

EXHIBIT "A"

106
11/24/15



Document A232™ – 2009

Design
Contract

General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

for the following PROJECT:

Woodbury County Lighting Retrofit

THE CONSTRUCTION MANAGER:

The Baker Group
4224 Hubbell
Des Moines, Iowa 50317

THE OWNER:

Woodbury County Board of Supervisors
620 Douglas Street -- Room 104
Sioux City, IA 50317

THE PROFESSIONAL ENGINEER:

West Plains Engineering
4609 S. Techlink Circle
Sioux Falls, SD 57106

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

This document is intended to be used in conjunction with AIA Documents A132™–2009, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132™–2009, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2009, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Basic Definitions

§ 1.1.1 **The Contract Documents.** The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement), and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Professional Engineer. The Contract Documents also include the bidding requirements (advertisement or invitation to bid and Instruction to Bidders). Unless specifically enumerated in the agreements, the Contract Documents do not include the Contractor's Bid.

§ 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 Professional Engineer or the Professional Engineer's consultants, (2) between the Owner and the Construction Manager or the Construction Manager's consultants, (3) between the Owner and the Professional Engineer or the Professional Engineer's consultants, (4) between the Contractor and the Construction Manager or the Construction Manager's consultants, (5) between the Owner and a Subcontractor or Sub-subcontractor (6) between the Construction Manager and the Professional Engineer, or (7) between any persons or entities other than the Owner and Contractor. The Construction Manager and Professional Engineer shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

§ 1.1.2.1 The Contract documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all of the Contract Documents, the Construction Manager shall identify such unsigned documents. No Contract shall be formed between the parties until all Contract Documents are executed by both parties.

§ 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 other Multiple Prime Contractors and by the Owner's own forces, including persons or entities under separate contracts not administered by the Construction Manager.

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

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

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

§ 1.1.8 **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 and certify termination of the Agreement under Section 14.2.2.

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§ 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 proper operating condition.

§ 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.

§ 1.2.4 If discrepancies or omissions are discovered in the Contract Documents, immediately notify the Professional Engineer for interpretation.

§ 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 Construction Documents, regardless of the media or format, as instruments of service, are the property of the Owner, whether the work for which they are made is executed or not. The Owner reserves the right to use the Construction Documents developed for the Project in such manner as the Owner may desire, subject to the provisions herein. The Owner shall not use or alter the Construction Documents without first notifying the Professional Engineer of its intended use or alteration of the Construction Documents. If Owner uses the Construction Documents to construct a new facility at another site, the Professional Engineer shall not be liable for Owner's subsequent use of the Construction Documents. Unless otherwise provided in this Agreement, nothing contained herein shall be construed as in derogation of the Professional Engineer's copyright rights.

(Paragraph deleted)

§ 1.6 Transmission of Data in Digital Form

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

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Article 4, the Construction Manager and the Professional Engineer do not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

(Paragraph deleted)

§ 2.2 Information and Services Required of the Owner

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3)

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the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

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

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall compare information furnished by the Owner (including surveys and soil tests with observable physical conditions) and the Contract Documents, and on the basis of such review shall report to Owner, Professional Engineer and Construction Manager any conflicts, errors or omissions. Contractor shall be responsible for any additional costs, delays and damages resulting from the Contractor's failure to immediately report any such errors, inconsistencies or omissions.

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

§ 2.2.5 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.

§ 2.2.6 The Owner shall endeavor to forward all communications to the Contractor through the Construction Manager and shall contemporaneously provide the same communications to the Professional Engineer about matters arising out of or relating to the Contract Documents.

§ 2.3 Owner's Right to Stop the Work

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or 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.

§ 2.4 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 written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Construction Manager's and Professional Engineer's and their respective consultants' additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Professional Engineer, after consultation with the Construction Manager. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

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.

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§ 3.1.2 The plural term "Multiple Prime Contractors" refers to persons or entities who perform construction under contracts with the Owner that are administered by the Construction Manager. The term does not include the Owner's own forces, including persons or entities under separate contracts not administered by the Construction Manager.

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

§ 3.1.4 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Construction Manager or Professional Engineer in their 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. The Contractor also represents that all Contract Documents for the Project have been examined, including those intended for work of trades not normally performed by the Contractor's own forces, and has become thoroughly familiar with all conditions which may pertain to or affect the Work under the Contract.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. 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 Construction Manager and Professional Engineer any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information submitted to the Construction Manager in such form as the Construction Manager and Professional Engineer 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 is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Construction Manager and Professional Engineer any nonconformity discovered by or made known to the Contractor as a request for information submitted to Construction Manager in such form as the Construction Manager and Professional Engineer may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Professional Engineer issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Professional Engineer for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 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, unless the Contract Documents give other specific instruction concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the

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Owner, the Construction Manager, and the Professional Engineer and shall not proceed with that portion of the Work without further written instructions from the Professional Engineer, through the Construction Manager. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons 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 the Project already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 Contractor shall perform the Work so as to cause a minimum of inconvenience to and interruption of the Owner's operations. Any and all interruptions of the operations of the Owner necessary for the performance of the Work shall be noted in the progress schedule and the Contractor shall additionally give the Owner sufficient advance notice of such interruption so as to allow the Owner to adjust operations accordingly. Contractor's failure to give the Owner timely notice of such intentions shall place the responsibility of any resulting delays or additional costs solely with the Contractor.

§ 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. Work required by the Contract Documents to be performed after working hours or work the Contractor elects to perform after hours shall be completed at no additional cost to the Owner.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Professional Engineer in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Professional Engineer, in consultation with the Construction Manager, and in accordance with a Change Order or Construction Change Directive. By making requests for substitutions, the Contractor (1) represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified; (2) represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified; (3) certifies that the cost data presented is complete and includes all related costs under this Contract except the Professional Engineer, or Professional Engineer's Consultants, re-design costs and waives all claims for additional costs related to the substitution which subsequently become apparent; and (4) will coordinate the installation of the accepted substitute making such changes as may be required for the Work to be complete in all respects.

§ 3.4.3 The Owner shall be entitled to deduct from the Contract Sum amounts paid to the Professional Engineer or Professional Engineer's Consultants, to evaluate the Contractor's proposed substitutions and to make agreed-upon changes in the Contract Documents made necessary by the Owner's acceptance of such substitutions.

§ 3.4.4 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.

§ 3.4.5 The Contractor, and those working under their jurisdiction, shall conform to local labor laws of the State of Iowa and all other laws, ordinances and legal requirements affecting the Work. Prior to starting Work, the Contractor shall become familiar with local labor and trade conditions, skilled and unskilled, and shall conform to local conditions. The Contractor shall consider the availability of labor in the area and import labor as may be required to meet the Schedule for the Work.

§ 3.4.6 Contractor shall strictly abide by all laws relating to employment eligibility verification and shall employ only persons who are legally eligible to work.

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§ 3.5 Warranty

The Contractor, or those under its jurisdiction, warrants to the Owner, Construction Manager, and Professional Engineer that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform with 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 Construction Manager or Professional Engineer, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The quality required under this warranty shall, as a minimum, equal all standards or requirements of form, function, durability, performance, type, strength, efficiency, service, appearance, or other criteria established by the requirements of the Contract Documents.

§ 3.6 Taxes

The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof 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.

§ 3.6.1 The Contractor shall be responsible for informing themselves of tax laws, requirements, regulations and interpretations as they apply to this Project.

§ 3.6.2 The Contractor shall not include in the bid State of Iowa and Local Option Sales and Use Tax for building materials that will be incorporated into real property for this Project. Each Bid Package Contractor shall provide a list of Subcontractors and Sub-subcontractors with their Federal Identification Number to the Owner. The Owner will issue exemption certificate to Contractors, Subcontractors and Sub-subcontractors in order to eliminate tax from the construction materials following award of contract. If material is purchased outside the State of Iowa and the other state requires that the Contractors, Subcontractors, Sub-subcontractors and suppliers pay sales tax, they are recommended to include this price in their bid unless they are able to obtain a sales tax refund from said state.

§ 3.6.3 The Contractor shall submit required sales tax exemption information within ten (10) days of the date of the Agreement between Owner and Contractor.

§ 3.7 Permits, Fees, Notices, and Compliance with Laws

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

§ 3.7.2 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. The Contractor shall take note and comply with all governing laws, rules and regulations affecting the Work. This may include such laws, rules and regulations as: (1) Licensing of Contractors for special requirements, e. g. hazardous waste removal; (2) Requirements for special construction permits; (3) Exemption from sales tax, if applicable; (4) Wage rates and employment requirements when required by law or by Owner; (5) Local labor requirements; and (6) Non-discriminatory hiring practices. Contractor shall participate in all equal employment opportunity programs applicable to the Project.

§ 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, Construction Manager, and the Professional Engineer before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The

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Professional Engineer and Construction Manager will promptly investigate such conditions and, if the Professional Engineer, in consultation with the Construction Manager, determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Professional Engineer, in consultation with the Construction Manager, 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 Professional Engineer shall promptly notify the Owner, Construction Manager, and Contractor in writing, stating the reasons. If the Owner or Contractor disputes the Professional Engineer's determination or recommendation, either party may proceed as provided in Article 15.

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

§ 3.7.6 The Contractor is responsible for scheduling inspections related to the performance of its work and ensuring work is complete for inspections. Any costs associated with reinspection caused by irregularities, deficiencies or non-conforming work will be borne by the responsible contractor including all architectural and engineering Services related to evaluation of the problem and development of an acceptable solution.

§ 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents:

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

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

§ 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 at all times during performance of the Work, including work of the Contractor's subcontractors. Any change in superintendent personnel must be approved by the Owner. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Other communications shall be similarly confirmed on written request in each case. This individual shall be fluent in all languages necessary to communicate with Contractor's employees and subcontractors. Owner and Construction Manager shall be furnished with the e-mail address and pager, home and cell phone numbers for the Superintendent.

§ 3.9.2 The Contractor, within ten (10) days of the date of the Agreement between Owner and Contractor, shall furnish in writing to the Owner and Professional Engineer through the Construction Manager, the name and qualifications of a proposed superintendent. The Construction Manager may reply within 14 days to the Contractor in writing stating (1) whether the Owner, the Construction Manager, or the Professional Engineer has reasonable

objection to the proposed superintendent or (2) that any of them require additional time to review. Failure of the Construction Manager to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent or other key personnel to whom the Owner, Construction Manager or Professional Engineer 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 Schedules

§ 3.10.1 The Contractor, within twenty (20) days of the date of the Agreement between Owner and Professional Engineer, shall prepare and submit for the Owner's and Professional Engineer's information and the Construction Manager's approval a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project or as requested by the Owner, Professional Engineer or Construction Manager, shall be related to the entire Project schedule to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. The Contractor shall cooperate with the Construction Manager in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Multiple Prime Contractors or the construction or operations of the Owner's own forces.

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

§ 3.10.3 The Contractor shall participate with other Contractors, the Construction Manager and Owner in reviewing and coordinating all schedules for incorporation into the Project schedule that is prepared by the Construction Manager. The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by the Construction Manager to conform to the Project schedule.

§ 3.10.4 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner, Construction Manager and Professional Engineer and incorporated into the approved Project schedule.

§ 3.11 Documents and Samples at the Site

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These documents shall be available to the Professional Engineer and delivered to the Construction Manager for submittal to the Owner upon completion of the Work as a record of the Work as constructed. The record documents shall be a separate set of documents used only for record purposes and kept clean and undamaged.

§ 3.12 Shop Drawings, Product Data and Samples

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Professional Engineer and Construction Manager is subject to the limitations of

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Sections 4.2.9 through 4.2.11. Informational submittals upon which the Construction Manager and Professional Engineer are 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 Construction Manager or Professional Engineer without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Construction Manager Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the Project submittal schedule approved by the Construction Manager and Professional Engineer, or in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Multiple Prime Contractors or the Owner's own forces. The Contractor shall cooperate with the Construction Manager in the coordination of the Contractor's Shop Drawings, Product Data, Samples and similar submittals with related documents submitted by other Multiple Prime Contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner, Construction Manager, and Professional Engineer, 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 reviewed and approved by the Professional Engineer.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Professional Engineer's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Construction Manager and Professional Engineer in writing of such deviation at the time of submittal and (1) the Professional Engineer 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 Professional Engineer'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 Construction Manager and Professional Engineer on previous submittals. In the absence of such written notice, the Professional Engineer'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. 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 Professional Engineer will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Professional Engineer. The Owner and the Professional Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Professional Engineer have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Professional Engineer will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

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§ 3.13 Use of Site

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

§ 3.13.2 The Contractor shall coordinate the Contractor's operations with, and secure the approval of, the Construction Manager before using any portion of the site.

§ 3.13.3 The Contractor shall not bring or permit any subcontractor, supplier or anyone else for whom the Contractor is responsible, to bring on the site any asbestos, PCBs petroleum, hazardous waste or radioactive materials (except for proper use in performing the Work).

§ 3.14 Cutting and Patching

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. Contractors shall be responsible for cutting and patching not specifically indicated on the drawings but required for completion of their Work. Cutting and patching shall be kept to a minimum by careful planning and through providing holes, sleeves, anchors, inserts, or other built-in items as Work progresses and then only to the extent required to properly place, support, hang, anchor, or install materials and equipment. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents. Note that the Courthouse is a National Historical Landmark and may require special permission from the Professional Engineer and/or the State Historical Preservation Office and/or the National Park Service before any sort of cutting or drilling or anchoring not specifically called for in the Project Plans and Specifications is done. All patching is subject to Professional Engineer and Construction Manager's acceptance. Unauthorized or careless cutting will not be permitted. No structural member shall be cut unless approved by the Professional Engineer or Professional Engineer's Consultants.

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

§ 3.15 Cleaning Up

§ 3.15.1 The Contractor, and their subcontractors (and each separate subcontractor if there are more than one), shall keep the premises and surrounding area free from accumulation of waste materials, fire hazards or rubbish caused by operations under the Contract and shall keep their work area neat and orderly through the construction period. 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, or Construction Manager with the Owner's approval, 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, Construction Manager and Professional Engineer 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, Construction Manager and Professional Engineer harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner, Professional Engineer, or Construction Manager. However, if the Contractor has reason to believe that the required

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design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Professional Engineer through the Construction Manager.

§ 3.18 Indemnification

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

§ 4.1 General

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

(Paragraphs deleted)

§ 4.2 Administration of the Contract

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

§ 4.2.2 The Professional Engineer will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to observe and evaluate the Work, to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, and to determine in general whether the Work observed is proceeding in accordance with the Contract Documents. However, the Professional Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Professional Engineer will keep the Owner and Construction Manager reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner and Construction Manager in writing any (1) known deviations from the Contract Documents and from the most recent Project schedule prepared by the Construction Manager, and (2) defects and deficiencies observed in the Work. The Professional Engineer will provide the Owner with written reports and construction update minutes as the Project progresses.

§ 4.2.3 The Construction Manager shall provide a staffing plan to include one or more representatives who shall be in attendance at the Project site whenever the Work is being performed and when otherwise necessary even when work is not being performed as mutually determined by the Owner and Construction Manager. The Construction Manager will determine in general if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner reasonably informed of the progress of the Work, and will report to the Owner and Professional Engineer (1) known deviations from the Contract Documents and the most recent Project schedule, and (2) defects and deficiencies observed in the Work.

§ 4.2.4 The Construction Manager will schedule and coordinate the activities of the Contractor and other Multiple Prime Contractors in accordance with the latest approved Project schedule.

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§ 4.2.5 The Construction Manager, except to the extent required by Section 4.2.4, and Professional Engineer will not have control over, or charge of, construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Construction Manager nor the Professional Engineer will have control over or charge of or be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work. The Professional Engineer shall report to the Owner known deviations from the Contract Documents.

§ 4.2.6 **Communications Facilitating Contract Administration.** Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Construction Manager, and shall contemporaneously provide the same communications to the Professional Engineer about matters arising out of or relating to the Contract Documents. Communications by and with the Professional Engineer's consultants shall be through the Professional Engineer. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with other Multiple Prime Contractors shall be through the Construction Manager and shall be contemporaneously provided to the Professional Engineer if those communications are about matters arising out of or related to the Contract Documents. Communications by and with the Owner's own forces shall be through the Owner.

§ 4.2.7 The Construction Manager and Professional Engineer will review and certify all Applications for Payment by the Contractor, in accordance with the provisions of Article 9.

§ 4.2.8 The Professional Engineer and Construction Manager have authority to reject Work that does not conform to the Contract Documents and will notify each other about the rejection. The Construction Manager shall determine in general whether the Work of the Contractor is being performed in accordance with the requirements of the Contract Documents and notify the Owner, Contractor and Professional Engineer of defects and deficiencies in the Work. Whenever the Construction Manager considers it necessary or advisable, the Construction Manager will have authority to require additional inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, upon written authorization of the Owner, whether or not such Work is fabricated, installed or completed. The foregoing authority of the Construction Manager will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of the Professional Engineer. However, neither the Professional Engineer's nor the Construction Manager's authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Professional Engineer or the Construction Manager to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons performing any of the Work.

§ 4.2.9 The Construction Manager will receive and promptly review for conformance with the submittal requirements of the Contract Documents, all submittals from the Contractor such as Shop Drawings, Product Data and Samples. Where there are Multiple Prime Contractors, the Construction Manager will also check and coordinate the information contained within each submittal received from Contractor and other Multiple Prime Contractors, and transmit to the Professional Engineer those recommended for approval. By submitting Shop Drawings, Product Data, Samples and similar submittals, the Construction Manager represents to the Owner and Professional Engineer that the Construction Manager has reviewed and recommended them for approval. The Construction Manager's actions will be taken in accordance with the Project submittal schedule approved by the Professional Engineer or, in the absence of an approved Project submittal schedule, with reasonable promptness while allowing sufficient time to permit adequate review by the Professional Engineer.

§ 4.2.10 The Professional Engineer 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 Professional Engineer or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Professional Engineer's professional judgment to permit adequate review. Upon the Professional Engineer's completed review, the Professional Engineer shall transmit its submittal review to the Construction Manager.

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§ 4.2.11 Review of the Contractor's submittals by the Construction Manager and Professional Engineer 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 Construction Manager and Professional Engineer'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 Construction Manager and Professional Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Construction Manager and Professional Engineer, of any construction means, methods, techniques, sequences or procedures. The Professional Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.12 The Construction Manager will prepare Change Orders and Construction Change Directives.

§ 4.2.13 The Construction Manager and the Professional Engineer will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7. and the Professional Engineer will have authority to order minor changes in the Work as provided in Section 7.4. The Professional Engineer, in consultation with the Construction Manager, will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.14 Utilizing the documents provided by the Contractor, the Construction Manager will maintain at the site for the Owner one copy of all Contract Documents, approved Shop Drawings, Product Data, Samples and similar required submittals, in good order and marked currently to record all changes and selections made during construction. These will be available to the Professional Engineer and the Contractor, and will be delivered to the Owner upon completion of the Project.

§ 4.2.15 The Construction Manager will assist the Professional Engineer in conducting inspections to determine the dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion in conjunction with the Professional Engineer pursuant to Section 9.8; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10. The Construction Manager will forward to the Professional Engineer a final Application and Certificate for Payment or final Project Application and Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

§ 4.2.16 The Professional Engineer will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of the Construction Manager, Owner or Contractor. The Professional Engineer's response to such requests will be made with reasonable promptness and within any time limits agreed upon. If no agreement is made concerning the time within which interpretations required of the Professional Engineer shall be furnished in compliance with this Section 4.6, then delay shall not be recognized on account of failure by the Professional Engineer to furnish such interpretations until 15 days after written request is made for them.

§ 4.2.17 Interpretations and decisions of the Professional Engineer shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and initial decisions, the Professional Engineer shall endeavor to secure faithful performance by the Contractors and shall not be liable for results of interpretations or decisions so rendered in good faith. The Professional Engineer covenants with the Owner to furnish his/her skill and judgment, and to cooperate with the Owner in a manner consistent with that degree of skill, care and learning ordinarily possessed by members of the same profession in similar circumstances. The Professional Engineer agrees to furnish efficient administration and observation of the Project and to perform all duties in the sound, expedient, and economical manner consistent with its professional standard of care.

§ 4.2.18 The Construction Manager will receive and review requests for information from the Contractor, and forward each request for information to the Professional Engineer, with the Construction Manager's recommendation. The Professional Engineer will review and respond in writing to the Construction Manager to requests for information about the Contract Documents. The Construction Manager's recommendation and the Professional Engineer's response to each request will be made in writing within any time limits agreed upon or

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otherwise with reasonable promptness. If appropriate, the Professional Engineer will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

(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 other Multiple Prime Contractors or subcontractors of other Multiple Prime Contractors.

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

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

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, within ten (10) days after the award of contract, shall furnish in writing to the Construction Manager for review by the Owner, Construction Manager and Professional Engineer the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design), along with a list of actual materials or equipment they will be furnishing, proposed for each principal portion of the Work. The Construction Manager may reply within 14 days to the Contractor in writing stating (1) whether the Owner, the Construction Manager or the Professional Engineer has reasonable objection to any such proposed person or entity or, (2) that the Construction Manager, Professional Engineer or Owner requires additional time for review. Failure of the Construction Manager, Owner, or Professional Engineer to reply 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, Construction Manager or Professional Engineer 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, Construction Manager or Professional Engineer has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, Construction Manager or Professional Engineer has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required. Acceptance or rejection of any subcontractor shall not relieve the Contractor of performance of Work as called for under the Contract Documents, nor shall acceptance of a particular subcontractor be construed as acceptance of any particular process or material.

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

§ 5.3 Subcontractual Relations

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner, Construction Manager and Professional Engineer. Each subcontract agreement shall preserve and protect the rights of the Owner, Construction Manager and Professional Engineer under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the 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

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

§ 5.4 Contingent Assignment of Subcontracts

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

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

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

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

(Paragraph deleted)

ARTICLE 6 CONSTRUCTION BY OWNER OR BY OTHER CONTRACTORS

§ 6.1 Owner's Right to Perform Construction with Own Forces and to Award Other Contracts

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, which include persons or entities under separate contracts not administered by the Construction Manager, and to award other contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When the Owner performs construction or operations with the Owner's own forces including persons or entities under separate contracts not administered by the Construction Manager, the Owner shall provide for coordination of such forces with the Work of the Contractor, who shall cooperate with them.

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

§ 6.2 Mutual Responsibility

§ 6.2.1 The Contractor and their Subcontractors shall cooperate with and coordinate their Work with all other Multiple Prime Contractors and their Subcontractors, Construction Manager and Owner to facilitate the general progress of the Project and to prevent delay of others. The Contractor shall afford the Owner's own forces, Construction Manager and other Multiple Prime 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. Each Contractor or Subcontractor shall provide and obtain layout drawings, rough-in detail sheets and other pertinent information directly from the Construction Manager to coordinate all phases of the work. For coordination with the Owner's equipment or materials, information shall be obtained from the Owner, through the Construction Manager. After timely notification by the Contractor of the need to accomplish a particular phase or element of the Work, other contractor's shall, within reasonable time, perform their Work so as not to delay or impede the Contractor.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner's own forces or other Multiple Prime Contractors, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Construction Manager and Professional Engineer apparent discrepancies

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or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's own forces or other Multiple Prime Contractors' completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs, including costs that are payable to a separate contractor or to other Multiple Prime Contractors because of the Contractor's delays, improperly timed activities, defective construction or lack of coordination with other Contractors. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of delays, improperly timed activities, damage to the Work, defective construction or lack of coordination by the Owner's own forces or other Multiple Prime Contractors.

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

§ 6.2.5 The Owner and other Multiple Prime Contractors shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, other Multiple Prime 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 Construction Manager, with notice to the Professional Engineer, will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Construction Manager, Professional Engineer and Contractor; a Construction Change Directive requires agreement by the Owner, Construction Manager and Professional Engineer 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 Professional Engineer alone.

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

§ 7.2 Change Orders

§ 7.2.1 A Change Order is a written instrument prepared by the Construction Manager and signed by the Owner, Construction Manager, Professional Engineer 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 (Methods used in determining adjustments to the Contract Sum shall include those listed in Subparagraph 7.3.3.); and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 The forms used to process a Change Order will include AIA Document G732 (2009), Change Order.

§ 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Construction Manager and signed by the Owner, Construction Manager and Professional Engineer, 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.

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

§ 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 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

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

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

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

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Cost of Subcontracted work, computed in the same way as provided for under this Subparagraph;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

§ 7.3.8 The maximum that will be allowed for overhead and profit or commission shall be (values are expressed as a percentage of the basic cost of the change) Fifteen percent (15%) maximum mark-up for work performed by employees of the Contractor, Subcontractor, or Sub-Subcontractor; Five percent (5%) maximum Contractor mark-up for work performed by a Subcontractor.

§ 7.3.9 In any proposal with material, equipment and supply credits, the credit shall be based on the actual Contract cost of the material (including trade and quantity discounts) less any charges actually incurred for handling or returning a material which has been delivered. No cancellation, restocking or similar charge will be allowed unless actually incurred by the purchaser and generally will not be allowed when the product has not been shipped.

§ 7.3.10 Cost changes shall be computed by determining the basic costs indicated under Subparagraph 7.3.7, to which the overhead and profit or commission may be added.

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§ 7.3.11 Subcontractors or Sub-subcontractors shall compute their costs in the same way and are subject to the same conditions of what may be included in the cost and same maximum percentages for overhead and profit or commission. To the Sub-Subcontractor's proposal, the Subcontractor may add bond cost, if applicable, and up to five percent commission. To the Subcontractors proposal, the Contractor may add bond cost and up to five percent commission.

§ 7.3.12 For changes involving work self-performed by the Contractor and work by a Subcontractor or Sub-Subcontractor, the commission shall be applied directly to the Subcontractor's proposal with the overhead and profit figure applied only to the Work self-performed by the Contractor.

§ 7.3.13 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 Construction Manager and Professional Engineer. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.14 In the event individual credits exceed \$5,000, a reasonable credit for overhead and profit or commission shall be provided to the Owner.

§ 7.3.15 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 Construction Manager and Professional Engineer will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Construction Manager and Professional Engineer determine to be reasonably justified. The 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.

§ 7.3.16 When the Owner and Contractor agree with a determination made by the Construction Manager and Professional Engineer 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 Construction Manager shall 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 Professional Engineer has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order issued through the Construction Manager and shall be binding on the Owner and Contractor.

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, or the date in the Notice to Proceed, whichever is later.

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

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

§ 8.2 Progress and Completion

§ 8.2.1 Time limits stated in the Contract Documents 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.

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

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial and Final Completion within the Contract Times specified. The Work shall not be suspended or shut down but shall progress continuously with sufficient labor and supervision at all times unless otherwise approved by the Owner.

§ 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 an act or neglect of the Owner, Owner's own forces, Construction Manager, Professional Engineer, any of the other Multiple Prime Contractors or an employee of any of them, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration, or by other causes that the Professional Engineer, based on the recommendation of the Construction Manager, determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Professional Engineer may determine. A time extension shall be Contractor's sole remedy and compensation for all such delays other than those resulting from the acts or negligence of the Owner, the Professional Engineer, the Construction Manager or the Owner's separate contractors (collectively Owner Caused Delays). For proven Owner Caused Delays, the Contractor may recoup the actual costs resulting from such delays, but not for any additional profit or fee.

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

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

§ 8.4 LIQUIDATED DAMAGES

§ 8.4.1 It is understood and agreed that completion of the entire project within the time stated in the Contract Agreement is a matter of vital necessity to the Owner, that the Owner will suffer substantial damages if the entire project is not completed within that time, and that it would not be possible to accurately determine the amount of such damages. In view of these facts, the Contractor agrees to pay the Owner liquidated damages in the sum set forth in the Construction Agreement for each calendar day, if any, which elapses between the date stated in the Construction Agreement, as extended by any extensions of time under the provisions of the General Conditions of the Contract, and the date when the entire project is Substantially Complete within the meaning of the General Conditions of the Contract. If the Contractor shall fail to pay such liquidated damages promptly upon demand therefor, the surety on his performance bond shall pay such damages. Also, the Owner may withhold all or any part of such liquidated damages from any payments due the Contractor. No changes in the work shall extend the time for completion unless set forth on a properly approved field order/change order.

§ 8.4.2 The Contractor and the Contractor's surety, shall be liable for and shall pay the Owner for any extra costs for engineering or architectural services, construction observation services and related expenses necessitated by the delayed prosecution of the work by the Contractor after Substantial Completion but before the date of Final Completion required by the Agreement. Such costs are in no way a penalty, but represent additional expenses to the Owner caused by the Contractor's delay in completing the Work.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 Contract Sum

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

§ 9.2 Schedule of Values

The Contractor shall submit to the Construction Manager, before the first Application for Payment, or as directed by other requirements of the Contract Documents, a schedule of values prepared in a form acceptable to the Construction Manager and the Owner allocating the entire Contract Sum to the various portions of the Work and supported by such data to substantiate its accuracy as the Construction Manager and Professional Engineer may

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require. This schedule, unless objected to by the Construction Manager or Professional Engineer, shall be used as a basis for reviewing the Contractor's Applications for Payment. In the event there is one Contractor, the Construction Manager shall forward to the Professional Engineer the Contractor's schedule of values. If there are Multiple Prime Contractors responsible for performing different portions of the Project, the Construction Manager shall forward the Multiple Prime Contractors' schedules of values only if requested by the Professional Engineer.

(Paragraph deleted)

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9.3 Applications for Payment

§ 9.3.1

At least 10 days before the date established for each progress payment, the Contractor shall submit to the Construction Manager an itemized Application for Payment for operations completed in accordance with the Schedule of Values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner, Construction Manager or Professional Engineer may require, such as copies of requisitions from Subcontractors and material suppliers. All applications for payment shall be accompanied by notarized Lien Waivers attesting to payment of all sums owing for work for which payment has already been made to Contractor by Owner on the forms that are attached to the Agreement as Exhibit "D". If the Contract Documents required the Owner to retain a portion of the payments until some future time, the Applications for Payment shall clearly state the percentage and the amount to be retained. Once the Application is approved by the Professional Engineer, the Application For Payment must be submitted for approval to the Board of Supervisors at its next regularly scheduled meeting. The application must be received at the Board office at least two weeks prior to the scheduled meeting for it to be included in that meeting's scheduled business.

§ 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 Construction Manager and Professional Engineer, but not yet included in Change Orders.

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work and for which Bills of Sale & Bailment Agreements on the forms attached to the Agreement as Exhibits "E" and "F" have been submitted to the Construction Manager. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

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

§ 9.3.4 The Owner, in making partial payment, will retain five percent (5%) of the approved value of the work performed under the Contract as of the date of the application for payment until final completion and acceptance of all work covered by the Contract, or as otherwise required by law.

§ 9.4 Certificates for Payment

§ 9.4.1 Where there is only one Contractor, the Construction Manager will, within seven days after the Construction Manager's receipt of the Contractor's Application for Payment, review the Application, certify the amount the Construction Manager determines is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Professional Engineer. Within seven days after the Professional Engineer receives the

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EXHIBIT E

BILL OF SALE

SELLER: _____

In consideration of payments made by _____ ("Buyer") referenced in the agreement dated _____, 20____, receipt of which is hereby acknowledged, Seller declares and certifies that it now possesses, and does hereby grant, sell, transfer and deliver to Buyer all right, title and interest in the following goods:

Buyer to have all right and title to the goods in himself and his executors, administrators and assigns forever and Seller, on behalf of itself, its successors and assigns, will warrant and defend the title to said goods and chattels hereby sold unto Buyer, its successors and assigns, forever, against the lawful claims and demands of all persons. It is expressly understood and agreed that the acceptance of the goods described herein is not a waiver of any right of action that the Buyer may have for breach of warranty or any other cause under the agreement referenced above or at law.

IN WITNESS WHEREOF, Seller has executed this Agreement the ____ day of _____, 20____.

Seller: _____

By: _____

Title: _____

Subscribed and sworn to before me this ____ day of _____, 20____.

Notary Public in and for said County and State

My commission expires:

EXHIBIT F

BAILMENT AGREEMENT

BAILOR:

BAILEE: Contractor/Subcontractor/
Supplier

LOCATION OF STORAGE:

The goods and materials described below are held and stored at the above referenced location pursuant to the Contract by and between Bailee, as Contractor/Subcontractor/Supplier, and Owner, for Work to be performed at _____

In consideration of payment made to the undersigned Bailee, the receipt and sufficiency of which are admitted, the Bailee agrees:

1. To keep said goods and materials at the above mentioned address, separate and apart from all other goods and identified as subject to this bailment,
2. To keep said goods and materials fully insured against all risk of physical loss or damage,
3. To keep said goods protected from the weather, commingling, vandalism and/or diversion from said Project, and
4. To deliver said goods and materials to the Project site in conjunction with the performance of Bailee's Contract referenced above or upon the direction of Bailor and no other. The Bailee acknowledges that it has no ownership rights or title in, nor shall claim any lien upon, said goods and materials.

QUANTITY _____ DESCRIPTION OF ITEM _____

Receipted and Acknowledged:

Contractor/Supplier (Bailee)

Dated: _____

By: _____
Authorized Signature

Contractor's Application for Payment from the Construction Manager, the Professional Engineer will either issue to the Owner a Certificate for Payment, with a copy to the Construction Manager, for such amount as the Professional Engineer determines is properly due, or notify the Construction Manager and Owner in writing of the Professional Engineer's reasons for withholding certification in whole or in part as provided in Section 9.5.1. The Construction Manager will promptly forward to the Contractor the Professional Engineer's notice of withholding certification.

§ 9.4.2 Where there are Multiple Prime Contractors performing portions of the Project, the Construction Manager will, within seven days after the Construction Manager receives the Multiple Prime Contractors' Applications for Payment: (1) review the Applications and certify the amount the Construction Manager determines is due each of the Multiple Prime Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Multiple Prime Contractors' application with information from similar applications for progress payments from other Multiple Prime Contractors; (3) prepare a Project Application and Certificate for Payment; (4) certify the amount the Construction Manager determines is due all Multiple Prime Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Professional Engineer.

§ 9.4.3 Within seven days after the Professional Engineer receives the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment from the Construction Manager, the Professional Engineer will either issue to the Owner a Project Certificate for Payment, with a copy to the Construction Manager, for such amount as the Professional Engineer determines is properly due, or notify the Construction Manager and Owner in writing of the Professional Engineer's reasons for withholding certification in whole or in part as provided in Section 9.5.1. The Construction Manager will promptly forward the Professional Engineer's notice of withholding certification to the Contractors.

§ 9.4.4 The Construction Manager's certification of an Application for Payment or, in the case of Multiple Prime Contractors, a Project Application and Certificate for Payment shall be based upon the Construction Manager's evaluation of the Work and the information provided as part of the Application for Payment. The Construction Manager's certification will constitute a representation that, to the best of the Construction Manager's knowledge, information and belief, the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents. The certification will also constitute a recommendation to the Professional Engineer and Owner that the Contractor be paid the amount certified.

§ 9.4.5 The Professional Engineer's issuance of a Certificate for Payment or in the case of Multiple Prime Contractors, Project Application and Certificate for Payment, shall be based upon the Professional Engineer's evaluation of the Work, the recommendation of the Construction Manager, and information provided as part of the Application for Payment or Project Application for Payment. The Professional Engineer's certification will constitute a representation that, to the best of the Professional Engineer's knowledge, information and belief, the Work has progressed to the point indicated, that the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified.

§ 9.4.6 The representations made pursuant to Sections 9.4.4 and 9.4.5 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 Construction Manager or Professional Engineer.

§ 9.4.7 The issuance of a separate Certificate for Payment or a Project Certificate for Payment will not be a representation that the Construction Manager or Professional Engineer has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed the Contractor's construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Construction Manager or Professional Engineer may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Construction Manager's or Professional Engineer's opinion the representations to the Owner required by Section

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9.4.4 and 9.4.5 cannot be made. If the Construction Manager or Professional Engineer is unable to certify payment in the amount of the Application, the Construction Manager will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.3. If the Contractor, Construction Manager and Professional Engineer cannot agree on a revised amount, the Professional Engineer will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which the Professional Engineer is able to make such representations to the Owner. The Construction Manager or Professional Engineer may also withhold a Certificate for Payment or, because of subsequently discovered evidence or subsequent observations, may nullify the whole or a part of a Certificate for Payment or Project Certificate for Payment previously issued, to such extent as may be necessary in the Construction Manager's or Professional Engineer's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from the 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 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 above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Professional Engineer or Construction Manager withholds certification for payment under Section 9.5.1, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Professional Engineer and the Construction Manager and both will reflect such payment on the next Certificate for Payment.

§ 9.6 Progress Payments

§ 9.6.1 After the Professional Engineer has reviewed and recommended a Certificate for Payment and after the Construction Manager has issued the Certificate of Payment and released it to the Owner, the Owner shall approve payment with Contractor to receive payment by the last day of the following month. Until Substantial Completion, the Owner will pay ninety-five percent (95%) of the amount due the Contractor on account of Progress Payments, and the Owner will withhold five percent (5%) retainage.

§ 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 Construction Manager 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, Construction Manager and Professional Engineer on account of portions of the Work done by such Subcontractor.

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

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

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§ 9.6.6 Issuance of a Contractor's Application and 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. The Contractor and its Surety agree any issuance of a project certificate for payment, payment on the Contract Sum, or any use or occupancy of the Work will in no way relieve them of the obligation to completely fulfill or accomplish all obligations of the Contract, including warranty of the Work, and that they waive any actual or alleged rights of subrogation or action against the Owner, Professional Engineer, or Construction Manager as a result of any such occupancy. At any time the Surety shall have the right to examine the status of the Work, as well as any payments, and may request the Owner to withhold additional sums as it considers appropriate to protect its interests.

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

§ 9.6.8 Payment to the Contractor will be made by the Owner from cash on hand from such sources as may be legally available.

§ 9.7 Failure of Payment

If the Construction Manager and Professional Engineer do not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen days after the Construction Manager's receipt of the Contractor's Application for Payment, provided it has been properly submitted as specified, 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 Construction Manager and Professional Engineer or awarded by the dispute resolution process, then the Contractor may, upon seven additional days' written notice to the Owner, Construction Manager and Professional Engineer, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 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 the Owner can occupy or utilize the Work for its intended use, subject only to completion of minor punch list items, the absence of completion of which does not interfere with the Owners intended use of the Project.

§ 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 notify the Construction Manager, and the Contractor and Construction Manager shall jointly prepare and submit to the Professional Engineer 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 list, the Professional Engineer, assisted by the Construction Manager, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Professional Engineer's inspection discloses any item, whether or not included on the list, which is not sufficiently complete in accordance with the requirements of 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 Professional Engineer. In such case, the Contractor shall then submit a request for another inspection by the Professional Engineer, assisted by the Construction Manager, to determine Substantial Completion.

§ 9.8.4 When the Professional Engineer, assisted by the Construction Manager, determines that the Work or designated portion thereof is substantially complete, the Construction Manager will prepare, and the Construction Manager and Professional Engineer shall execute a Certificate of Substantial Completion that shall establish the date

of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. 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 written acceptance of responsibilities assigned to them in such Certificate. Upon receipt of the fully executed Certificate of Substantial Completion, the Contractor may request release of all or part of retained funds due in accordance with Iowa Code Chapter 26 provisions. Remaining retained funds shall not become due until Contractor submits to the Construction Manager (1) a sworn statement that ten calendar days prior to filing request for release of retained funds, a notice was given to all known subcontractors, sub-subcontractors and suppliers that Contractor was requesting release of retained funds; (2) an itemized list of Work left to complete, including estimated value of labor and materials; (3) an itemized list of Iowa Code Chapter 573 claims currently on file at time request for release of retained funds is received; (4) outstanding change orders fully executed; (5) Operation, Maintenance and Warranty Manuals and Record Drawings and Specifications; (6) AIA Document G704/CMA – Certificate of Substantial Completion; (7) AIA Document G707 – Consent of Surety to Final Payment; and (8) AIA Document G707A – Consent of Surety to Reduction on Partial Release of Retainage.

§ 9.8.6 The Contractor shall reimburse the Owner for any additional professional services (including the Professional Engineer and Construction Manager) made necessary by the Contractor's failure to finally complete the Work within sixty (60) days after the date specified in the Contract Documents for Project Substantial Completion.

§ 9.8.6.1 The Contractor shall also be responsible for reimbursing the Owner for any costs, including attorney fees, which arise out of the filing of any Iowa Code Chapter 573 claims.

§ 9.8.7 If documentation requested in Subparagraph 9.8.5 is received from Contractor, Owner shall make payment due Contractor at Owner's next monthly board meeting or within thirty days, whichever is less, except the Owner may retain (1) an amount equal to 200% of the value of labor and materials yet to be provided on the Project (final values to be withheld shall be determined by the Construction Manager and Professional Engineer based on the estimates provided by the Contractor and the Construction Manager's and Professional Engineer's onsite visits, observations and inspections); (2) Double the amount of any Iowa Code Chapter 573 claims currently on file; (3) An amount equal to 0.5% of the total value of the Contract or \$500, whichever is greater, will be withheld for Operation, Maintenance and Warranty Manuals and Record Drawings and Specifications not submitted fifteen (15) days prior to Substantial Completion Inspection.

§ 9.8.8 If the Owner withholds any amount of retained funds, the Construction Manager and/or Professional Engineer shall provide an itemization and list of reasons why amounts are being withheld within thirty (30) calendar days of receipt of request.

§ 9.9 Partial Occupancy or Use

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

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

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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 completion of the Work, the Contractor shall forward to the Construction Manager a written notice that the Work is ready for final inspection and acceptance and shall also forward to the Construction Manager a final Contractor's Application for Payment. Upon receipt, the Construction Manager will evaluate the completion of Work of the Contractor and then forward the notice and Application, with the Construction Manager's recommendations, to the Professional Engineer who will promptly make such inspection. When the Professional Engineer, finds the Work acceptable under the Contract Documents and the Contract fully performed, the Construction Manager and Professional Engineer will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Construction Manager's and Professional Engineer's final Certificate for Payment or Project Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Professional Engineer through the Construction Manager such substantiation of the Contractor's Right to Payment as the Owner may require such as and including (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 and a Final Waiver of Liens and Release of Claims on the form attached to the Agreement as Exhibit "G", (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees. Final payment or remaining retained percentage shall be made no earlier than thirty-one (31) days after completion and final acceptance of the Work by Owner, contingent on stated requirements for final payment at a regularly scheduled Board Meeting, contingent on stated requirements for final payment and subject to the conditions of and in accordance with the provisions of Iowa Code Chapter 573 and Iowa Code Chapter 26.

§ 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 Construction Manager and Professional Engineer so confirm, the Owner shall, upon application by the Contractor and certification by the Construction Manager and Professional Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Professional Engineer through the Construction Manager 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. The Owner may at its option retain a maximum of two times the value of the incomplete or uncorrected parts of the Work, as estimated by the Construction Manager and the Professional Engineer, provided the remaining work is minor and cannot be completed or corrected due to weather, unsuitable conditions for testing or other circumstances beyond the Contractor's control, as agreed upon by the Professional Engineer and Construction Manager.

§ 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;

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- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

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

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to the Construction Manager for review and coordination with the safety programs of other Contractors. The Construction Manager's responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by the Construction Manager.

§ 10.2 Safety of Persons and Property

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors;
- .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; and
- .4 construction or operations by the Owner or other Contractors.

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

- .1 Contractors shall comply with the Iowa Smoke Free Air Act while on Owner Property and shall not smoke or use any tobacco product while on Owner property. Owner property shall include, but not be limited to, inside private Contractor or employee owned vehicles while parked on Owner property.

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

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

§ 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, 10.2.1.3 and 10.2.1.4 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, 10.2.1.3 and 10.2.1.4, except damage or loss attributable to acts or omissions of the Owner, Construction Manager or Professional Engineer or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault, acts, operations, methods 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, Construction Manager and Professional Engineer.

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

§ 10.2.8 The Contractor shall have a written safety program for the protection of persons and property. Contractor's safety program shall be submitted to the Construction Manager within ten (10) days of the date of the Agreement between Owner and Contractor. The Construction Manager will review the safety program and monitor Contractor implementation. The Contractor, not the Owner, shall be entirely responsible and liable for the safety of persons and property. The review of the safety program and monitoring of Contractor implementation by the Construction Manager does not shift that responsibility and liability to the Owner or Construction Manager.

- .1 The Construction Manager reserves the right to suspend work activity or deny access to the site of the work Contractor's, Subcontractor's, Sub-subcontractor's and their employees for repeated safety program rules violations.

§ 10.3 Hazardous Materials

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

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

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Construction Manager, Professional Engineer, their consultants, and agents and employees of any of them from and against claims, damages, losses and expenses 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 not 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 materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 Contractor's Liability Insurance- see Exhibit "H" to the Agreement

(Paragraphs deleted)

§ 11.2 Owner's Liability Insurance See Exhibit "H"

(Paragraphs deleted)

§11.3 (not used)

§ 11.4 Performance Bond and Payment Bond

§ 11.4.1 The Contractor shall furnish bonds covering faithful performance of the contract and payment of obligations arising thereunder. Bonds may be obtained through the Contractor's usual source and the cost shall be included in the Contract sum. The amount of each bond shall be equivalent to 100 percent of the Contract Sum and shall be on the forms attached to the Agreement as Exhibits "I" and "J".

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

§ 11.4.3 The Contractor shall deliver the required bonds to the Owner not later than three days following the date the Agreement is entered into, or if the work is to be commenced prior thereto in response to a letter of intent, the Contractor shall, prior to commencement of the work, submit evidence satisfactory to the Owner that such bonds will be furnished.

§ 11.4.4 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of the power of attorney.

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 Construction Manager's or Professional Engineer's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by either, be uncovered for their observation and be replaced at the Contractor's expense without change in the Contract Time. The Contractor shall give timely notice to the Professional Engineer through the Construction Manager of the readiness of the Work to be observed.

§ 12.1.2 If a portion of the Work has been covered which the Construction Manager or Professional Engineer has not specifically requested to observe prior to its being covered, the Construction Manager or Professional Engineer may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or one of the other Contractors in which event the Owner shall be responsible for payment of such costs.

§ 12.2 Correction of Work

§ 12.2.1 Before or After Substantial Completion

The Contractor shall promptly correct Work rejected by the Construction Manager or Professional Engineer or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed, unless the Owner elects to accept the Work as

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provided for under Section 12.3. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Construction Manager's and Professional Engineer's services and expenses made necessary thereby, shall be at the Contractor's expense. Work rejected before final completion shall be corrected prior to processing of the final Contractor's Application and Certificate for Payment.

§ 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. 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 Professional Engineer, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period 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, whether completed or partially completed, of the Owner or separate contractors or other Multiple Prime Contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

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

§ 12.3 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 state of Iowa.

§ 13.2 Successors and Assigns

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

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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 such assignment.

§ 13.3 Written Notice

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

§ 13.4 Rights and Remedies

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

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

§ 13.5 Tests and Inspections

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

§ 13.5.2 If the Construction Manager, Professional Engineer, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Construction Manager and Professional Engineer will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Construction Manager and Professional Engineer of when and where tests and inspections are to be made so that the Construction Manager and Professional Engineer may be present for such procedures. Such costs except as provided in Section 13.5.3, shall be at the Owner's expense.

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

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Construction Manager for transmittal to the Professional Engineer.

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

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

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§ 13.6 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the then current interest rate in effect for stamped warrants pursuant to Iowa Code 74A.2.

§ 13.7 Time Limits on Claims

As to acts or failures to act, any applicable statute of limitation shall commence to run and any alleged causes of action shall be deemed to have accrued in any and all events not later than the date of Owner approval of the Final Certificate for Payment.

§ 13.8 Rebates

The Owner shall have the right to apply for and secure all rebates which are available when Bids are received. Contractor shall provide invoices, itemizations and cooperation to the Owner in this regard.

§ 13.9 Conformance with Laws.

The Contractor shall conform in all respects with the provisions of the Federal Civil Rights Act, the Code of Iowa, Chapter 216 Civil Rights Commission and the rules and regulations adopted thereto by the Iowa Civil Rights Commission. The Contractor shall not discriminate against any employee or applicant because of race, color, religion, sex, national origin, ancestry, age, marital status, physical or mental handicap, sexual orientation and gender identity. The Contractor shall comply with all applicable federal, state and local, laws, rules, regulations, ordinances, policies and procedures, including the Woodbury County policies and procedures. The Contractor shall require similar clauses in all of its subcontracts for service or materials.

§ 13.10 Employees

The Contractor and its Subcontractors shall at all times enforce strict discipline and good order among its employees and shall not employ on the work any person considered by the Owner or its Construction Manager to be unfit or not skilled in the work assigned.

The Contractor or their Subcontractors shall not be owned, operated, or managed by a registered sex offender who has been convicted of a sex offense against a minor in accordance with Iowa Code 692A.113. In addition, the Contractor or their Subcontractors shall not permit an employee who is a registered sex offender convicted of a sex offense against a minor on real property of the Owner in accordance with Iowa Code 692A.113.

§ 13.11 Drug Free and Smoke Free Zone

The Woodbury County buildings are a drug-free and tobacco-free zone. In furtherance of this standard, the Contractor shall establish and maintain a safe and efficient work environment for all employees, free from the effects of smoke, alcohol, controlled substances and illicit drugs.

- .1 Smoking and the use of smokeless tobacco shall be prohibited at all times on County property, including parking lots and inside of any private vehicles on County property.
- .2 The manufacture, distribution, dispensing, possession, or use of alcohol, controlled substances and illicit drugs is prohibited on or adjacent to the project site and all of the Owner's property at all times.
- .3 Illicit drug use is the use of illegal drugs and the abuse of alcohol and other drugs, including anabolic steroids.
- .4 Controlled substances are drugs specifically identified and regulated under state and federal law and include, but are not limited to, opiates, narcotics, cocaine, methamphetamines, and other stimulants, depressants, hallucinogenic substances and marijuana.
- .5 The Contractor will strictly enforce these prohibitions among its own employees and its Subcontractor's and their employees at all times. Employees who violate these prohibitions will be subject to disciplinary action by their employers up to and including termination and may be denied access to the site of the work.
- .6 Violation of Section 13.11 shall also constitute sufficient grounds for termination of the Contract or any subcontract without damages or penalty to Owner.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 Termination by the Contractor

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

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- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Construction Manager has not certified or the Professional Engineer 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, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner, Construction Manager and Professional Engineer, terminate the Contract and recover from the Owner payment for Work executed through the date of termination.

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

§ 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

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

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

§ 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 Owner completes the Work and if the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including the Owner's additional costs, attorney's costs and compensation for the Construction Manager's and Professional Engineer's services and expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor and/or their Surety shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall, upon

application, be certified by the Initial Decision Maker after consultation with the Construction Manager, and 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 the Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. No adjustment shall be made to the extent:

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

§ 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner reserves the right to terminate all or any part of the Contract for its convenience and without cause upon 14 days' written notice to the Contractor. In such event, Contractor shall immediately cease all work except as may be directed by Owner to preserve work already in place. Contractor shall promptly advise Owner of the status of all subcontracts and purchase orders to allow Owner the option of terminating them under most advantageous terms. Contractor shall be paid for its work through the date of termination based on the Schedule of Values.

§ 14.4.2 Upon receipt of written 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 promptly advise Owner of the status of all subcontracts and purchase orders to allow Owner the option of terminating them under most advantageous terms.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed through the date of termination based on the Schedule of Values.

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, 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.

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

§ 15.1.3 **Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Construction Manager will prepare Change Orders and the Professional Engineer will issue a Certificate for Payment or Project Certificate for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 **Claims for Additional Cost.** If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.3.

§ 15.1.5 Claims for Additional Time

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

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

(Paragraphs deleted)

§ 15.2 Initial Decision

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Professional Engineer will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement.

§ 15.2.2 The Professional Engineer will approve or reject Claims by written decision within ten (10) days of receipt of the claim, which shall state the reasons therefore and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection may be subject to mediation, arbitration, litigation, or any other alternative dispute resolution process mutually agreeable to the parties involved in the dispute but shall not be required and shall not preclude litigation by any of the parties involved.

(Paragraphs deleted)

§ 15.3 Mediation

§ 15.3.1 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, may be administered in accordance with Iowa Code Chapter 679C, as amended. A request for mediation shall be made in writing, and delivered to the other party to the Contract. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

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

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