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General Conditions of the Contract for Construction

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

Wilson School District – Whitfield Elementary School Secured Vestibule for Modular Classrooms Project

THE OWNER:
(Name, legal status and address)

Wilson School District
2601 Grandview Boulevard
West Lawn, PA 19609

THE
ARCHITECT/ENGINEER (hereinafter and for purposes of this document and the contract documents, the "Architect"):

Consolidated Engineers
1022 James Drive
Leesport, PA 19533

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 The Contract Documents

The Contract Documents are enumerated in Article 9 of the Agreement between the Owner and Contractor (hereinafter the Agreement) and also include 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 or Owner.

§ 1.1.2 The Contract

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

§ 1.1.3 The Work

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 The Project

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner 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. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 Initial Decision Maker

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

§ 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. In the event of conflicts, inconsistencies, or discrepancies among the Agreement and the Contract Documents, the body of the Agreement takes precedence. Any inconsistency existing within the remaining Contract Documents shall be resolved in favor of the Contract Document first listed in Article 9 of the Agreement. In the event of any conflicts, inconsistencies, or discrepancies between the Contract Documents and applicable standards, codes, laws, ordinances, regulations, and/or requirements of applicable laws, the Contractor shall provide the better quality or greater quantity of Work or comply with the more stringent requirement, or both, in accordance with the Owner's interpretation.

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

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the 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.

§ 1.3 Capitalization

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

§ 1.4 Interpretation

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

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

§ 1.5.1 The 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 retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

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

§ 1.6 Notice

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

§ 1.6.2 Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

§ 1.7 Digital Data Use and Transmission

The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set

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forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER

§ 2.1 General

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

§ 2.1.2 Intentionally deleted.

§ 2.2 Intentionally deleted.

(Paragraphs Deleted)

§ 2.3 Information and Services Required of the Owner

§ 2.3.1 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.

§ 2.3.2 The Owner shall retain an engineer licensed to practice in the Commonwealth of Pennsylvania. 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.

§ 2.3.3 If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 2.3.4 Upon Contractor's request, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

§ 2.3.6 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.

§ 2.4 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 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.

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§ 2.5 Owner's Right to Carry Out the Work

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 notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect and may deduct the reasonable cost and fees (without limitation, legal fees) thereof, including Owner's expenses from the payment then or thereafter due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to Owner. Notwithstanding the above, Owner shall not be required to comply with the notice provisions hereof, and may proceed to correct deficiencies if Contractor fails within a 24-hour period after receipt of written notice from the Owner to commence and continue correction of such deficiencies where further delay would cause substantial disruption to the Project schedule. Owner shall have the further right to carry out Work without any prior notice to Contractor in an emergency affecting safety of persons or property, and said Work is necessary to prevent threatened damage, injury or loss. Owner's rights in this regard shall not relieve Contractor of its obligations and responsibilities under the Contract Documents and shall not give rise to a duty on the part of the Owner to exercise these rights for the benefit of the Contractor or any other person or entity.

ARTICLE 3 CONTRACTOR

§ 3.1 General

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

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

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

§ 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.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the 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 any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Owner 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.

§ 3.2.3 The Contractor shall confirm that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, and the Contractor shall promptly report to the Owner any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Owner may require.

§ 3.2.4 Intentionally deleted.

§ 3.3 Supervision and Construction Procedures

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract

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Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner, and shall propose alternative means, methods, techniques, sequences, or procedures. The Owner shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Owner objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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

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

§ 3.4 Labor and Materials

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

§ 3.4.2 Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 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.

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

§ 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner 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.
The Contractor shall perform the Work and take all steps necessary to secure any applicable manufacturer's warranty.

§ 3.5.2 All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. Owner will provide a tax-exempt certificate to the extent required and permitted by applicable laws.

§ 3.7 Permits, Fees, Notices and Compliance with Laws

§ 3.7.1 The Owner shall acquire and pay for all permits and approvals necessary for proper execution and completion of the Work from governmental authorities having jurisdiction over the Project. Contractor shall pay for any licenses, permits, and fees necessary for Contractor to do business in the municipality, county, and state in which the Project is located, including, without limitation, business privilege licenses or taxes, if any.

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§ 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.

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

§ 3.7.4 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 before conditions are disturbed and in no event later than three (3) days after first observance of the conditions. The Owner will promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Owner 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 Owner shall promptly notify the Contractor, stating the reasons. If Contractor disputes the Owner's determination or recommendation, the Contractor may submit a Claim 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. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.7.6 COVID-19 Prevention and Mitigation Measures

The Contractor shall comply with all Orders issued by state or federal authorities related to COVID-19 closures, prevention, and mitigation measures. The Contractor

(Paragraph Deleted)

shall require that its employees, agents, materialmen, and subcontractors (the "Agents") follow the most current prevention and mitigation measures issued by the Centers for Disease Control ("CDC"), Pennsylvania Department of Health ("Pa DOH"), and/or other governmental authority with jurisdiction, including, but not limited to, wearing properly fitted and secured masks, frequent handwashing, and

staying home when ill. The Contractor shall provide adequate handwashing stations for its Agents and alert the District if Contractor learns that any such Agents test positive for COVID-19. Nothing in this paragraph limits in any way any other duty that Contractor may have under law and

the Contract Documents relating in any way to COVID-19 prevention, mitigation, screening, or damages.

§ 3.8

Intentionally deleted.

§ 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent Superintendent and necessary assistants who shall be in attendance at the Project site full time 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. If during the course of the Project, it is evident that the Superintendent is not competent, is not managing the progress of the Work, or is not

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coordinating the various trades under the Contractor's supervision, then, upon Owner's request, the Contractor shall replace the Superintendent with an acceptable Superintendent.

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

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner 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.

§ 3.10 Contractor's Construction and Submittal Schedules

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Owner's approval. The Owner's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Owner reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved 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.

§ 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Owner, and delivered 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 how 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. Informational submittals upon which the Architect and/or Owner 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 Owner without action.

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

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner 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 Owner.

§ 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 the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect and the Owner 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.

§ 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 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 provide professional services in violation of applicable law.

§ 3.12.10.1 If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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

§ 3.13 Use of Site

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

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Contractor shall adhere to any instructions provided by the Owner with respect to minimization of disruption of instruction to students at the site.

§ 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, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The 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 construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

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

§ 3.16 Access to Work

The Contractor shall provide the Owner with 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 and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when the copyright violations are contained in Drawings, Specifications, or other documents prepared by the Owner or Architect. . However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect and Owner.

§ 3.18 Indemnification

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Owner's consultants, Architect, Architect's consultants, and agents and employees of any of them immediately from and against any and all claims, damages, losses, and expenses, including but not limited to legal fees (attorneys' fees, paralegals' fees, and expert witnesses' fees), arising out of or resulting from performance of the Work, including, without limitation, claims, damages, losses, or expenses attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property (other than the Work itself), whether caused in whole or in part by the negligent acts, omissions, or willful misconduct 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.

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

ARTICLE 4 ARCHITECT

ARTICLE 4 CONTRACT ADMINISTRATION

§ 4.1

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The Owner will provide administration of the Work. The Owner reserves the right to engage an independent third party Clerk of the
Works or Construction Manager to administer the Work on its behalf. If the Owner does so, the Contractor shall **coordinate its activities with the**
Clerk of Works or Construction Manager and follow instructions from such person as the Owner's representative. The Contractor shall not be entitled to any additional compensation as a result of the Owner's use of a Clerk of the Works or Construction Manager .

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

§ 4.3 The Owner will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Owner will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.4 Intentionally deleted.
§ 4.5 The Owner has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 4.6 Intentionally deleted.

§ 4.7 The Owner will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of the Contractor.

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

§ 4.9 Intentionally deleted.
§ 4.1 General
§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

§ 4.2 Contract Administration
§ 4.2.1 The Owner will provide administration of the Work. The Owner reserves the right to engage an independent third party Clerk of the Works or Construction Manager to administer the Work on its behalf. If the Owner does so, the Contractor shall coordinate its activities with the Clerk of Works or Construction Manager and follow instructions from such person as the Owner's representative. The Contractor shall not be entitled to any additional compensation as a result of the Owner's use of a Clerk of the Works or Construction Manager .

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

§ 4.2.3 The Owner will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Owner 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.

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§ 4.2.4 The Owner has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

§ 4.2.5 The Owner will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of the Contractor.

§ 4. 2.6 The Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 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 Architect's review shall not constitute approval of safety precautions or 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 Owner will prepare Change Orders and Construction Change Directives. The Architect may order 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 Owner will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive , 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.

(Paragraphs Deleted)

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 the 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.

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

§ 5.2.1 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Owner may notify the Contractor whether the Owner (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Owner to provide notice within the 14-day period shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner 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 Intentionally deleted.

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

§ 5.3 Subcontractual Relations

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Ownerand 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.

(Paragraph Deleted)

Under no circumstances shall a privity of
contractor relationship be inferred and/or established between the Owner and any/all Subcontractors.

(Paragraph Deleted)

§
5.4

(Paragraphs Deleted)

Intentionally deleted.

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 term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

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§ 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 any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

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

§ 6.2 Mutual Responsibility

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Owner of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Owner of apparent discrepancies or defects prior to proceeding with the Work 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. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

§ 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 that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor 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.

§ 6.2.6 Contractor shall cooperate with and follow instructions provided by Owner with regard to Contractor's coordination with Owner's own forces or separate contractors. Any delay attributable to lack of coordination or cooperation by and/or between Contractor and its Subcontractors, Sub-subcontractors with Owner's own forces or separate contractors shall not be a basis for any claim for increasing the Contract Sum or Contract Time.

§ 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 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 a Modification, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

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§ 7.1.2 A Change Order shall be based upon agreement between the Owner and Contractor.

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

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Contractor and signed by the Owner and Contractor, 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.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Owner and signed by the Owner and 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 in accordance with the Contract Documents.

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

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

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

§ 7.3.4
(Paragraph Deleted)

Intentionally deleted.

(Paragraphs Deleted)

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract Time or Contract Sum, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

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

§ 7.3.7 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.

§ 7.3.8 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 Owner. 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.

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§ 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 for purposes of monthly certification for payment for those costs and certify for payment the amount that the Owner determines to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Owner concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner will prepare a 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 may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Owner and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the Architect's order for a minor change without prior notice to the Owner that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents 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, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

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

§ 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, unusually adverse and unforeseeable weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, justify delay, then the Contract Time shall be extended for such reasonable time as the Owner may determine, in the Owner's sole discretion..

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

§ 8.3.3 Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under the Contract Documents, shall be the sole remedy of the Contractor for (1) delay in the commencement, prosecution or completion of the Work; (2) hindrance or obstruction in the performance of the

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Work; (3) loss of productivity; or (4) other similar claims (collectively referred to in this subparagraph as delays) whether or not such delays are foreseeable, unless a delay is caused by the acts of the Owner constituting active interference with the Contractor's performance of the Work, and only to the extent that such acts continue after the Contractor furnishes the Owner with written notice of such interference. In no event shall the Contractor be entitled to any compensation or recovery of any damages, in connection with any delay, including, without limitation, consequential damages, winter protection costs, lost opportunity cost, impact damages, lost or expected profits or similar remuneration. The Owner's exercise or failure to exercise any rights or remedies under the Contract Documents (including without limitation, ordering changes in the Work, or directing suspension, rescheduling or correction of the Work), regardless of the extent or frequency thereof, shall not be construed as active interference with the Contractor's performance of the Work.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

§ 9.1.2 Intentionally deleted.

§ 9.2 Schedule of Values

The Contractor's Proposals attached to this Agreement include Contractor's schedule of values for completion of the Work. This schedule shall be used in preparing the Contractor's Applications for Payment.. Any changes to the schedule of values shall be submitted to the Owner and supported by such data to substantiate its accuracy as the Owner may require, and unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least thirty days before the date established for each progress payment, the Contractor, without further request, written or oral, is hereby required and agrees to provide to Owner each month, together with the Contractor's Application for Payment, a partial release of liens, in a form acceptable to Owner from itself and its subcontractors releasing and relinquishing all liens, mechanic's lien claims, or rights of lien, if any, that the Contractor or its subcontractors may have with respect to the Project for all Work performed through the date of the previous Application for Payment. If a payment claim or lien is made or filed with or against Owner, the Contractor shall immediately satisfy, discharge or bond-off the claim or lien. Each Application for Payment shall be accompanied by the original certified payroll records of Contractor, Subcontractors, and Sub-Subcontractors for the entire duration covered by the Application for Payment for verification of compliance with the Prevailing Wage Law. Contractor's failure to provide all required original certified payrolls or sufficient data supporting Contractor's right to any payment shall be a basis for rejection of all or part of the Application for Payment or withholding of payment until such certified payroll records are submitted in full.

§ 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 Owner, but not yet included in Change Orders.

(Paragraph Deleted)

§ 9.4 Certificates for Payment

§ 9.4.1 In accordance with Article 5 of the Agreement, in response to
(Paragraph Deleted)

the Contractor's Application for Payment, the Owner shall either (1) issue payment to the Contractor in the full amount of the Application for Payment; or (2) issue to the Contractor payment for such amount as the Owner determines is properly due, and notify the Contractor ; or (3) withhold payment of the entire amount sought in the Application for Payment, and notify the Contractor of the Owner's reason for withholding payment in whole.

§ 9.4.2 Intentionally deleted.

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§ 9.5 Decisions to Withhold Payment

§ 9.5.1 The Owner may withhold payment in whole or in part, to the extent reasonably necessary to protect the Owner and in accordance with law. If the determines that withholding of payment is appropriate and permitted, the Owner will notify the Contractor. If the Contractor and Owner cannot agree on a revised amount, the Owner will promptly issue payment for the amount that is not disputed. The Owner may also withhold payment or, because of subsequently discovered evidence, may nullify the whole or a part payment previously issued, to such extent as may be necessary in the Owner's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

.1 defective Work not remedied;

.2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;

.3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;

.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

.5 damage to the Owner or 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 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the Contractor disputes the Owner's decision regarding payment under Section 9.5.1, in whole or in part, Contractor may submit a Claim in accordance with Article 15.

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

§ 9.5.4 If the Owner withholds 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 supplier 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 Contractor shall reflect such payment on its next Application for Payment.

§ 9.6 Progress Payments

§ 9.6.1 Intentionally deleted.

§ 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.

§ 9.6.3 The Contractor 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 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 suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. The Owner shall not have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

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

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

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(Paragraphs Deleted)

§ 9.7 Intentionally deleted.

(Paragraph Deleted)

§ 9.8 Substantial Completion

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

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

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

§ 9.8.4 When the Owner determines that the Work or designated portion thereof is substantially complete, the Owner will accept from Contractor a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner by the Contractor for Owner's written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. In no case shall the time established for Contractor's completion and correction of items on the list extend beyond fourteen (14) days after certification of Substantial Completion, except for unforeseeable delay beyond the Contractor's control.

§ 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 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 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.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Contractor 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.

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§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner finds the Work acceptable under the Contract Documents and the Contract fully performed, the Contractor will promptly issue a final Application for Payment stating that to the best of the Contractor's knowledge, information and belief, and on the basis of the Owner's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Contractor's final Application for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Final payment shall not become due until the Contractor has obtained the requisite approval of the Work by all municipal and other governing bodies having jurisdiction over the Project.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner (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, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. 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, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance 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 the lien, claim, security interest, or encumbrance, including all costs and reasonable legal fees.

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

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

- **.1** liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents;
- **.3** terms of warranties required by the Contract Documents; or
- **.4** audits performed by the Owner, if permitted by the Contract Documents, after final payment.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

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

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§ 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, a Subcontractor, or a Sub-subcontractor; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

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

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property 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. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or 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.

§ 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
(Paragraph Deleted)

Intentionally deleted.

§ 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner of the condition in writing.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be equitably adjusted

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(to the extent applicable, by the Unit Prices) to provide for reasonable and direct out-of-pocket expenses (which shall not include overhead or profit) incurred in the interruption and resumption of Contractor's services.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, 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.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous 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 reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Insurance and Bonds

§ 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, insurance for protection from claims under workers' compensation acts and other employee benefit acts which are applicable, claims for damages because of bodily injury, including death, and claims for damages, other than to the Work itself, to property which may arise out of or result from the Contractor's operations and completed operations under the Contract, whether such operations be by the Contractor or by a Subcontractor or anyone directly or indirectly employed by any of them. This insurance shall be written for not less than limits of liability specified below or required by law, whichever coverage is greater, and shall include contractual liability insurance applicable to the Contractor's obligations under Section 9.15. Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. The Contractor shall cause the commercial liability coverage required by the Contract Documents to include: (1) the Owner, as 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 for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations. The Contractor shall name the Owner as an additional insured on the Contractor's liability insurance policies. In no event shall the furnishings of such insurance release Contractor from its obligation to indemnify or defend Owner under this Agreement or the Contract Documents. The Contractor shall maintain the following insurance policies for the entire term of this Agreement with at least the following coverages:

§ 11.1.2 Statutory Worker's Compensation including Occupational Disease as required by the laws of the Commonwealth of Pennsylvania and also Employer's Liability Insurance with limits not less than the following:

Workers' Compensation: Amounts and coverage as required by the laws of the Commonwealth of Pennsylvania

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Employer's Liability: $100,000.00 each accident
$500,000.00 disease (policy limit)
$100,000.00 disease (each employee)

§ 11.1.3 Comprehensive General Liability, with limits not less than the following. Liability insurance shall include all major divisions of coverage and be on a comprehensive general basis including: Premises – Operations (including explosion, collapse and underground (XCU)), Owner's and Contractor's protective, products and completed operations, contractual and broad form property damage.

Bodily Injury and Property Damage: $1,000,000.00 per person
$2,000,000.00 per occurrence

§ 11.1.4 Comprehensive Automobile Liability Pennsylvania, Comprehensive Automobile Liability Insurance, including coverage for accidents related to operation of motor vehicles owned, non-owned, or leased, with limits not less than the following:

Bodily Injury and Property Damage: $1,000,000.00 combined single limit

§ 11.1.5 Umbrella Liability Insurance, with limits not less than the following:

Umbrella Liability: $5,000,000.00 each occurrence
$5,000,000.00 aggregate

§ 11.1.2 The Contractor shall furnish performance and payment bonds in the form attached to the Contract as Exhibit A and Exhibit B covering faithful performance of the Contract and payment of obligations arising thereunder for the full Contract Sum. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the Commonwealth of Pennsylvania.

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

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

§ 11.2 Owner's Insurance

§ 11.2.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is
located, property insurance on an "all-risk" or equivalent policy form, including builder's risk, in the amount of the initial Contract Sum, plus the value of subsequent modifications and cost of materials supplied and 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 15.5 or
until no person or entity other than the Owner has an insurable interest in the property required by this Section 17.3.1 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and sub-subcontractors in the Project..

§ 11.2.2 Intentionally deleted.

§ 11.2.3 Intentionally deleted.

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§ 11.3 Waivers of Subrogation

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

§ 11.3.2 Intentionally deleted.

§ 11.4

(Paragraph Deleted)

Intentionally deleted.

§11.5 Adjustment and Settlement of Insured Loss

§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Contractor shall make payments to their consultants and Subcontractors in similar manner.

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 Uncovering of Work

§ 12.1.1 If a portion of the Work is covered contrary to the Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Owner, be uncovered for the Owner'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 has not specifically requested to examine prior to its being covered, the Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

§ 12.2 Correction of Work

§ 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or

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completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Owner's services and expenses made necessary thereby, shall be at the Contractor's expense.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so at no additional cost to the Owner, unless the Owner has previously given the Contractor a specific written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 2.5.

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

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

§ 12.2.3 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 of the Owner or Separate Contractors, whether completed or partially completed, 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 The one-year limit limitation period shall not limit or reduce the application of any extended warranties required by the Contract Documents.

§ 12.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 Governing Law

The Contract shall be governed by the law of the Commonwealth of Pennsylvania, without regard to its principles of conflicts of law.

§ 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 an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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§ 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 the assignment.

§ 13.3 Rights and Remedies

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

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

§ 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the 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 timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

§ 13.4.2 If the Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the 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 of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures shall be at the Contractor's expense.

§ 13.4.4 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 Owner.

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

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

§ 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Paragraph Deleted)

§ 13.6 Commencement of Statutory Limitation Period

As to claims made by the Contractor, all actions related to this Agreement shall be commenced prior the earlier of the expiration of any applicable statute of limitations provided by the laws of the Commonwealth of Pennsylvania or two years from the date of Substantial Completion. As to claims made by the Owner, the Owner reserves all rights and privileges applicable to it pursuant to the doctrine of nullum tempus occurrit regi.

§ 13.7 E-Verify. The Contractor and its Subcontractors are required to comply with the Public Works Employment Verification Act, Act No. 127, July 5, 2012 (formerly Senate Bill 637) (as used in this Paragraph, the "Act"). Prior

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to award of this Agreement by the Owner, the Contractor shall submit to the Owner the verification form required by the Act acknowledging its responsibilities and its compliance with the Act. The verification form is to be obtained from the Secretary of the Pennsylvania Department of General Services. The verification form shall include a certification that the information in the statement is true and correct and that the individual signing the statement understands that the submission of false or misleading information in connection with the verification shall subject the individual and the public works contactor or subcontractor, as the case may be, to sanctions provided by law; and the verification form shall be signed by a representative of the public works contractor or subcontractor, as applicable, who has sufficient knowledge and authority to make the representations and certifications contained in the statement. Contractor's subcontractors (as defined in the Act) shall provide, and Contractor shall cause its Subcontractors to provide, their verification forms prior to commencing Work on the Project.

§ 13.8 Workers shall not smoke, including the use of vape pens, e-cigarettes, "Juuls," and similar nicotine delivery devices, within the limits of the Owner's property boundaries or as otherwise required by Federal legislation, Title X, P.L. 103-227, Goal 2000, Educate America Act of 1994 as amended from time to time, including without limitation, 20 U.S.C.A. Section 6081, et seq., the Pro-Children Act of 1994. Nothing in the Educate America Act of 1994 or its codification in the Pro-Children Act of 1994 shall preempt any provision of law of a state or political subdivision of a state that is more restrictive. Workers shall not possess or consume alcoholic beverages when within the limits of the Owner's property boundaries. The Contractor shall require its employees and agents, and its Subcontractor's employees and agents to work diligently and behave in an orderly manner at all times when at or about the Project site and shall remove from the Project any employee whose conduct is deemed objectionable.

§ 13.9 Criminal History And Child Protective Services Information

§ 13.9.1 The background checks required pursuant to 24 P.S. § 1-111 and 23 Pa.C.S. § 6344, each as amended from time-to-time, shall be submitted to the Owner for review and approval prior to Contractor or any of Contractor's employees (including any subcontractor's or supplier's employees) commencing work under the Contract. Contractor shall be required to obtain Criminal History Reports (24 P.S. § 1-111), Child Abuse Clearances (23 Pa.C.S. § 6344) and an Employment Background Review (24 P.S. § 1-111.1) for any individual Contractor intends to utilize in conjunction with the Contract. The District shall follow the regulations promulgated by the State Board of Education concerning the confidentiality of the Criminal History Reports, Child Abuse Clearances and Employment Background Review. In compliance with 24 P.S. § 1-111, as amended, and 23 Pa.C.S. § 6344, Contractor shall be required to present:

.1 Original report of criminal history record information from the Pennsylvania State Police or a statement from the Pennsylvania State Police that the Pennsylvania State Police central repository contains no such information relating to any of Contractor's employees or its subcontractor's employees working on the Project site prior to such persons performing work at the Project site. Such report of criminal history shall be dated no more than one (1) year prior to the date of execution of this Agreement. To obtain this document, contact the nearest Pennsylvania State Police barracks.

.2 Registration ID Number of the Federal Criminal History record from the Federal Bureau of Investigation in the manner prescribed by the Department of Education. To obtain such a report, contact the nearest FBI Field Office.

.3 Original background check in accordance with Section 111 of the Public School Code, as amended (24 P.S. Section 1-111, et seq.) on the form published by the Pennsylvania Department of Education.

.4 Official clearance statement obtained from the Pennsylvania Department of Public Welfare pursuant to Act 151 of December 16, 1994 (P.L. 1292), subchapter C.2 of the Child Protective Services Law, as amended from time to time.

§ 13.9.2 The Contractor and its subcontractors shall refuse to employ any person as an independent contractor or employee whose Federal Criminal History record information indicates that such prospective employee has been convicted within five (5) years immediately preceding the date of the report of any of the following offenses:

.1 An offense under one (1) or more of the following provisions of Title 18 of the Pennsylvania Consolidated Statutes:

- Chapter 25 (relating to criminal homicide).
- Section 2702 (relating to aggravated assault).
- Former section 2709(b) (relating to stalking).
- Section 2709.1 (relating to stalking).

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- Section 2901 (relating to kidnapping).
- Section 2902 (relating to unlawful restraint).
- Section 3121 (relating to rape).
- Section 3122.1 (relating to statutory sexual assault).
- Section 3123 (relating to involuntary deviate sexual intercourse).
- Section 3124.1 (relating to sexual assault).
- Section 3125 (relating to aggravated indecent assault).
- Section 3126 (relating to indecent assault).
- Section 3127 (relating to indecent exposure).
- Section 4302 (relating to incest).
- Section 4303 (relating to concealing death of child).
- Section 4304 (relating to endangering welfare of children).
- Section 4305 (relating to dealing in infant children).
- A felony offense under Section 5902(b) (relating to prostitution and related offenses).
- Section 5903(c) or (d) (relating to obscene and other sexual materials and performances).
- Section 6301 (relating to corruption of minors).
- Section 6312 (relating to sexual abuse of children).

.2 An offense designated as a felony under the act of April 14, 1972 (P.L. 233, No. 64), known as "The Controlled Substance, Drug, Device and Cosmetic Act."

.3 An out-of-State or Federal offense similar in nature to those crimes listed in Paragraphs 16.10.2.1 and 16.10.2.2.

.4 Would otherwise be precluded from employment by the Owner under Section 111 of the Public School Code, as amended (24 P.S. § 1-111).

13.9.3 Upon review of the Criminal History Reports, Child Abuse Clearance or Employment Background Review for any particular individual, the Owner may determine that utilizing the individual pursuant to the Contract is inappropriate. At that point, the Owner shall notify Contractor in writing and Contractor shall then assign a different, cleared individual immediately to the role that otherwise would have been filled by the excluded individual. Similarly, Contractor shall also assign a different, cleared individual immediately if a previously cleared individual fails to submit new Criminal History Reports or Child Abuse Clearances prior to the expiration of the old report(s).

13.9.4 Contractor shall comply with any amendments to the criminal history records laws and child abuse clearance laws during the course of the Contract, at Contractor's sole cost and expense.

§ 13.10 Aluminum and Steel Products

§ 13.10.1 As this Project involves the construction, reconstruction, alteration, repair, improvement or maintenance of "public work", the Contractor shall strictly comply with all requirements of the Pennsylvania Steel Products Procurement Act, 73 P.S. Section 1881, et seq., with respect to the Work, which shall include, without limitation, using steel, steel products (including machinery and equipment) or cast iron produced in the United States unless otherwise exempted therefrom.

§ 13.10.2 In addition to the requirements set forth in Paragraph 22.4.1, the Contractor shall strictly comply with all requirements of the Trade Practices Act, 71 P.S. § 773.101 et seq., which shall include, without limitation, being prohibited from using any aluminum or steel products made in a foreign country which discriminates against aluminum or steel products manufactured in Pennsylvania. The countries of Brazil, South Korea, Spain, and Argentina have been found to discriminate against certain products manufactured in Pennsylvania. Therefore, the purchase or use of those countries' products, as listed herein, for the Project is strictly prohibited.

§ 13.10.2.1 BRAZIL: Welded carbon steel pipes and tubes; carbon steel wire rods; tool steel; certain steel products, including hot-rolled stainless steel bar; stainless steel wire rod and cold-formed stainless steel bar; pre-stressed concrete steel wire strand; hot-rolled carbon steel plate in coil; hot-rolled carbon steel sheet and cold-rolled carbon steel sheets.

§ 13.10.2.2 SPAIN: Certain stainless steel products, including stainless steel wire rod, hot-rolled stainless steel bars and cold-formed stainless steel bars; pre-stressed concrete steel wire strands certain steel products, including hot-rolled steel plate, cold-rolled carbon steel plate, carbon steel structural shapes, galvanized carbon steel sheet, hot-rolled carbon steel bars and cold-formed carbon steel bars.

§ 13.10.2.3 SOUTH KOREA: Welded carbon steel pipes and tubes; hot-rolled carbon steel plate; hot-rolled carbon steel sheet and galvanized steel sheet.

§ 13.10.2.4 ARGENTINA: Carbon steel wire rod and cold-rolled carbon steel sheet.

§ 13.11 Anti-Pollution Legislation

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§ 13.11.1 62 Pa. C.S.A. Section 3301 requires that bidders and contractors on construction contracts, for the Commonwealth of Pennsylvania be advised that there are provisions of Federal and State statutes, rules and regulations dealing with the prevention of environmental pollution and the preservation of public natural resources that affect the Project on which Bids are being received.

§ 13.11.2 The Contractor shall become thoroughly acquainted with the terms of the listed statutes, rules and regulations, including, but not limited to, Flood Plain Management Act (32 P.S. Section 679.101, et seq.), Water Well Drillers License Act (32 P.S. Section 645.1, et seq.), Pennsylvania Scenic Rivers Act (32 P.S. Section 820.21, et seq.), Dam Safety and Encroachment Act (32 P.S. Sec. 693.1, et seq.), Bluff Recession and Setback Act (32 P.S. Section 5201, et seq.), Storm Water Management Act (32 P.S. Section 680, et seq.), Pennsylvania Sewage Facilities Act (35 P.S. Section 750.1, et seq.), Pennsylvania Solid Waste Management Act (35 P.S. Section 6018.101, et seq.), Pennsylvania Safe Drinking Water Act (35 P.S. Section 721.1, et seq.), the Clean Streams Law (35 P.S. Section 691.901 et seq. and 35 P.S. Section 691.1 et. seq.), Air Pollution Control Act (35 P.S. Section 4001, et seq.), Pennsylvania Historic Preservation Act (37 Pa. C.S.A. Section 501, et seq.), Pennsylvania Hazardous Sites Clean Up Act (35 P.S. Section 6020.101, et seq.), Pennsylvania Storage Tank and Spill Prevention Act (35 P.S. Sec. 6021.101, et seq.), Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sections 9601-9675) as amended, including, but not limited to, the Superfund Amendments and Reauthorization Act (P.L. 99-499), Federal Solid Waste Disposal Act (42 U.S.C. Sections 6901-6992), Federal Clean Air Act (Air Pollution Act) (42 U.S.C. Sections 7401-7642), Federal Safe Drinking Water Act (See Public Health Service Act Sections 1401-1451) (42 U.S.C. Sections 300f-300j-11), Wild and Scenic River Act (P.L. 90-542), Endangered Species Conservation Act of 1969 (P.L. 89-669), Endangered Species Conservation Act of 1973 (16 U.S.C. Sections 1531-1544), Federal Clean Water Act of 1977 (P.L. 95-217), Rivers and Harbor Act of 1970 (P.L. 91-611), Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sections 136-136y), Toxic Substance Control Act (15 U.S.C. Sections 2601-2692), Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sections 6901-6991), Coastal Wetlands Planning, Protection and Restoration Act (16. U.S.C. Sections 3951-3956), Coastal Zone Management Act of 1972 (16 U.S.C. Sections 1451-1464), Community Environmental Response Facilitation Act (42 U.S.C. Section 9620), Emergency Planning and Right-to-Know Act of 1986 (42 U.S.C. Sections 11001-11050), Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. Sections 791-798), Environmental Quality Improvement Act of 1970 (42 U.S.C. Sections 4371-4375), Federal Facility Compliance Act of 1992 (42 U.S.C. Section 6901), Federal Land Policy and Management Act of 1976 (43 U.S.C. Sections 1701-1784), Federal Water Pollution Control Act (33 U.S.C. Sections 1251-1387), Geothermal Energy Research, Development, and Demonstration Act of 1974 (30 U.S.C. Sections 1101-1164), Global Climate Protection Act of 1987 (15 U.S.C. Section 2901 note), Hazardous Substance Response Revenue Act of 1980 (see 26 U.S.C. Sections 4611, 4612, 4661, 4662), Lead-Based Paint Exposure Reduction Act (15 U.S.C. Sections 2681-2692), Lead Contamination Control Act of 1988 (42 U.S.C. Sections 300j-21 to 300j-25), Low-Level Radioactive Waste Policy Act (42 U.S.C. Sections 2021b-2021d), National Climate Program Act (15 U.S.C. Sections 2901-2908), National Contaminated Sediment Assessment and Management Act (33 U.S.C. Section 1271 note), National Environmental Policy Act of 1969 (42 U.S.C. Sections 4321-4370b), National Ocean Pollution Planning Act of 1978 (33 U.S.C. Sections 1701-1709), Noise Control Act of 1972 (42 U.S.C. Sections 4901-4918), Oil Pollution Act of 1990 (33 U.S.C. Sections 2701-2761), Pollution Prevention Act of 1990 (42 U.S.C. Sections 13101-13109), Public Health Service Act (42 U.S.C. Sections 300f-300j-11), Renewable Resources Extension Act of 1978 (16 U.S.C. Sections 1671-1676), Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sections 6901-6991), Soil and Water Resources Conservation Act of 1977 (16 U.S.C. Sections 2001-2009), Water Resources Research Act of 1984 (42 U.S.C. Sections 10301-10309), Wood Residue Utilization Act of 1980 (16 U.S.C. Sections 1681-1687), Pennsylvania Worker and Community Right-to-Know Act (35 P.S. Section 7301, et seq.), Asbestos Hazard Emergency Response Act of 1986 (see Toxic Substances Control Act Sections 201-214) (15 U.S.C. Sections 2651-2654), Delaware River Basin Compact (32 P.S. Section 815.101, et seq.), Brandywine River Valley Compact (32 P.S. Section 818, et seq.), Wheeling Creek Watershed Protection and Flood Prevention District Compact (32 P.S. Section 819, et seq.), Susquehanna River Basin Compact (32 P.S. Section 820.1, et seq.), Chesapeake Bay Commission Agreement (32 P.S. Section 820.11, et seq.), Land and Water Conservation and Reclamation Act (32 P.S. Section 5101, et seq.), Wild Resource Conservation Act (32 P.S. Section 5301, et seq.), Cave Protection Act (32 P.S. Section 5601, et seq.), Rails to Trails Act (32 P.S. Section 5611, et seq.), Phosphate Detergent Act (35 P.S. Section 722.1, et seq.), Plumbing System Lead Ban and Notification Act (35 P.S. Section 723.1, et seq.), Publicly Owned Treatment Works Penalty Law (35 P.S. Section 752.1, et seq.), Pennsylvania Solid Waste-Resources Recovery Act (35 P.S. Section 755.1, et seq.), Sewage System Cleaner Control Act (35 P.S. Section 770.01, et seq.), Hazardous Material Emergency Planning and Response Act (35 P.S. Section 6022.101, et seq.), Oil Spill Responder Liability Act (35 P.S. Section 6023.1, et seq.), Land Recycling and Environmental Remediation Standards Act (35 P.S. Section 6026.101, et seq.), Radiation Protection Act (35 P.S.

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Section 7110.101, et seq.), Low-Level Radioactive Waste Disposal Act (35 P.S. Section 7130.101, et seq.), Pennsylvania Municipalities Planning Code (53 P.S. Section 10101, et seq.), regulations, ordinances, and other actions pursuant to the foregoing, regulations pertaining to Pennsylvania Erosion and Sediment Control, and so on. No separate or additional payment will be made for such compliance. In the event that the listed statutes, rules and regulations are amended, or if new statues, rules or regulations become effective, after date of receipt of Bids, upon receipt of documentation which causes the Contractor to perform additional Work, the Owner may issue a Change Order setting forth the additional Work that must be undertaken and such additional Work shall be undertaken at no additional cost to the Owner. It is also the responsibility of the Contractor to determine what local ordinances, if any, will affect their portion of the Work. The Contractor shall check for any County, City, Borough or Township rules or regulations applicable to the area in which the Project is being constructed and, in addition, for any rules or regulations of other organizations having jurisdiction, including, without limitation, chambers of commerce, planning commissions, industries or utility companies who have jurisdiction over lands which the Contractor occupies. Any costs of compliance with local controls shall be included in the prices bid, even though documents of such local controlling agencies are not listed herein.

§ 13.12 Erosion Control.

§ 13.12.1 To the extent the Contractor performs excavation work, it shall comply with all rules and regulations of Chapter 102, Title 25 of Pennsylvania Soils Erosion and Sedimentation Control (25 Pa. Code Section 102.1, et seq.). Prior to any grading, the Contractor shall be responsible to obtain approval from the Department of Environmental Protection for an approved sedimentation and erosion control site plan for the Project site and shall perform all necessary site work in accordance with said plan. The applicable plan shall be available at the Project site at all times. If the Contractor performs excavation work, it shall maintain all devices as required to control erosion caused by storing water and preventing dust and particles from being distributed off site.

§ 13.13 Discrimination

§ 13.13.1 Each Contract entered into by a governmental agency for the construction, alteration or repair of any public building or public work shall contain the following provisions by which the Contractor agrees:

.1 In the hiring of any employees for the manufacturer of supplies, performance of the Work, or any other activity required under the Contract or any subcontract, the Contractor, Subcontractor, or any person acting on behalf of the Contractor or Subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of the Commonwealth of Pennsylvania who is qualified and available to perform the Work to which the employment relates. (62 Pa. C.S.A. Section 3701).

.2 Neither the Contractor nor any Subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacturer of supplies, the performance of Work, or any other activity required under the Contract on account of gender, race, creed, or color. (62 Pa. C.S.A. Section 3701).

.3 The Contractor and Subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

.4 The Contractor shall not discriminate by reason of gender, race, creed, or color against any Subcontractor or supplier who is qualified to perform the Work to which the Contracts relates.

.5 The Contractor and each Subcontractor shall furnish necessary employment documents and records to and permit access to their books, records, and accounts by the contracting agency and the Bureau of Contract Administration and Business Development, for purposes of investigation, to ascertain compliance with provisions of this Section 22.7.1. If the Contractor or any Subcontractor does not possess documents or records reflecting the necessary information requested, the Contractor or Subcontractor shall furnish such information on reporting forms supplied by the contracting agency or the Bureau of Contract Administration and Business Development.

.6 The Contractor shall include, without limitation, the provisions of this Section 22.7.1 in every subcontract so that such provisions will be binding, upon each Subcontractor.

.7 The Owner may cancel or terminate the Contract and all money due or to become due under the Contract may be forfeited for a violation of the terms and conditions of this Paragraph 22.7.1. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the contractor responsibility file.

§ 13.14 Waiver of Liens

The Contractor shall execute a Waiver of Liens in the form included in the Contract Documents.

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§ 13.15 Currency All dollar amounts are in United States Dollars.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

If the Owner fails to make payment of undisputed amounts as provided in Article 9 for a period of 30 days, the Contractor may, upon thirty additional days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed.

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- **.1** repeatedly refuses or fails to supply enough properly skilled workers or proper materials or demonstrates poor workmanship;
- **.2** fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- **.3** repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- **.4** otherwise commits a material breach of a provision of the Contract Documents.
- **.5 if Contractor is adjudged bankrupt or files for bankruptcy or creditor protection under the law of this United States or the Commonwealth of Pennsylvania (or under the laws applicable to the Country or location in which Contractor is formed or located), or if Contractor makes an assignment for the benefit of its creditors, or if a receiver or trustee or custodian is appointed for Contractor or any of its assets which appointment is not removed, dismissed or terminated with ten (10)**

days.

§ 14.2.2 When any of the reasons described in Section 14.2.1 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' notice, terminate the Contract 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.

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

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Owner's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, including, without limitation, legal fees, engineers' fees, architects' fees, and consultants' fees, 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 within 30 days of the Owner's written demand. This obligation for payment shall survive termination of the Contract.

§ 14.3 Suspension by the Owner for Convenience

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

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

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.1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience

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

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

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

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

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed up to the date of written notice of the cancellation.

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

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

§ 15.1.2 Time Limits on Claims

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by the Contract Documents.

§ 15.1.3

(Paragraphs Deleted)

Intentionally deleted.

§ 15.1.4 Continuing Contract Performance

§ 15.1.4.1 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.

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Contractor will issue Applications for Payment in accordance with the decision of the Initial Decision Maker.

§ 15.1.5 Claims for Additional Cost

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

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§ 15.1.6 Claims for Additional Time

§ 15.1.6.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 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.

§ 15.1.7 Waiver of Claims for Consequential Damages

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

.1 damages incurred by the Owner for 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 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2

(Paragraphs Deleted)

Intentionally deleted.

§ 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.

(Paragraph Deleted)

§ 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract shall be subject to mediation as a condition precedent to binding dispute resolution. As it relates to non-compulsory mediation, the Owner retains the exclusive right to waive mediation and move directly to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation, which claims , unless the parties mutually agree otherwise, shall be subject to mandatory non-binding mediation with the Berks County Bar Association as a condition precedent to binding dispute resolution. The mediation shall be conducted in accordance with the rules of the Berks County Bar Association effective on the date of the application for mediation and shall be conducted in Berks County, Pennsylvania. The parties agree to participate in such mediation in good faith for not less than sixty days after the submission of the application for mediation with the Berks County Bar Association. If the parties are unable to resolve a
claim, dispute or other matters in question within sixty days of the commencement of mediation, either party may pursue litigation in the Court of Common Pleas of Berks County as the sole and exclusive method of binding dispute resolution.

§ 15.3.3 Intentionally deleted.

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

§ 15.4

(Paragraphs Deleted)

Intentionally deleted.

§ 15.4.4

(Paragraphs Deleted)

Intentionally deleted.

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PAGE 1

Wilson School District – Whitfield Elementary School Secured Vestibule for Modular Classrooms Project
Wilson School District
2601 Grandview Boulevard
West Lawn, PA 19609

...

THE ~~ARCHITECT:~~

...

~~*(Name, legal status and address)*~~*ARCHITECT/ENGINEER (hereinafter and for purposes of this document and the contract documents, the "Architect"):*

...

Consolidated Engineers

...

1022 James Drive

...

Leesport, PA 19533

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ARTICLE 1 GENERAL PROVISIONS

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...

The Contract Documents are enumerated in Article 9 of 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~~ and also include 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 or proposal requirements.~~Architect or Owner.

...

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

...

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.~~ developed. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

...

§ 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. In the event of conflicts, inconsistencies, or discrepancies among the Agreement and the Contract Documents, the body of the Agreement takes precedence. Any inconsistency existing within the remaining Contract Documents shall be resolved in favor of the Contract Document first listed in Article 9 of the Agreement. In the event of any conflicts, inconsistencies, or discrepancies between the Contract Documents and applicable standards, codes, laws, ordinances, regulations, and/or requirements of applicable laws, the Contractor shall provide the better quality or greater quantity of Work or comply with the more stringent requirement, or both, in accordance with the Owner's interpretation.

PAGE 11

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

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§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. ~~Except as otherwise provided in Section 4.2.1, the Architect does not have such authority.~~ The term "Owner" means the Owner or the Owner's authorized representative.

...

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

...

§ 2.2 ~~Evidence of the Owner's Financial Arrangements~~Intentionally deleted.

...

~~§ 2.2.1~~ ~~Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.~~

...

~~§ 2.2.2~~ ~~Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.~~

...

~~§ 2.2.3~~ ~~After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.~~

...

~~§ 2.2.4~~ ~~Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.~~

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§ 2.3.2 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.~~ engineer licensed to practice in the Commonwealth of Pennsylvania. 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.

...

§ 2.3.4 ~~The~~ Upon Contractor's request, the Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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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 notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or ~~neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for 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. If current and future payments~~ neglect and may deduct the reasonable cost and fees (without limitation, legal fees) thereof, including Owner's expenses from the payment then or thereafter due the Contractor. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to ~~the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.~~Owner. Notwithstanding the above, Owner shall not be required to comply with the notice provisions hereof, and may proceed to correct deficiencies if Contractor fails within a 24-hour period after receipt of written notice from the Owner to commence and continue correction of such deficiencies where further delay would cause substantial disruption to the Project schedule. Owner shall have the further right to carry out Work without any prior notice to Contractor in an emergency affecting safety of persons or property, and said Work is necessary to prevent threatened damage, injury or loss. Owner's rights in this regard shall not relieve Contractor of its obligations and responsibilities under the Contract Documents and shall not give rise to a duty on the part of the Owner to exercise these rights for the benefit of the Contractor or any other person or entity.

...

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

...

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the 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 ~~Architect~~ Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the ~~Architect~~ Owner 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.

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

...

§ 3.2.4 ~~If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit 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, subject to Section 15.1.7, 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.~~ Intentionally deleted.

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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, 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 shall be 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 notice to the Owner~~and Architect,~~ , and shall propose alternative means, methods, techniques, sequences, or procedures. The ~~Architect~~ Owner shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the ~~Architect~~ Owner objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

...

§ 3.5.1 The Contractor warrants to the Owner ~~and Architect~~ that materials and equipment furnished under the Contract will be of good quality and new unless 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.~~ The Contractor shall perform the Work and take all steps necessary to secure any applicable manufacturer's warranty.

...

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 will provide a tax-exempt certificate to the extent required and permitted by applicable laws.

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§ 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.~~ The Owner shall acquire and pay for all permits and approvals 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.~~ from governmental authorities having jurisdiction over the Project. Contractor shall pay for any licenses, permits, and fees necessary for Contractor to do business in the municipality, county, and state in which the Project is located, including, without limitation, business privilege licenses or taxes, if any.

PAGE 15

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 ~~and the Architect~~ before conditions are disturbed and in no event later than ~~14~~ three (3) days after first observance of the conditions. The ~~Architect~~ Owner will promptly investigate such conditions and, if the ~~Architect~~ Owner determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the ~~Architect~~ Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the ~~Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party~~ Owner shall promptly notify the Contractor, stating the reasons. If Contractor disputes the Owner's determination or recommendation, the Contractor may submit a Claim 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, 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.

...

§ ~~3.8 Allowances~~3.7.6 COVID-19 Prevention and Mitigation Measures

...

§ 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.~~ The Contractor shall comply with all Orders issued by state or federal authorities related to COVID-19 closures, prevention, and mitigation measures. The Contractor

...

§ 3.8.2 ~~Unless otherwise provided in the Contract Documents,~~

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.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;~~shall require that its employees, agents, materialmen, and subcontractors (the "Agents") follow the most current prevention and mitigation measures issued by the Centers for Disease Control ("CDC"), Pennsylvania Department of Health ("Pa DOH"), and/or other governmental authority with jurisdiction, including, but not limited to, wearing properly fitted and secured masks, frequent handwashing, and

...

.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;~~ staying home when ill. The Contractor shall provide adequate handwashing stations for its Agents and alert the District if Contractor learns that any such Agents test positive for COVID-19. Nothing in this paragraph limits in any way any other duty that Contractor may have under law and

...

.3 ~~whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.~~the Contract Documents relating in any way to COVID-19 prevention, mitigation, screening, or damages.

...

§ ~~3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.~~3.8

...

Intentionally deleted.

PAGE 16

§ 3.9.1 The Contractor shall employ a competent ~~superintendent~~ Superintendent and necessary assistants who shall be in attendance at the Project site full time 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. If during the course of the Project, it is evident that the Superintendent is not competent, is not managing the progress of the Work, or is not coordinating the various trades under the Contractor's supervision, then, upon Owner's request, the Contractor shall replace the Superintendent with an acceptable Superintendent.

...

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

...

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§ 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.

...

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall submit for the Owner's ~~and Architect's~~ information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

...

§ 3.10.2 The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the ~~Architect's approval. The Architect's~~ Owner's approval. The Owner's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the ~~Architect~~ Owner reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved 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.~~.

...

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the ~~Architect and~~ Owner, and 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 how 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.~~ Informational submittals upon which the Architect and/or Owner 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~~ Owner without action.

PAGE 17

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

...

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

...

§ 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.~~Owner.

...

§ 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 the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect and the Owner 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.

...

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

PAGE 18

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or ~~equipment.~~equipment or interfere with the Owner's use of the site and parking areas. Contractor shall adhere to any instructions provided by the Owner with respect to minimization of disruption of instruction to students at the site.

...

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

...

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for 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 an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the ~~Architect.~~Architect and Owner.

...

§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Owner's consultants, Architect, Architect's consultants, and agents and employees of any of them immediately from and against any and all claims, damages, losses, and expenses, including but not limited to ~~attorneys' fees,~~ legal fees (attorneys' fees, paralegals' fees, and expert witnesses' fees), arising out of or resulting from performance of the

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Work, ~~provided that such claim, damage, loss, or expense is~~ including, without limitation, claims, damages, losses, or expenses attributable to bodily injury, sickness, disease or death, or to injury to or destruction of ~~tangible~~ property (other than the Work itself), ~~but only to the extent caused by the negligent acts or omissions~~ whether caused in whole or in part by the negligent acts, omissions, or willful misconduct 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.

...

ARTICLE 4 CONTRACT ADMINISTRATION

...

§ 4.1 ~~General~~

PAGE 19

§ 4.1.1 ~~The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.~~The Owner will provide administration of the Work. The Owner reserves the right to engage an independent third party Clerk of the

...

§ 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.~~Works or Construction Manager to administer the Work on its behalf. If the Owner does so, the Contractor shall

...

~~§ 4.2 Administration of the Contract~~coordinate its activities with the

...

§ 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.~~Clerk of Works or Construction Manager and follow instructions from such person as the Owner's representative. The Contractor shall not be entitled to any additional compensation as a result of the Owner's use of a Clerk of the Works or Construction Manager .

...

§ 4.2.2 ~~The Architect~~ **4.2** The Owner will visit the site at intervals appropriate to the stage of ~~construction, or as otherwise agreed with the Owner,~~ the construction 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 Architect~~ completed. However, the Owner will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The ~~Architect~~ Owner will not have control over, charge of, or responsibility ~~for~~ 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.

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...

~~§ 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 promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect~~ **4.3** The Owner will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The ~~Architect~~ Owner will not have control over or charge ~~of,~~ of and will not be responsible for acts or omissions ~~of,~~ of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

...

§ ~~4.2.4 Communications~~**4.4** Intentionally deleted.

...

~~The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities.~~ **§ 4.5** The Owner has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

...

§ 4.6 Intentionally deleted.

...

~~The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise~~ **§ 4.7** The Owner will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of the Contractor.

...

~~relating to the Project. Communications by and with the Architect's consultants shall be through~~ **§ 4.8** The Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

...

§ 4.9 Intentionally deleted.

...

§ 4.1 General

...

~~the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.~~ **§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

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...

§ 4.2 Contract Administration

...

§ ~~4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.~~ 4.2.1 The Owner will provide administration of the Work. The Owner reserves the right to engage an independent third party Clerk of the Works or Construction Manager to administer the Work on its behalf. If the Owner does so, the Contractor shall coordinate its activities with the Clerk of Works or Construction Manager and follow instructions from such person as the Owner's representative. The Contractor shall not be entitled to any additional compensation as a result of the Owner's use of a Clerk of the Works or Construction Manager .

...

§ ~~4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or~~ 4.2.2 The Owner will visit the site at intervals appropriate to the stage of the construction to become generally familiar with the progress and quality of the portion of the Work completed. However, the Owner will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Owner will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

...

~~not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or~~ § 4.2.3 The Owner will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Owner 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.

PAGE 20

§ 4.2.4 The Owner has authority to reject Work that does not conform to the Contract Documents and to require inspection or testing of the Work.

...

§ 4.2.5 The Owner will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of the Contractor.

...

§ 4. 2.6 The Owner's decisions on matters relating to aesthetic effect will be final if consistent with the intent

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expressed in the Contract Documents.

...

§ 4.2.8 The ~~Architect~~ Owner will prepare Change Orders and Construction Change ~~Directives, and~~ Directives. The Architect may order 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~~ Owner will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive ~~and forward to the Owner,~~ , for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue 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 Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.~~

...

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

...

~~**§ 4.2.12** Interpretations and decisions of the Architect will be 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 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~~

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~~reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.~~

PAGE 21

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

...

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

...

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

...

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

...

~~**§ 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~~ Under no circumstances shall a privity of

...

~~.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; and~~ contractor relationship be inferred and/or established between the Owner and any/all Subcontractors.

...

~~.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.~~

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§

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5.4

...

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

...

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

...

§ 5.4.3 ~~Upon 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.~~

...

Intentionally deleted.

PAGE 22

§ 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 notify the ~~Architect~~ Owner of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the ~~Architect~~ Owner of apparent discrepancies or defects prior to proceeding with the Work 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. The Contractor shall not be responsible for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

...

§ 6.2.6 Contractor shall cooperate with and follow instructions provided by Owner with regard to Contractor's coordination with Owner's own forces or separate contractors. Any delay attributable to lack of coordination or cooperation by and/or between Contractor and its Subcontractors, Sub-subcontractors with Owner's own forces or separate contractors shall not be a basis for any claim for increasing the Contract Sum or Contract Time.

...

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

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...

§ 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,~~ a Modification, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

PAGE 23

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

...

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

...

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

...

.4 ~~As provided in Section 7.3.4.~~Intentionally deleted.

...

§ 7.3.4~~If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:~~

...

~~**.1** Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;~~

...

Intentionally deleted.

...

~~**.2** Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;~~

...

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~~.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;~~

...

~~.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and~~

...

~~.5 Costs of supervision and field office personnel directly attributable to the change.~~

...

§ 7.3.5 If the Contractor disagrees with the adjustment in the Contract ~~Time,~~ Time or Contract Sum, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

...

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

...

§ 7.3.8 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.~~ Owner. 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.

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§ 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 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,~~ Owner determines to be reasonably justified. The ~~Architect's~~ 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~~ Owner concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the ~~Architect~~ Owner will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

...

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

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...

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

...

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, unusually adverse and unforeseeable weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, ~~and the Architect determines,~~ justify delay, then the Contract Time shall be extended for such reasonable time as the ~~Architect may determine.~~Owner may determine, in the Owner's sole discretion..

PAGE 25

§ 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.~~Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under the Contract Documents, shall be the sole remedy of the Contractor for (1) delay in the commencement, prosecution or completion of the Work; (2) hindrance or obstruction in the performance of the Work; (3) loss of productivity; or (4) other similar claims (collectively referred to in this subparagraph as delays) whether or not such delays are foreseeable, unless a delay is caused by the acts of the Owner constituting active interference with the Contractor's performance of the Work, and only to the extent that such acts continue after the Contractor furnishes the Owner with written notice of such interference. In no event shall the Contractor be entitled to any compensation or recovery of any damages, in connection with any delay, including, without limitation, consequential damages, winter protection costs, lost opportunity cost, impact damages, lost or expected profits or similar remuneration. The Owner's exercise or failure to exercise any rights or remedies under the Contract Documents (including without limitation, ordering changes in the Work, or directing suspension, rescheduling or correction of the Work), regardless of the extent or frequency thereof, shall not be construed as active interference with the Contractor's performance of the Work.

...

§ 9.1.2 ~~If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.~~Intentionally deleted.

...

~~Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Architect. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.~~ The Contractor's Proposals attached to this Agreement include Contractor's schedule of values for completion of the Work. This schedule shall be used in preparing the Contractor's Applications for Payment.. Any changes to the schedule of values shall be submitted to the ~~Architect~~ Owner and supported by such data to substantiate its accuracy as the ~~Architect~~ Owner may require, and unless objected to by the ~~Architect,~~ Owner, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

...

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§ 9.3.1 At least ~~ten~~ thirty 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. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.~~Contractor, without further request, written or oral, is hereby required and agrees to provide to Owner each month, together with the Contractor's Application for Payment, a partial release of liens, in a form acceptable to Owner from itself and its subcontractors releasing and relinquishing all liens, mechanic's lien claims, or rights of lien, if any, that the Contractor or its subcontractors may have with respect to the Project for all Work performed through the date of the previous Application for Payment. If a payment claim or lien is made or filed with or against Owner, the Contractor shall immediately satisfy, discharge or bond-off the claim or lien. Each Application for Payment shall be accompanied by the original certified payroll records of Contractor, Subcontractors, and Sub-Subcontractors for the entire duration covered by the Application for Payment for verification of compliance with the Prevailing Wage Law. Contractor's failure to provide all required original certified payrolls or sufficient data supporting Contractor's right to any payment shall be a basis for rejection of all or part of the Application for Payment or withholding of payment until such certified payroll records are submitted in full.

...

§ 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,~~ Owner, 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 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. Paymentfor materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.~~9.4 Certificates for Payment

...

~~§ 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, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.~~**9.4.1** In accordance with Article 5 of the Agreement, in response to

...

~~§ 9.4 Certificates for Payment~~

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...

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

...

§ 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 in the Application for Payment, that, to the best of the Architect's knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by the Architect. 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 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.~~Intentionally deleted.

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§ 9.5 Decisions to Withhold ~~Certification~~Payment

...

§ 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~~ Owner and in accordance with law. If the determines that withholding of payment is appropriate and permitted, the Owner will notify the Contractor. If the Contractor and Owner 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~~ Owner will promptly issue payment for the amount that is not disputed. The Owner may also withhold payment or, because of subsequently discovered evidence, may nullify the whole or a part ~~of a Certificate for Payment~~ payment previously issued, to such extent as may be necessary in the ~~Architect's~~ Owner's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

...

§ 9.5.2 When ~~either party disputes the Architect's decision regarding a Certificate for Payment~~ the Contractor disputes the Owner's decision regarding payment under Section 9.5.1, in whole or in part, ~~that party~~ Contractor may submit a Claim in accordance with Article 15.

...

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

...

§ 9.5.4 If the ~~Architect withholds certification for~~ Owner withholds 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 supplier 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 Contractor shall reflect such payment on its next Application for Payment.

...

§ 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.~~Intentionally deleted.

...

§ 9.6.3 The ~~Architect~~ Contractor 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 suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. ~~Neither the Owner nor Architect shall~~ The Owner shall not have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

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~~**§ 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 or provided by 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, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.~~

...

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

...

§ 9.7 ~~Failure of Payment~~Intentionally deleted.

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...

~~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' 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 shutdown, delay and start-up, plus interest as provided for in the Contract Documents.~~

...

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

...

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

...

§ 9.8.4 When the Owner determines that the Work or designated portion thereof is substantially complete, the ~~Architect will prepare~~ Owner will accept from Contractor a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

...

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner ~~and Contractor for their~~ by the Contractor for Owner's written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. In no case shall the time established for Contractor's completion and correction of items on the list extend beyond fourteen (14) days after certification of Substantial Completion, except for unforeseeable delay beyond the Contractor's control.

...

§ 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 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

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considers a portion substantially complete, the Contractor shall prepare and submit a list to the ~~Architect~~ Owner 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.

...

§ 9.9.2 Immediately prior to such partial occupancy or use, the ~~Owner, Contractor, and Architect~~ Owner and Contractor 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.

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§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the ~~Architect~~ Owner will promptly make such inspection. When the ~~Architect~~ Owner finds the Work acceptable under the Contract Documents and the Contract fully performed, the ~~Architect~~ Contractor will promptly issue a final ~~Certificate~~ Application for Payment stating that to the best of the ~~Architect's~~ Contractor's knowledge, information and belief, and on the basis of the ~~Architect's~~ Owner's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The ~~Architect's final Certificate~~ Contractor's final Application for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Final payment shall not become due until the Contractor has obtained the requisite approval of the Work by all municipal and other governing bodies having jurisdiction over the Project.

...

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the ~~Architect~~ Owner (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, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. 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, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance 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 the lien, claim, security interest, or encumbrance, including all costs and reasonable ~~attorneys' fees.~~ legal fees.

...

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the ~~Architect~~ Owner 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, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the ~~Architect~~

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Owner prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

...

.3 terms of ~~special~~ warranties required by the Contract Documents; or

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§ 10.2.2 The Contractor ~~shall~~ shall, at its sole cost, 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.

...

§ 10.2.5 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. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner ~~or 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.~~.

...

§ 10.2.8~~Injury or Damage to Person or Property~~

...

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

...

Intentionally deleted.

...

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner ~~and Architect of the condition.~~of the condition in writing.

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§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. ~~Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection.~~ When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be ~~increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.~~equitably adjusted (to the extent applicable, by the Unit Prices) to provide for reasonable and direct out-of-pocket expenses (which shall not include overhead or profit) incurred in the interruption and resumption of Contractor's services.

...

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

...

§ 11.1.1 The Contractor shall purchase ~~and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.~~ from, and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, insurance for protection from claims under workers' compensation acts and other employee benefit acts which are applicable, claims for damages because of bodily injury, including death, and claims for damages, other than to the Work itself, to property which may arise out of or result from the Contractor's operations and completed operations under the Contract, whether such operations be by the Contractor or by a Subcontractor or anyone directly or indirectly employed by any of them. This insurance shall be written for not less than limits of liability specified below or required by law, whichever coverage is greater, and shall include contractual liability insurance applicable to the Contractor's obligations under Section 9.15. Certificates of Insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. Each policy shall contain a provision that the policy will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. The Contractor shall cause the commercial liability coverage required by the Contract Documents to include: (1) the Owner, as 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 for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations. The Contractor shall name the Owner as an additional insured on the Contractor's liability insurance policies. In no event shall the furnishings of such insurance release Contractor from its obligation to indemnify or defend Owner under this Agreement or the Contract Documents. The Contractor shall maintain the following insurance policies for the entire term of this Agreement with at least the following coverages:

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...

§ 11.1.2 Statutory Worker's Compensation including Occupational Disease as required by the laws of the Commonwealth of Pennsylvania and also Employer's Liability Insurance with limits not less than the following:

...

Workers' Compensation: Amounts and coverage as required by the laws of the Commonwealth of Pennsylvania

PAGE 31

Employer's Liability: $100,000.00 each accident

...

$500,000.00 disease (policy limit)

...

$100,000.00 disease (each employee)

...

§ 11.1.3 Comprehensive General Liability, with limits not less than the following. Liability insurance shall include all major divisions of coverage and be on a comprehensive general basis including: Premises – Operations (including explosion, collapse and underground (XCU)), Owner's and Contractor's protective, products and completed operations, contractual and broad form property damage.

...

Bodily Injury and Property Damage: $1,000,000.00 per person

...

$2,000,000.00 per occurrence

...

§ 11.1.4 Comprehensive Automobile Liability Pennsylvania, Comprehensive Automobile Liability Insurance, including coverage for accidents related to operation of motor vehicles owned, non-owned, or leased, with limits not less than the following:

...

Bodily Injury and Property Damage: $1,000,000.00 combined single limit

...

§ 11.1.5 Umbrella Liability Insurance, with limits not less than the following:

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...

Umbrella Liability: $5,000,000.00 each occurrence

...

$5,000,000.00 aggregate

...

§ 11.1.2 The Contractor shall ~~provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents.~~ furnish performance and payment bonds in the form attached to the Contract as Exhibit A and Exhibit B covering faithful performance of the Contract and payment of obligations arising thereunder for the full Contract Sum. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the ~~jurisdiction where the Project is located.~~Commonwealth of Pennsylvania.

...

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

...

~~§ 11.2.2 Failure to Purchase Required Property Insurance.~~ ~~If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.~~located, property insurance on an "all-risk" or equivalent policy form, including builder's risk, in the amount of the initial Contract Sum, plus the value of subsequent modifications and cost of materials supplied and 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 15.5 or

...

~~§ 11.2.3 Notice of Cancellation~~ ~~or~~ **~~Expiration of Owner's Required Property Insurance.~~** ~~Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor:~~

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~~(1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.~~until no person or entity other than the Owner has an insurable interest in the property required by this Section 17.3.1 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and sub-subcontractors in the Project..

...

§ 11.2.2 Intentionally deleted.

...

§ 11.2.3 Intentionally deleted.

PAGE 32

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

...

§ 11.3.2 ~~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, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.~~Intentionally deleted.

...

§ 11.4~~Loss of Use, Business Interruption, and Delay in Completion Insurance~~

...

~~The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.~~

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Intentionally deleted.

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§ 11.5.1 A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the ~~Architect and~~ Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the ~~Architect and~~ Contractor shall make payments to their consultants and Subcontractors in similar manner.

...

§ 12.1.1 If a portion of the Work is covered contrary to the ~~Architect's~~ Owner's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the ~~Architect,~~ Owner, be uncovered for the ~~Architect's~~ Owner'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 ~~Architect~~ Owner has not specifically requested to examine prior to its being covered, the ~~Architect~~ Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

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

...

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after 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 any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do ~~so,~~ so at no additional cost to the Owner, unless the Owner has previously given the Contractor a specific written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. ~~During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty.~~ If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the ~~Owner or Architect,~~ Owner, the Owner may correct it in accordance with Section 2.5.

...

§ 12.2.6 The one-year limit limitation period shall not limit or reduce the application of any extended warranties required by the Contract Documents.

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...

The Contract shall be governed by the law of the ~~place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.~~Commonwealth of Pennsylvania, without regard to its principles of conflicts of law.

PAGE 34

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

...

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

...

§ 13.4.2 If the ~~Architect,~~ Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, 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 ~~Architect~~ Owner of when and where tests and inspections are to be made so that the ~~Architect~~ Owner may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

...

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures ~~and compensation for the Architect's services and expenses,~~ shall be at the Contractor's expense.

...

§ 13.4.4 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.~~Owner.

...

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

...

~~**ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT**~~

...

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§ 13.6 Commencement of Statutory Limitation Period

...

~~§ 14.1 Termination by the Contractor~~As to claims made by the Contractor, all actions related to this Agreement shall be commenced prior the earlier of the expiration of any applicable statute of limitations provided by the laws of the Commonwealth of Pennsylvania or two years from the date of Substantial Completion. As to claims made by the Owner, the Owner reserves all rights and privileges applicable to it pursuant to the doctrine of nullum tempus occurrit regi.

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§ ~~14.1.1~~ ~~The Contractor may terminate the Contract if the Work is stopped for a period~~ **13.7** E-Verify. The Contractor and its Subcontractors are required to comply with the Public Works Employment Verification Act, Act No. 127, July 5, 2012 (formerly Senate Bill 637) (as used in this Paragraph, the "Act"). Prior to award of this Agreement by the Owner, the Contractor shall submit to the Owner the verification form required by the Act acknowledging its responsibilities and its compliance with the Act. The verification form is to be obtained from the Secretary of the Pennsylvania Department of General Services. The verification form shall include a certification that the information in the statement is true and correct and that the individual signing the statement understands that the submission of false or misleading information in connection with the verification shall subject the individual and the public works contactor or subcontractor, as the case may be, to sanctions provided by law; and the verification form shall be signed by a representative of the public works contractor or subcontractor, as applicable, who has sufficient knowledge and authority to make the representations and certifications contained in the statement. Contractor's subcontractors (as defined in the Act) shall provide, and Contractor shall cause its Subcontractors to provide, their verification forms prior to commencing Work on the Project.

...

~~of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees,~~ **§ 13.8** Workers shall not smoke, including the use of vape pens, e-cigarettes, "Juuls," and similar nicotine delivery devices, within the limits of the Owner's property boundaries or as otherwise required by Federal legislation, Title X, P.L. 103-227, Goal 2000, Educate America Act of 1994 as amended from time to time, including without limitation, 20 U.S.C.A. Section 6081, et seq., the Pro-Children Act of 1994. Nothing in the Educate America Act of 1994 or its codification in the Pro-Children Act of 1994 shall preempt any provision of law of a state or political subdivision of a state that is more restrictive. Workers shall not possess or consume alcoholic beverages when within the limits of the Owner's property boundaries. The Contractor shall require its employees and agents, and its Subcontractor's employees and agents to work diligently and behave in an orderly manner at all times when at or about the Project site and shall remove from the Project any employee whose conduct is deemed objectionable.

...

§ 13.9 Criminal History And Child Protective Services Information

...

~~or any other persons or entities performing portions of the Work, for any of the following reasons:~~**§ 13.9.1** The background checks required pursuant to 24 P.S. § 1-111 and 23 Pa.C.S. § 6344, each as amended from time-to-time, shall be submitted to the Owner for review and approval prior to Contractor or any of Contractor's employees (including any subcontractor's or supplier's employees) commencing work under the Contract. Contractor shall be required to obtain Criminal History Reports (24 P.S. § 1-111), Child Abuse Clearances (23 Pa.C.S. § 6344) and an Employment Background Review (24 P.S. § 1-111.1) for any individual Contractor intends to utilize in conjunction with the Contract. The District shall follow the regulations promulgated by the State Board of Education concerning the confidentiality of the Criminal History Reports, Child Abuse Clearances and Employment Background Review.

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In compliance with 24 P.S. § 1-111, as amended, and 23 Pa.C.S. § 6344, Contractor shall be required to present:

...

.1 ~~Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;~~Original report of criminal history record information from the Pennsylvania State Police or a statement from the Pennsylvania State Police that the Pennsylvania State Police central repository contains no such information relating to any of Contractor's employees or its subcontractor's employees working on the Project site prior to such persons performing work at the Project site. Such report of criminal history shall be dated no more than one (1) year prior to the date of execution of this Agreement. To obtain this document, contact the nearest Pennsylvania State Police barracks.

...

.2 ~~An act of government, such~~ Registration ID Number of the Federal Criminal History record from the Federal Bureau of Investigation in the manner prescribed by the Department of Education. To obtain such a report, contact the nearest FBI Field Office.

...

~~as a declaration~~ **.3** Original background check in accordance with Section 111 of the Public School Code, as amended (24 P.S. Section 1-111, et seq.) on the form published by the Pennsylvania Department of Education.

...

~~of national emergency, that requires all Work to be stopped;~~.4 Official clearance statement obtained from the Pennsylvania Department of Public Welfare pursuant to Act 151 of December 16, 1994 (P.L. 1292), subchapter C.2 of the Child Protective Services Law, as amended from time to time.

...

~~**.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,~~ **§ 13.9.2** The Contractor and its subcontractors shall refuse to employ any person as an independent contractor or employee whose Federal Criminal History record information indicates that such prospective employee has been convicted within five (5) years immediately preceding the date of the report of any of the following offenses:

...

~~or because the Owner has not made payment on a Certificate for Payment within the time stated~~ **.1** An offense under one (1) or more of the following provisions of Title 18 of the Pennsylvania Consolidated Statutes:

...

- Chapter 25 (relating to criminal homicide).

...

- Section 2702 (relating to aggravated assault).

...

- Former section 2709(b) (relating to stalking).

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...

- Section 2709.1 (relating to stalking).

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- Section 2901 (relating to kidnapping).

...

- Section 2902 (relating to unlawful restraint).

...

- Section 3121 (relating to rape).

...

- Section 3122.1 (relating to statutory sexual assault).

...

- Section 3123 (relating to involuntary deviate sexual intercourse).

...

- Section 3124.1 (relating to sexual assault).

...

- Section 3125 (relating to aggravated indecent assault).

...

- Section 3126 (relating to indecent assault).

...

- Section 3127 (relating to indecent exposure).

...

- Section 4302 (relating to incest).

...

- Section 4303 (relating to concealing death of child).

...

- Section 4304 (relating to endangering welfare of children).

...

~~in the Contract Documents; -~~ Section 4305 (relating to dealing in infant children).

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...

- A felony offense under Section 5902(b) (relating to prostitution and related offenses).

...

- Section 5903(c) or (d) (relating to obscene and other sexual materials and performances).

...

~~.4 The Owner has failed to furnish~~ - Section 6301 (relating to corruption of minors).

...

- Section 6312 (relating to sexual abuse of children).

...

~~the Contractor reasonable evidence as required~~ **.2** An offense designated as a felony under the act of April 14, 1972 (P.L. 233, No. 64), known as "The Controlled Substance, Drug, Device and Cosmetic Act."

...

.3 An out-of-State or Federal offense similar in nature to those crimes listed in Paragraphs 16.10.2.1 and 16.10.2.2.

...

.4 Would otherwise be precluded from employment by ~~Section 2.2.~~the Owner under Section 111 of the Public School Code, as amended (24 P.S. § 1-111).

...

~~§ 14.1.2~~ ~~The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or~~ **13.9.3** Upon review of the Criminal History Reports, Child Abuse Clearance or Employment Background Review for any particular individual, the Owner may determine that utilizing the individual pursuant to the Contract is inappropriate. At that point, the Owner shall notify Contractor in writing and Contractor shall then assign a different, cleared individual immediately to the role that otherwise would have been filled by the excluded individual. Similarly, Contractor shall also assign a different, cleared individual immediately if a previously cleared individual fails to submit new Criminal History Reports or Child Abuse Clearances prior to the expiration of the old report(s).

...

~~any other persons~~ **13.9.4** Contractor shall comply with any amendments to the criminal history records laws and child abuse clearance laws during the course of the Contract, at Contractor's sole cost and expense.

...

§ 13.10 Aluminum and Steel Products

...

~~or entities performing portions of the Work, repeated suspensions, delays, or interruptions~~ **§ 13.10.1** As this Project involves the construction, reconstruction, alteration, repair, improvement or maintenance of "public work", the Contractor shall strictly comply with all requirements of the Pennsylvania Steel Products Procurement Act, 73 P.S. Section 1881, et seq., with respect to the Work, which shall include, without limitation, using steel, steel products

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(including machinery and equipment) or cast iron produced in the United States unless otherwise exempted therefrom.

...

~~of the entire Work by the Owner as described~~ **§ 13.10.2** In addition to the requirements set forth in Paragraph 22.4.1, the Contractor shall strictly comply with all requirements of the Trade Practices Act, 71 P.S. § 773.101 et seq., which shall include, without limitation, being prohibited from using any aluminum or steel products made in a foreign country which discriminates against aluminum or steel products manufactured in Pennsylvania. The countries of Brazil, South Korea, Spain, and Argentina have been found to discriminate against certain products manufactured in Pennsylvania. Therefore, the purchase or use of those countries' products, as listed herein, for the Project is strictly prohibited.

...

§ 13.10.2.1 BRAZIL: Welded carbon steel pipes and tubes; carbon steel wire rods; tool steel; certain steel products, including hot-rolled stainless steel bar; stainless steel wire rod and cold-formed stainless steel bar; pre-stressed concrete steel wire strand; hot-rolled carbon steel plate in coil; hot-rolled carbon steel sheet and cold-rolled carbon steel sheets.

...

§ 13.10.2.2 SPAIN: Certain stainless steel products, including stainless steel wire rod, hot-rolled stainless steel bars and cold-formed stainless steel bars; pre-stressed concrete steel wire strands certain steel products, including hot-rolled steel plate, cold-rolled carbon steel plate, carbon steel structural shapes, galvanized carbon steel sheet, hot-rolled carbon steel bars and cold-formed carbon steel bars.

...

§ 13.10.2.3 SOUTH KOREA: Welded carbon steel pipes and tubes; hot-rolled carbon steel plate; hot-rolled carbon steel sheet and galvanized steel sheet.

...

§ 13.10.2.4 ARGENTINA: Carbon steel wire rod and cold-rolled carbon steel sheet.

...

§ 13.11 Anti-Pollution Legislation

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~~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.~~**§ 13.11.1** 62 Pa. C.S.A. Section 3301 requires that bidders and contractors on construction contracts, for the Commonwealth of Pennsylvania be advised that there are provisions of Federal and State statutes, rules and regulations dealing with the prevention of environmental pollution and the preservation of public natural resources that affect the Project on which Bids are being received.

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~~§ 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' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.~~**13.11.2** The Contractor shall become thoroughly acquainted with the terms of the listed statutes, rules and regulations, including, but not limited to, Flood Plain Management Act (32 P.S. Section 679.101, et seq.), Water Well Drillers License Act (32 P.S. Section 645.1, et seq.), Pennsylvania Scenic Rivers Act (32 P.S. Section 820.21, et seq.), Dam Safety and Encroachment Act (32 P.S. Sec. 693.1, et seq.), Bluff Recession and Setback Act (32 P.S.

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Section 5201, et seq.), Storm Water Management Act (32 P.S. Section 680, et seq.), Pennsylvania Sewage Facilities Act (35 P.S. Section 750.1, et seq.), Pennsylvania Solid Waste Management Act (35 P.S. Section 6018.101, et seq.), Pennsylvania Safe Drinking Water Act (35 P.S. Section 721.1, et seq.), the Clean Streams Law (35 P.S. Section 691.901 et seq. and 35 P.S. Section 691.1 et. seq.), Air Pollution Control Act (35 P.S. Section 4001, et seq.), Pennsylvania Historic Preservation Act (37 Pa. C.S.A. Section 501, et seq.), Pennsylvania Hazardous Sites Clean Up Act (35 P.S. Section 6020.101, et seq.), Pennsylvania Storage Tank and Spill Prevention Act (35 P.S. Sec. 6021.101, et seq.), Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Sections 9601-9675) as amended, including, but not limited to, the Superfund Amendments and Reauthorization Act (P.L. 99-499), Federal Solid Waste Disposal Act (42 U.S.C. Sections 6901-6992), Federal Clean Air Act (Air Pollution Act) (42 U.S.C. Sections 7401-7642), Federal Safe Drinking Water Act (See Public Health Service Act Sections 1401-1451) (42 U.S.C. Sections 300f-300j-11), Wild and Scenic River Act (P.L. 90-542), Endangered Species Conservation Act of 1969 (P.L. 89-669), Endangered Species Conservation Act of 1973 (16 U.S.C. Sections 1531-1544), Federal Clean Water Act of 1977 (P.L. 95-217), Rivers and Harbor Act of 1970 (P.L. 91-611), Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sections 136-136y), Toxic Substance Control Act (15 U.S.C. Sections 2601-2692), Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sections 6901-6991), Coastal Wetlands Planning, Protection and Restoration Act (16. U.S.C. Sections 3951-3956), Coastal Zone Management Act of 1972 (16 U.S.C. Sections 1451-1464), Community Environmental Response Facilitation Act (42 U.S.C. Section 9620), Emergency Planning and Right-to-Know Act of 1986 (42 U.S.C. Sections 11001-11050), Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. Sections 791-798), Environmental Quality Improvement Act of 1970 (42 U.S.C. Sections 4371-4375), Federal Facility Compliance Act of 1992 (42 U.S.C. Section 6901), Federal Land Policy and Management Act of 1976 (43 U.S.C. Sections 1701-1784), Federal Water Pollution Control Act (33 U.S.C. Sections 1251-1387), Geothermal Energy Research, Development, and Demonstration Act of 1974 (30 U.S.C. Sections 1101-1164), Global Climate Protection Act of 1987 (15 U.S.C. Section 2901 note), Hazardous Substance Response Revenue Act of 1980 (see 26 U.S.C. Sections 4611, 4612, 4661, 4662), Lead-Based Paint Exposure Reduction Act (15 U.S.C. Sections 2681-2692), Lead Contamination Control Act of 1988 (42 U.S.C. Sections 300j-21 to 300j-25), Low-Level Radioactive Waste Policy Act (42 U.S.C. Sections 2021b-2021d), National Climate Program Act (15 U.S.C. Sections 2901-2908), National Contaminated Sediment Assessment and Management Act (33 U.S.C. Section 1271 note), National Environmental Policy Act of 1969 (42 U.S.C. Sections 4321-4370b), National Ocean Pollution Planning Act of 1978 (33 U.S.C. Sections 1701-1709), Noise Control Act of 1972 (42 U.S.C. Sections 4901-4918), Oil Pollution Act of 1990 (33 U.S.C. Sections 2701-2761), Pollution Prevention Act of 1990 (42 U.S.C. Sections 13101-13109), Public Health Service Act (42 U.S.C. Sections 300f-300j-11), Renewable Resources Extension Act of 1978 (16 U.S.C. Sections 1671-1676), Resource Conservation and Recovery Act of 1976 (42 U.S.C. Sections 6901-6991), Soil and Water Resources Conservation Act of 1977 (16 U.S.C. Sections 2001-2009), Water Resources Research Act of 1984 (42 U.S.C. Sections 10301-10309), Wood Residue Utilization Act of 1980 (16 U.S.C. Sections 1681-1687), Pennsylvania Worker and Community Right-to-Know Act (35 P.S. Section 7301, et seq.), Asbestos Hazard Emergency Response Act of 1986 (see Toxic Substances Control Act Sections 201-214) (15 U.S.C. Sections 2651-2654), Delaware River Basin Compact (32 P.S. Section 815.101, et seq.), Brandywine River Valley Compact (32 P.S. Section 818, et seq.), Wheeling Creek Watershed Protection and Flood Prevention District Compact (32 P.S. Section 819, et seq.), Susquehanna River Basin Compact (32 P.S. Section 820.1, et seq.), Chesapeake Bay Commission Agreement (32 P.S. Section 820.11, et seq.), Land and Water Conservation and Reclamation Act (32 P.S. Section 5101, et seq.), Wild Resource Conservation Act (32 P.S. Section 5301, et seq.), Cave Protection Act (32 P.S. Section 5601, et seq.), Rails to Trails Act (32 P.S. Section 5611, et seq.), Phosphate Detergent Act (35 P.S. Section 722.1, et seq.), Plumbing System Lead Ban and Notification Act (35 P.S. Section 723.1, et seq.), Publicly Owned Treatment Works Penalty Law (35 P.S. Section 752.1, et seq.), Pennsylvania Solid Waste-Resources Recovery Act (35 P.S. Section 755.1, et seq.), Sewage System Cleaner Control Act (35 P.S. Section 770.01, et seq.), Hazardous Material Emergency Planning and Response Act (35 P.S. Section 6022.101, et seq.), Oil Spill Responder Liability Act (35 P.S. Section 6023.1, et seq.), Land Recycling and Environmental Remediation Standards Act (35 P.S. Section 6026.101, et seq.), Radiation Protection Act (35 P.S. Section 7110.101, et seq.), Low-Level Radioactive Waste Disposal Act (35 P.S. Section 7130.101, et seq.), Pennsylvania Municipalities Planning Code (53 P.S. Section 10101, et seq.), regulations, ordinances, and other actions pursuant to the foregoing, regulations pertaining to Pennsylvania Erosion and Sediment Control, and so on. No separate or additional payment will be made for such compliance. In the event that the listed statutes, rules and regulations are amended, or if new statues, rules or regulations become effective, after date of receipt of Bids, upon receipt of documentation which causes the Contractor to perform additional Work, the Owner may issue a Change Order setting forth the additional Work that must be undertaken and such additional Work shall be undertaken at no additional cost to the Owner. It is also the responsibility of the Contractor to determine what local ordinances, if any, will affect their portion of the Work. The Contractor shall check for any County, City, Borough or Township rules

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or regulations applicable to the area in which the Project is being constructed and, in addition, for any rules or regulations of other organizations having jurisdiction, including, without limitation, chambers of commerce, planning commissions, industries or utility companies who have jurisdiction over lands which the Contractor occupies. Any costs of compliance with local controls shall be included in the prices bid, even though documents of such local controlling agencies are not listed herein.

...

§ 13.12 Erosion Control.

...

§ ~~14.1.4 If the Work is stopped~~ **13.12.1** To the extent the Contractor performs excavation work, it shall comply with all rules and regulations of Chapter 102, Title 25 of Pennsylvania Soils Erosion and Sedimentation Control (25 Pa. Code Section 102.1, et seq.). Prior to any grading, the Contractor shall be responsible to obtain approval from the Department of Environmental Protection for an approved sedimentation and erosion control site plan for the Project site and shall perform all necessary site work in accordance with said plan. The applicable plan shall be available at the Project site at all times. If the Contractor performs excavation work, it shall maintain all devices as required to control erosion caused by storing water and preventing dust and particles from being distributed off site.

...

§ 13.13 Discrimination

...

~~for a period of 60 consecutive days through no act or fault~~ **§ 13.13.1** Each Contract entered into by a governmental agency for the construction, alteration or repair of any public building or public work shall contain the following provisions by which the Contractor agrees:

...

~~of the Contractor, a Subcontractor, a Sub-subcontractor, or~~ **.1** In the hiring of any employees for the manufacturer of supplies, performance of the Work, or any other activity required under the Contract or any subcontract, the Contractor, Subcontractor, or any person acting on behalf of the Contractor or Subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of the Commonwealth of Pennsylvania who is qualified and available to perform the Work to which the employment relates. (62 Pa. C.S.A. Section 3701).

...

~~their agents or employees or any other persons or entities performing portions~~ **.2** Neither the Contractor nor any Subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacturer of supplies, the performance of Work, or any other activity required under the Contract on account of gender, race, creed, or color. (62 Pa. C.S.A. Section 3701).

...

.3 The Contractor and Subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

...

.4 The Contractor shall not discriminate by reason of ~~the Work because~~ gender, race, creed, or color

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against any Subcontractor or supplier who is qualified to perform the Work to which the Contracts relates.

...

.5 The Contractor and each Subcontractor shall furnish necessary employment documents and records to and permit access to their books, records, and accounts by the contracting agency and the Bureau of Contract Administration and Business Development, for purposes of investigation, to ascertain compliance with provisions of this Section 22.7.1. If the Contractor or any Subcontractor does not possess documents or records reflecting the necessary information requested, the Contractor or Subcontractor shall furnish such information on reporting forms supplied by the contracting agency or the Bureau of Contract Administration and Business Development.

...

.6 The Contractor shall include, without limitation, the provisions of this Section 22.7.1 in every subcontract so that such provisions will be binding, upon each Subcontractor.

...

~~Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress~~ **.7** The Owner may cancel or terminate the Contract and all money due or to become due under the Contract may be forfeited for a violation of the terms and conditions of this Paragraph 22.7.1. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the contractor responsibility file.

...

§ 13.14 Waiver of Liens

...

The Contractor shall execute a Waiver of ~~the Work,~~ Liens in the form included in the Contract Documents.

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§ 13.15 Currency All dollar amounts are in United States Dollars.

...

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

...

§ 14.1 Termination by the Contractor

...

~~the Contractor may, upon seven additional days' notice to the Owner and the Architect,~~ If the Owner fails to make payment of undisputed amounts as provided in Article 9 for a period of 30 days, the Contractor may, upon thirty additional days' written notice to the Owner, terminate the Contract and recover from the Owner ~~as provided in Section 14.1.3.~~payment for Work executed.

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...

.1 repeatedly refuses or fails to supply enough properly skilled workers or proper ~~materials;~~materials or demonstrates poor workmanship;

...

.4 otherwise ~~is guilty of substantial~~ commits a material breach of a provision of the Contract Documents.

...

.5 if Contractor is adjudged bankrupt or files for bankruptcy or creditor protection under the law of this United States or the Commonwealth of Pennsylvania (or under the laws applicable to the Country or location in which Contractor is formed or located), or if Contractor makes an assignment for the benefit of its creditors, or if a receiver or trustee or custodian is appointed for Contractor or any of its assets which appointment is not removed, dismissed or terminated with ten (10)

...

days.

...

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, ~~and upon certification by the Architect that sufficient cause exists to justify such action,~~ 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' notice, terminate ~~employment of the Contractor~~ the Contract and may, subject to any prior rights of the surety:

...

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the ~~Architect's~~ Owner's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, including, without limitation, legal fees, engineers' fees, architects' fees, and consultants' fees, 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~~ Owner within 30 days of the Owner's written demand. This obligation for payment shall survive termination of the Contract.

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§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly ~~executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.~~executed up to the date of written notice of the cancellation.

...

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

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~~Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.~~the Contract Documents.

...

§ 15.1.3~~Notice of Claims~~

...

~~§ 15.1.3.1~~ ~~Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.~~

...

~~§ 15.1.3.2~~ ~~Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.~~

...

Intentionally deleted.

...

§ 15.1.4.2 The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The ~~Architect will issue Certificates~~ Contractor will issue Applications for Payment in accordance with the decision of the Initial Decision Maker.

PAGE 41

.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

...

§ 15.2~~Initial Decision~~

...

~~§ 15.2.1~~ ~~Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, 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. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a 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.~~

...

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~~**§ 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 the 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 receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.~~

...

Intentionally deleted.

...

~~**§ 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 15.1.7,~~ Contract shall be subject to mediation as a condition

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precedent to binding dispute resolution. As it relates to non-compulsory mediation, the Owner retains the exclusive right to waive mediation and move directly to binding dispute resolution.

...

§ 15.3.2 The parties shall endeavor to resolve their Claims by ~~mediation which,~~ mediation, which claims , unless the parties mutually agree otherwise, shall be ~~administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.~~subject to mandatory non-binding mediation with the Berks County Bar Association as a condition precedent to binding dispute resolution. The mediation shall be conducted in accordance with the rules of the Berks County Bar Association effective on the date of the application for mediation and shall be conducted in Berks County, Pennsylvania. The parties agree to participate in such mediation in good faith for not less than sixty days after the submission of the application for mediation with the Berks County Bar Association. If the parties are unable to resolve a

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~~§ 15.3.3~~ ~~Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution.If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.~~claim, dispute or other matters in question within sixty days of the commencement of mediation, either party may pursue litigation in the Court of Common Pleas of Berks County as the sole and exclusive method of binding dispute resolution.

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§ 15.3.3 Intentionally deleted.

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§ 15.3.4 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.~~ Berks County, Pennsylvania. 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. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. 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.~~

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~~§ 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.~~

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Intentionally deleted.

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§ 15.4.4~~Consolidation or Joinder~~

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~~§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party 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 those of the Owner and Contractor under this Agreement.~~

...

Intentionally deleted.

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I, Jennifer J. Hanlin, Esquire, 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 23:14:47 ET on 07/21/2020 under Order No. 4217069611 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™ - 2017, 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.

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(Signed)

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(Title)

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(Dated)

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