitations or advertisements for employees placed by them or on their behalf, comply with all laws prohibiting discrimination against any employee or applicant for employment because of race, religion, age, disability, sex, or national origin and state that all qualified applications will receive consideration for employment without regard to race, religion, age, disability, sex, or national origin.

§ 13.9 JOB RECORDS

§ 13.9.1 Contractor shall at all times through the date of Final Completion, maintain Job Records, including, but not limited to, invoices, payment records, payroll record, daily reports, diaries, logs, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda, other financial data including, without limitation, the records described in Modified A133-2009 Agreement, Section 6.11, and job meeting minutes applicable to the Project, in a manner which maintains the integrity of the documents. Job Records must be retained by Contractor for at least five (5) years after the date of Final Completion of the Project. Within 10 days of Owner's request, Contractor shall make such Job Records available for inspection, copying and auditing by the Owner, PM, Owner's auditors or experts, Architect or their respective representatives.

§ 13.9.2 Contractor shall also maintain, in accordance with the provisions of Section 13.9.1, the following: subcontract files, including proposals of successful and unsuccessful bidders, bid recaps and subcontractor payments; original estimates; estimating work sheets; general ledger entries detail cash and trade discounts received; insurance rebates and dividends; and any other supporting evidence deemed necessary by the Owner or PM to substantiate charges related to the Contract.

§ 13.9.3 Contractor shall keep a full and detailed financial accounting system and shall exercise such controls as may necessary for proper financial management under this Contract; the accounting and control system shall be satisfactory to the Owner and shall be subject to the provisions of Section 13.9.1.

§ 13.9.4 Contractor shall keep all Construction Documents related to the Project, subject to the provisions of

Section 13.9.1, provided, however, Contractor shall not destroy said documents until Contractor has confirmed doing so with Owner.

§ 13.9.5 In the event that an audit by the Owner reveals any errors or overpayments by the Owner, then the Contractor shall refund to the Owner the full amount of such overpayment within thirty (30) days of such audit findings, or the Owner, at its option, reserves the right to deduct such amounts owed to the Owner from any payments due to the Contractor.

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§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30-90 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities-any Contractor-Related Person performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:reasons, subject to the requirements of Section 14.1.3 below:

...

- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1. The Contractor is entitled to and has suspended performance in accordance with the Contract Documents.

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

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

§ 14.1.4 If the Work is stopped for a period of 60-90 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons or any Contractor-Related Person performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner-Owner, PM and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

...

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

- .1 repeatedly refuses or fails-fails to diligently prosecute the Work to completion thereof in an efficient, timely, workmanlike, skillful and careful manner and in strict accordance with the provisions of the Contract Documents, including, but not limited to, refusing or failing repeatedly to supply enough properly skilled workers or proper materials;

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- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.
- .5 the Contractor becomes insolvent, or makes a transfer in fraud of creditors, or makes an assignment for the benefit of creditors;

- .6 the Contractor files or has filed against it a petition under any chapter or section of the United States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any state thereof, or shall be adjudged bankrupt or insolvent in any legal proceeding;
- .7 a receiver or trustee is appointed for all or a significant portion of the assets of Contractor;
- .8 the Contractor actually or constructively abandons, or puts Owner on actual or constructive notice that it intends to abandon, the Project;
- .9 engages in conduct that would constitute a violation of state or federal criminal law, including but not limited to, the law prohibiting certain gifts to public servants, or engages in conduct that would constitute a violation of the Owner's ethics or conflict of interest policies; or
- .10 the progress of construction is such that Owner reasonably believes that the Contractor shall not be able to achieve Substantial Completion within 60 days following the date of Substantial Completion required by the Agreement. Without limiting the foregoing, Owner shall be deemed to have a reasonable belief that the Contractor shall not be able to achieve Substantial Completion by the date required pursuant to the preceding sentence if the Contractor shall fail to achieve a critical milestone within 60 days of the date for such critical milestone set forth in the critical path schedule.

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

...

- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

Notwithstanding the foregoing, if Owner reasonably determines that Contractor's acts or omissions pose an immediate and substantial threat or danger of injury to persons or damage to the Work or other property, Owner may, without prejudice to any other rights or remedies granted by Contract Documents or by law, immediately suspend Contractor's performance of the Work, take immediate possession of the Project site, take such further action reasonably necessary to prevent, mitigate against, remove, or repair such threat or damage, and deduct such costs and expenses it reasonably incurs from any sums due and owing to the Contractor, or, in the absence thereof, to recover such costs and expenses from the Contractor.

It is recognized that if Contractor is adjudged a bankrupt, or makes a general assignment for the benefit of creditors, or if a receiver is appointed for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, such could impair or frustrate Contractor's performance of this Agreement. Accordingly, it is agreed that upon the occurrence of any such event, Owner shall be entitled to request of Contractor or its successor in interest adequate assurance of future performance in accordance with the terms and conditions hereof. Failure to comply with such request within 10 days of delivery of the request shall entitle Owner to terminate this Agreement and to the accompanying rights set forth above. In all events pending receipt of adequate assurance of performance and actual performance in accordance therewith, Owner shall be entitled to proceed with the Work with its own forces or with other contractors on a time and material or other appropriate basis the cost of which will be back charged against the Contract Sum hereof.

...

~~§ 14.2.4~~ If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract. As required by Texas Government Code Chapter 2253, if a Performance Bond has been furnished and the Contractor is declared by the Owner to be in default under the Contract Documents, then the Surety shall promptly perform the Work, in full accordance with the plans, specifications and Contract Documents. Unless otherwise agreed in writing between the Surety and the Owner, the Surety shall complete the Work by the

Surety entering into a Contract acceptable to Owner, with a Contractor acceptable to Owner, and shall obtain new Payment and Performance Bonds as required by law.

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§ 14.3.2 The Subject to Section 2.3.3.5.2 of the Agreement, the Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

...

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Furthermore, if this Contract is a multi-year contract funded through Owner's current general funds that are not bond funds, then the Owner's Commissioners' Court has the right to not appropriate adequate monies for the next fiscal year and to terminate this Contract at the end of each fiscal year during the term of the Contract, without the Owner incurring any further liability to Contractor as a result of such termination.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall promptly and expeditiously:

- .1 cease operations as directed by the Owner in the notice; the notice, including the prompt removal of its employees and equipment from the site, except to the extent necessary to carry out its remaining duties and obligations hereunder;

...

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, paid for Work properly executed and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed on the Work not executed and fee earned on such Work in accordance with the Contract Documents prior to the effective date of termination, as measured by the Contract Sum, and the direct, actual, and unavoidable (by exercising reasonable care) costs incurred by Contractor in terminating the Work, including but not limited to, demobilization costs, the cost of canceling subcontracts and purchase orders not assumed by the Owner and other such out-of-pocket costs incurred by Contractor to third parties with respect to termination of this Agreement. Owner shall not be responsible for any lost profits or reimbursement for overhead on the Work not performed. The amounts owing by Owner to Contractor pursuant to this Section shall be as specified in Contractor's final Application for Payment and approved by Owner. In addition to payment for the Work performed prior to the effective date of termination and for any Work performed following the date of termination pursuant to Owner's written request, Contractor shall be entitled to payment for materials and equipment (whether specifically fabricated or otherwise) delivered and stored in accordance with the Owner's instructions, as well as restocking fees incurred for materials or equipment returned.

§ 14.4.4 Upon determination by a Court of competent jurisdiction that termination of the Contractor pursuant to Section 14.2 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.4, and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments permitted for termination for convenience as set forth in Section 14.4.

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A Claim For purposes of Section 15.1, a "Claim" is a demand or assertion by ~~one of the parties seeking~~, a party, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question ~~between the Owner and Contractor~~ that a party may have or assert arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

...

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker party, and against the Owner to the PM and Architect. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Neither party shall waive a Claim against the other solely by virtue of the fact that notice of such Claim was not provided in strict accordance with a notice deadline set forth in the Contract Documents; provided, however, each party shall provide the other with reasonable notice of any Claim that they may have against the other. No failure of Owner to give a notice timely shall result in a waiver or forfeiture of rights.

...

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

...

§ 15.1.4.1 Except as otherwise provided in the Agreement, in calculating the amount of any Claim recoverable by the Contractor, the following standards will apply:

- .1 No indirect or consequential damages will be allowed.
- .2 No recovery shall be based on a comparison of planned expenditures to total actual expenditures, or on estimated losses of labor efficiency, or on a comparison of planned man-loading to actual man-loading, or any other analysis that is used to shown damages indirectly.
- .3 Damages are limited to extra costs specifically shown to have been directly caused by a proven wrong, Contractor's Fee applicable thereto, and interest, if applicable..
- .4 Except to the extent the Contract Documents expressly provide otherwise, no damages will be allowed for home office overhead or other indirect home office charges or any Eichlay formula calculation.

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

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction-anticipated, prevented the execution of major items of work on normal working days, and impacted the critical path. "Adverse weather conditions" means severe weather which is beyond the normal weather recorded and expected for the locality and/or the season or seasons of the year. In the case of rain as the basis for an adverse weather conditions claim, rainfall needs to exceed one-half (0.5) inch during a normal working day. Rain days do not extend to subsequent days as "dry-out" days; they are limited to the actual date of the rainfall.

§ 15.1.5.3 Claims for additional time based upon causes other than adverse weather will not be granted unless (a) the event upon which the claim is predicated was not within the control of or caused by the Contractor or any Contractor-Related Party; and (b) the construction schedule cannot be revised so as to reasonably accommodate and absorb the event into the construction schedule within the remaining Contract Time.

§ 15.1.5.4 No extension of time shall be made to the Contractor because of hindrances or delays from any cause that is the fault of Contractor or any Contractor-Related Person. Claims for extension of time may only be considered because of abnormal weather delays, or other hindrances or delays that are the fault of Owner, and the construction schedule cannot be revised so as to reasonably accommodate and absorb the event into the construction schedule within the remaining Contract Time. Commissioners Court approval shall be required for any extension of the Contract Time. No damage shall be paid for any delays. Contractor shall only be entitled to time extensions per the terms of the Contract Documents.

§ 15.1.5.5 Neither Saturdays nor Sundays shall be included in the Claim for additional time unless the Contractor furnishes to owner, PM and Architect proof that (a) Contractor's current Work schedule on file with the PM and Architect indicated that Contractor was scheduled to work on each Saturday or Sunday for which an extension is sought and that Contractor had, in fact, been complying with such construction schedule; or (b) Contractor had scheduled critical work to be performed on such Saturday or Sunday for which an extension of the Contract Time is sought and that such Work was delayed or had to be aborted because of adverse weather or other cause meeting the requirements in this Section 15.1.5.

§ 15.1.5.6 In the event the progress of the Work is delayed or interrupted by occurrences or events that entitle Contractor to request an extension of time pursuant to the terms of the Contract Documents, then the scheduled Substantial Completion date may not exceed a period of time equal to the length of such delay. Except to the extent a delay is expressly permitted elsewhere in the Contract Documents, an extension will only be considered provided that (a) within 7 days after the Contractor discovers such delay, Contractor delivers to Owner, PM and Architect a written notice of such delay stating the nature and cause thereof and (b) within 7 days following the expiration of any such delay Contractor delivers to Owner, PM and Architect a written request for extension of the scheduled Contract Time by reason of such delay, with such additional information required, and such request is approved by Commissioners' Court, which approval shall not be unreasonably withheld. No extension of the scheduled substantial completion date (or right on the party of Contractor to secure any such extension) pursuant to this Section shall prejudice any right Owner may have under this Contract, or otherwise, to terminate this Agreement as permitted by the Contract.

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

- .1 — damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 — damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION~~omitted~~

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

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

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

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a

response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

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

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

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

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

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

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation as a condition precedent to binding dispute resolution. ~~submitted to non-binding mediation.~~

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall not be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. ~~Association.~~ A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings. ~~Contract.~~

§ 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. ~~Hidalgo County, Texas.~~ Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 15.4 ARBITRATION

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

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

written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

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

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

§ 15.4.4 CONSOLIDATION OR JOINDER

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

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

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

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 12:43:47 on 03/23/2018 under Order No. 4820073103 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2007, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)