

# AIA® Document A101® - 2017

## Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the « » day of « August » in the year « 2022 »  
(In words, indicate day, month and year.)

BETWEEN the Owner:  
(Name, legal status, address and other information)

«West Point Association of Graduates of the United States Military Academy (USMA)  
d/b/a West Point Association of Graduates, located at 698 Mills Road, West Point, NY  
10996-1607 »« »

« »  
« »  
« »

and the Contractor:  
(Name, legal status, address and other information)

« »« »  
« »  
« »  
« »

for the following Project:  
(Name, location and detailed description)

«Egner Hall (Building 685) Renovations »  
« »  
« »

The Architect:  
(Name, legal status, address and other information)

«Mark B. Thompson Associates LLC, located at 502 South 24<sup>th</sup> Street, Philadelphia, PA  
19146 »« »

« »

«The Owner's Designated Representative:

»

« Tectonic Engineering, with offices located at 118-35 Queens Boulevard, 10<sup>th</sup> floor,  
Suite 1000, Forest Hills, NY 11375 »

The Owner and Contractor agree as follows.

**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.

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

The parties should complete A101®-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201®-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

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## EXHIBIT A INSURANCE AND BONDS

### ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, Design & Construction Master Schedule Dated XXXXX attached hereto, Architect's Issues 1 Documents for Bid Dated XXXX, other documents listed in this Agreement, the Invitation to Bid dated XXXX, Exhibits A, B, C, D and E, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

#### § 1.2 Relationship of the Parties

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with Tectonic and the Architect and exercise the Contractor's best skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

#### § 1.3 Start of Work

Notwithstanding any other portion of this Agreement, the Contractor accepts and acknowledges that no Work shall commence until a notice to proceed is issued by the Owner or the Owner's Designated Representative. The Owner shall have the option to issue multiple limited notices to proceed as it deems appropriate. Additionally, Contractor accepts and acknowledges that this Agreement is contingent upon the following:

1. The Owner's Board approval of the Project;
2. The Federal Government acceptance of the gift in kind from the Owner for the entire Project and/or any portion of the Project which may be submitted by the Owner.
3. The Owner obtaining funding for the Project.

### ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others, in accordance with the care, skill and diligence of a contractor experienced in renovating buildings on higher education campuses, particularly with respect to acoustical retrofits, in the state of New York (the "Performance Expectations").

## **§ 2.1 Consultation**

The Contractor shall schedule and conduct meetings with the Architect, Tectonic and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work. The Contractor shall advise the Owner, Tectonic and the Architect on proposed site use and improvements, selection of materials, and building systems and equipment. The Contractor shall also provide recommendations consistent with the Project requirements to the Owner, Tectonic and Architect on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

**§ 2.2** The Contractor shall prepare and periodically (but not less than monthly) update a Project schedule for the Architect's and Tectonic's review and the Owner's acceptance. The Contractor shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Contractor's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include, at a minimum, the following: components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

## **§ 2.3 Phased Construction**

The Contractor shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, or phased construction. The Contractor shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities and procurement and construction scheduling issues.

## **§ 2.4 Procurement Schedule**

The Contractor shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Contractor shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction.

## **§ 2.5 Notices and Compliance with Laws**

The Contractor shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities including, but not limited to, USMA applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities for inclusion in the Contract Documents.

## **§ 2.6 Subcontracts**

Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Contractor shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor under this Agreement. Each such subcontract shall incorporate the terms of this Agreement as well as the terms set forth in AIA Document A201™--2017, General Conditions of the Contract for Construction. The Contractor shall not enter into any subcontract without written approval from Owner.

## **§ 2.7 Progress**

The Contractor shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Contractor shall submit written progress reports to the Owner, Tectonic and Architect, showing percentages of completion and other information required by the Owner. The Contractor shall also keep, and make available to the Owner, Tectonic and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

## **§ 2.8 Cost Control**

The Contractor shall develop a system of cost control for the Work in connection with proposed changes.

## **ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

**§ 3.1** The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner:

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work and in accordance with the Design & Construction Master Schedule dated ????.

**§ 3.3 Substantial Completion**

§ 3.3.1 The Contractor shall achieve Substantial Completion of the entire Work not later than \_\_\_\_\_ subject to adjustments of this Contract Time as provided in the Contract Documents and Final Completion of the Work not later than \_\_\_\_\_ 2023.

§ 3.4 In the event that the Contractor fails to achieve either Substantial Completion or Final Completion by the date or within the time specified, as the case may be, in the approved schedule, or any approved extension thereof, the contractor shall pay to Owner as liquidated damages the sum equal to \$ \_\_\_\_\_ for liquidated damages times each and every calendar day after such date or time until the Contractor achieves the respective Substantial Completion or Final Completion, as the case may be. The Contractor and Owner agree that said liquidated damages shall be for loss of a bargain and not as a penalty.

§ 3.4.1 Contractor acknowledges that the liquidated damages amounts set forth in Section § 3.4 above represents a fair and reasonable estimate of the Owner's probable losses, damage and /or expenses, and are not a penalty, for late completion of the Work and phases thereof.

§ 3.4.2 Owner shall be entitled to offset any liquidated damages owed by the Contractor against any amounts owing by Owner to Contractor.

**ARTICLE 4 CONTRACT SUM**

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be « » (\$ « »), subject to additions and deductions as provided in the Contract Documents.

§ 4.2 The Contract Sum is based upon the Contract Documents.

§ 4.3 Allowances, if any, included in the Contract Sum:  
*(Identify each allowance.)*

Item	Price
_____	_____

§ 4.4 Unit prices, if any:  
*(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)*

Item	Units and Limitations	Price per Unit (\$0.00)
_____	_____	_____

**§ 4.5 Changes in the Work**

§ 4.5.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2017, General Conditions of the Contract for Construction. The Contractor may be entitled to equitable adjustment in the Contract Time as a result of changes in the Work.

§ 4.5.2 In calculating adjustments to the Contract Sum, the terms "cost" as used in the above-referenced provisions of AIA Document A201-2017 shall mean the Cost of Work as defined in Article 6 of this Agreement. No Payment for extra or changed work shall be made unless Contractor has received such written authorization before performing the work. Contractor shall perform extra or changed work promptly in conformity with any Change Order or Field Order issued in accordance therewith.

## ARTICLE 5 PAYMENTS

### § 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

« »

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the « 25th » day of a month, the Owner shall make payment of the amount certified to the Contractor not later than «30 » days after the Architect approves the Application for Payment. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than «30 » days after the Architect approves the Application for Payment. Contractor shall submit one original and three copies of each Application for Payment which invoice shall consist of not less than required under this Agreement in a form of invoice acceptable to Owner and verified by Contractor, with an affidavit and waiver of lien by Contractor (form provided by Owner) signed by an officer or any duly authorized party of Contractor and each supplier and subcontractor to be paid pursuant to the invoice. Failure to submit an Application for Payment in accordance with this Agreement and/or without such waiver and release of lien shall cause such Application for Payment to be denied.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to the provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of five percent (5%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Documents A201-2017, General Conditions of the Contract for Construction;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored off the site at a location agreed upon in writing; less retainage of five percent (5%);
- .3 Subtract the aggregate of previous payments made by Owner; and
- .4 Subtract amounts, if any for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2017.

§ 5.1.6.1 The Progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10 of AIA Document A201-2017.

§ 5.1.6.2 Except with Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.1.6.3 In taking action on the Contractor's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted hereunder.

#### § 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

«[Ten Percent (10%)]»

#### § 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment.

### ARTICLE 6 DISPUTE RESOLUTION

§ 7.1 The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the binding dispute resolution process set forth in this Agreement within the period specified by applicable law, but in any case not more than 5 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Article 7.

§ 7.2 This Agreement shall be construed and governed in accordance with the laws of the State of New York, and any disputes under this Agreement shall be heard in a court of competent jurisdiction in the State of New York; provided however, the Parties agree to first submit any such dispute to mediation prior to arbitration or litigation. The parties shall agree in writing as to the identity of the mediator and the rules and procedures of the mediation. Should any dispute not be resolved through mediation, the Parties agree to submit any such dispute to arbitration to be decided in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. The location of any mediation and/or arbitration will be in New York City, New York. Should any dispute not be resolved through mediation or arbitration, then the parties hereby consent to the jurisdiction of the Federal Court Southern District of New York, and of the New York State Supreme Court, County of New York. The prevailing party shall be entitled to an award of all reasonable consultant, attorney's fees and costs.

§ 7.3 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.

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

§ 7.5 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

## **§ 7.6 CONSOLIDATION OR JOINDER**

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

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

**§ 7.6.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Article 7.6, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Contractor under this Agreement.

## **§ 7.7 INITIAL DECISION MAKER**

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201-2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

## **ARTICLE 8 TERMINATION OR SUSPENSION**

**§ 8.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2017.

**§ 8.2** The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2017.

## **ARTICLE 9 MISCELLANEOUS PROVISIONS**

**§ 9.1** Where reference is made in this Agreement to a provision of AIA Document A201-2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 9.2** The Owner and Contractor, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement Neither the Owner nor the Contractor shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201-2017, 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.

**§ 9.3** Each Party represents, warrants and covenants to the other party, as of the date of this Agreement first set forth above, that: (i) it is an organization, corporation or limited liability company, duly organized, validly existing, and in good standing; (ii) it has all necessary powers and authority to execute, deliver, and perform this Agreement; (iii) the execution, delivery, and performance of this Agreement have been duly and validly authorized by that party; (iv) this Agreement constitutes a valid and legally binding obligation of that party enforceable in accordance with its terms, except as such enforceability may be affected by reason of bankruptcy or other similar laws affecting creditors' rights; (vi) there are no actions, suits, investigations, or other proceedings pending or, to the knowledge of that party, threatened, against or relating to that party, at law or in equity, or before or by any federal, state, local, foreign or other court, governmental department, agency or alternative dispute resolution person, body or panel, which, if decided, would prevent or impair, in whole or in part, performance by that Party of its obligations under this Agreement.

**§ 9.3** If any provision contained in this Agreement is held to be unenforceable by a court of competent jurisdiction, this Agreement shall be construed as if such provision did not exist and the unenforceability of such provisions shall not be held to render any other provision of this Agreement unenforceable.

**§ 9.4** The failure of any party to, at any time, enforce any of the provisions of this Agreement shall not be deemed to be a waiver of any such provision, nor to in any way effect the validity of this Agreement or any provision hereof or

the right of any of the parties to thereafter enforce each and every provision of this Agreement. No waiver of any breach of any of the provisions of this Agreement shall be effective unless set forth in a written instrument., executed by the party against whom enforcement of such waiver is sought, and no waiver of any such breach shall be construed or deemed to be a waiver of any other or subsequent breach.

**§ 9.5** This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Execution and delivery of this Agreement by electronic transmission shall be sufficient for all purposes and shall be binding on any party who so executes and delivers.

**§ 9.6** All Notices required by this Agreement or other communications to either party by the other shall be deemed given when made in writing and deposited in the United States mail, sent by facsimile transmission or sent by a nationally recognized overnight courier service, addressed as follows:

To Owner: West Point Association of Graduates United States Military Academy  
698 Mills Road  
West Point, NY 10996-1607  
Attention: Pat Ortland, Chief Operating Officer

With a copy to: West Point Association of Graduates United States Military Academy,  
698 Mills Road,  
West Point, NY 10996-1607  
Attention: Anthony Laroche P.E., Tectonic Engineering Construction  
Project Manager

To Contractor: TBD

**§ 9.7** If either party is rendered unable, wholly or in part by Force Majeure, as hereinafter defined, to perform its obligations under this Agreement, it is agreed that the performance of the respective obligations of either party, so far as they are affected by Force Majeure, shall be excused and suspended from the inception of any such inability until it is corrected. Whichever party is claiming such inability shall give written notice thereof to the other as soon as practicable after the occurrence of the Force Majeure. During the period that the non-performing party is unable to perform, the other party shall also be excused from performance of its obligations to the extent such obligations are reciprocal to, or depend upon, the performance of the non-performing party that has been prevented by the Force Majeure event. The non-performing party shall use commercially reasonable efforts to avoid or remove the cause of its non-performance and both parties shall proceed to perform once the cause is removed or ceases. "Force Majeure" shall mean acts of God, including epidemics, landslides, lightning, earthquakes, hurricanes, storms, fires (not caused by either Party), explosions, floods, and other similar unusual and severe natural calamities; acts of the public enemy, wars, terrorist acts, blockades, insurrections, riots or interruption or curtailment of service due to an event of Force Majeure.

**§ 9.8** In connection with any Change Orders, Contractor waives any right to charge or claim damages against Owner, Architect and/or Tectonic their respective officers, directors, employees or agents, consultants, engineers, architects or other representatives for delays or disruptions resulting from any such Change Orders.

**§ 9.9** Contractor agrees that in the event any liens are filed against the Project as the result of Contractor's actual or alleged acts or omissions in operating under this Agreement, Contractor shall, at its sole expense, cause the same to be discharged within twenty (20) days from the date on which Owner notifies Contractor of such filing, and that Contractor shall indemnify, defend and hold harmless Owner, Architect and Tectonic against any and all such claims or liens. If Contractor fails to cause such claims or liens to be discharged within the said twenty (20) day period, then, without limiting any other rights or remedies of Owner; Owner shall have the right to retain out of any payment to Contractor then due, or thereafter to become due, an amount sufficient to completely indemnify Owner against said potential lien. If such payment amount is not sufficient to fully indemnify Owner, Contractor shall compensate Owner for the insufficient amount. Any such lien, until it is removed, shall preclude any payment and any and all claims or demand for any payment whatsoever under and by virtue of the Agreement. In the event that the lien was caused solely by Owner's failure to make payment to the Contractor hereunder for undisputed amounts, then in such event the Owner will reimburse the Contractor for the actual costs of discharging the lien.



**§ 9.10** All personnel assigned to this Agreement by Contractor shall be required to cooperate fully with personnel assigned to the Project by Owner. In the event that Contractor's personnel fail to cooperate, Contractor shall relieve them of their duties upon request of Owner. Owner may request that Contractor substitute personnel at any time, in Owner's sole discretion.

**§ 9.11** Contractor shall not discriminate against any employee who is employed in connection with the services to be performed or applicant for such employment because of age, race, creed, color, sex, affectionate preference, ancestry, marital status, religion or national origin. Contractor shall, and shall cause all of its respective subcontractors to, take affirmative action to afford equal employment opportunities without discrimination because of age, race, creed, color, sex affectionate preference, ancestry, marital status, religion or national origin. Such action shall be taken with referenced to, but not to be limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay and other forms of compensation, and selection for training, including apprenticeship and on-the-job training. Contractor shall give all notices and comply with all legal requirements relating to the terms and condition of employment of any employee who is employed in connection with the services including, without limitation, the applicable provisions of the Fair Labor Standards Act, the Fair Employment Practices Law and the Equal Pay Act. Contractor shall comply with all plans, guidelines and policy determinations relating to the employment of minority groups, established by any public authority, trade association, or any other organization designated by Owner. If Contractor breaches any of the covenants contained in this section, Owner shall have the right to immediately terminate this Agreement without penalty or further payment of any sums due and owing or claimed by Contractor hereunder. In such instance, Contractor shall indemnify, defend and hold harmless Owner, Architect, Tectonic and their respective employees, officers, directors and agents, for any penalties, losses and expenses resulting from such breach of the provisions of this section.

**§ 9.12** Notwithstanding any other provision of this Agreement to the contrary, Owner's liability to Contractor, except to the extent losses are covered by proceeds of any insurance provided pursuant to Article 11 hereof, arising out of or related to Contractor's performance of services under this Agreement, whether based in contract (including breach of warranty), tort (including negligence, whether of Owner or others), strict liability or otherwise, shall not exceed in the aggregate the total fees paid to Contractor for services performed under this Agreement. In no event shall either Party be liable to the other in contract, tort or otherwise for any losses, delayed or diminished profits, revenues or opportunities, losses by reason of shutdown or inability to utilize or complete the Project, or any other incidental, special, indirect or consequential damages of any kind or nature whatsoever resulting from performance or failure to perform services under this Agreement. Owner shall have the right to offset any amounts owed by Contractor to Owner from any application from payment. The provisions of this Article 9.12 shall survive the expiration, cancellation or termination of this Agreement.

**§ 9.13** If Owner, Architect and/or Tectonic is brought into litigation related to this Agreement as a non-party through, for example, a subpoena for records, deposition request, court directive or otherwise, Contractor will pay all costs incurred by Owner, Architect and/or Tectonic in compliance with any subpoena, deposition, court directive or otherwise including, but not limited to, document and records reproduction costs, search and review time, preparation time, appearance time, legal fees incurred, travel and other expenses, at all employees' regular billing rate at the time these costs are incurred is brought into litigation related to this Agreement as a non-party through, for example, a subpoena for records, deposition request, court directive or otherwise, Contractor will pay all costs incurred by Owner, Architect and/or Tectonic in compliance with any subpoena, deposition, court directive or otherwise including, but not limited to, document and records reproduction costs, search and review time, preparation time, appearance time, legal fees incurred, travel and other expenses, at all employees' regular billing rate at the time these costs are incurred.

**§ 9.14** All laborers, workers, and mechanics employed in the performance of the Agreement either by Contractor or its subcontractors, or other person doing or contracting to do the whole or a part of the Work, shall be certified prior to performing any work on the Project as having successfully completed a course in construction safety and health approved by The United States Department of Labor's Occupational Safety and Health Administration ("OSHA") that is at least ten (10) hours in duration. Contractor shall provide written proof to Owner that the requirements of Labor Law Section 220-h have been met. Failure of Contractor to provide such written proof shall cause any Application for Payment to be denied.

## **ARTICLE 10 NOT USED**

## **ARTICLE 11 INSURANCE, BONDS & INDEMNIFICATION**

**§ 11.1** The Contractor shall furnish a Performance Bond in an amount at least equal to one hundred percent (100%) of the Contract Sum herein as security for the full, faithful and timely performance of this Agreement; and also a Labor and Material Payment Bond in an amount at least equal to one hundred percent (100%) of the Contract Sum for the payment of all persons performing labor or providing materials to Contractor or its Subcontractors in connection with the Work, each such bond to be in the form as may be acceptable to Owner. Owner shall be named the obligee under the bond and beneficiary of any and all other security. The surety on such bond shall be authorized to transact business as a surety in the State of New York and be subject to approval by Owner.

**§ 11.2** Premiums due and payable under such bonds are to be paid by the Contractor and are included in the Contract Sum. Contractor shall be obligated to deliver such bonds to Owner along with this Agreement fully signed by Contractor. Failure of Contractor to deliver such bonds in accordance with the above shall cause this Agreement to be null and void. Any and all costs incurred by Owner as a result of Contractor failing to deliver such bonds shall be for the sole account of Contractor.

**§ 11.3** Any and all additional bond or insurance costs resulting from changes in the Work and/or Extra Work shall be paid as part of Contractor's overhead and profit; the amount of which is to be included in any change order for the Work. No charges or claims shall be made by Contractor for any additional bond or insurance costs resulting from changes in the Work or Extra Work.

**§ 11.4** Contractor shall maintain, during the term of this Agreement: (i) commercial general liability insurance covering bodily injury and property damage with a limit of liability of no less than \$10,000,000 per occurrence and \$15,000,000 in the aggregate, (ii) automobile liability insurance covering bodily injury and property damage with a limit of liability of no less than \$5,000,000 per occurrence and \$5,000,000 in the aggregate, (iii) worker's compensation insurance in the amount or amounts required by applicable law; (iv) professional liability insurance covering any damages caused by an error, omission or any act of Contractor, its subcontractors, agents, officers, or employees in performance under this Agreement with a combined single limit per occurrence of not less than \$1,000,000.00 and an annual aggregate limit of not less than \$5,000,000.00; and property insurance written on a builder's risk 1 all-risk 11 or equivalent policy form in an amount not less than the full cost of replacement including changes to the Agreement, professional fees, costs related to delay or interruption due to a covered cause of loss to the Work, cost of materials supplied or installed by others, the contents of the Project during construction and when completed and occupied, facilities and contents, comprising total value for the entire Project at the site on a replacement cost basis without deductibles. Contractor shall add USMA, Owner, Tectonic and Architect as additional insureds on such insurance policies. Upon execution of this Agreement, Contractor shall provide certificates of insurance evidencing such insurance coverage including a 30-day notice of cancellation endorsement. Under no circumstances shall Contractor receive any payment until Owner has received the certificates of insurance pursuant to this Section.

**§ 11.5** Contractor shall be responsible for and shall defend, indemnify and hold harmless the Owner, USMA Architect and Tectonic, their respective, directors, officers, agents and employees, from and against:

**§ 11.5.1** any and all liability imposed by reason of actual or asserted violation of laws, regulations, ordinances or other rules of any government or quasi-governmental body or agency, including actual or alleged failure to pay taxes as herein provided; and

**§ 11.5.2** any and all liability, damage, loss, cost, expense, claim, demand, suit, action, judgment, or recovery (including, but not limited to, reasonable attorney and consultant fees) for or on account of any injury or death of persons or damage to property, including, but not limited to, damage to property of Contractor, Owner, Architect and Tectonic or others; or injury, death, or damage to property of Owner, USMA, Architect and Tectonic or Contractor's officers, agents, employees, sub-subcontractors or representatives, arising out of, or in any way occurring directly or indirectly in connection with the Work, including without limitation, delegable or nondelegable duties imposed on Contractor, Owner, Architect and Tectonic by law, except for such injury, death or damage as it is caused by the sole negligence of Owner, Architect and/or Tectonic; and Contractor shall at its sole expense defend any and all actions based thereon. Any loss or damage incurred by Owner, USMA, Architect and/or Tectonic in connection with the foregoing may be deducted from Contractor's compensation then due or thereafter to become due, in addition to any other remedies that Owner, USMA, Architect and Tectonic may have.

**§ 11.5.3** The Owner, Architect and Tectonic shall not be liable to Contractor in contract, tort, or otherwise

(including negligence, warranty, or strict liability) for any incidental, special, punitive, indirect or consequential damages or for loss of profits or revenues arising out of or in connection with or resulting from this Agreement and/or the Work.

**§ 11.5.4** Contractor explicitly waives any right it has to immunity under applicable industrial insurance laws and agrees to indemnify, defend and hold Owner, USMA, Architect and Tectonic harmless from and against any and all liability, losses, costs, expenses and fees arising out of claims or lawsuits brought by Contractor's employees or any of its sub-subcontractors' employees for bodily injuries or death sustained while performing services hereunder. In addition, Contractor agrees to indemnify, defend and hold Owner, USMA, Architect and Tectonic harmless from and against any and all liability, losses, costs, expenses and fees arising out of claims or lawsuits brought by or on behalf of a construction worker or workers for bodily injuries or death sustained while performing construction services at the Project to the extent said claims allege that Contractor or Owner, Architect and Tectonic owed a duty of care to said construction worker(s).

**ARTICLE 12 ENUMERATION OF CONTRACT DOCUMENTS**

**§ 12.1** This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A101™–2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified by the parties, attached hereto as Exhibit G
- .4?
- .5 Drawings

Number	Title	Date
See Exhibit E		

- .6 Specifications

Section	Title	Date	Pages
See Exhibit D			

- .7 Addenda, if any:

Number	Date	Pages
See Exhibit I		

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

- .8 Other Exhibits:  
(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

[  ] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:  
(Insert the date of the E204-2017 incorporated into this Agreement.)

[  ] The Sustainability Plan:

Title	Date	Pages

[  ] Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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- 9 Other documents, if any, listed below:  
*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

- «  
 Exhibit B – Basis of Contract Sum  
 Exhibit C – Addenda and Clarifications Included in Contract  
 Exhibit D – List of Specifications  
 Exhibit E – List of Drawing Sheets  
 Exhibit F – Design & Construction Master Schedule Dated \_\_\_\_\_ and updated \_\_\_\_\_  
 Exhibit G – AIA Document A201™-2017, General Conditions of the Contract for Construction, as modified by the parties  
 Exhibit H – The Invitation To Bid dated \_\_xxxx\_\_\_\_\_ including all documents referenced therein  
 Exhibit I – Addenda »

This Agreement entered into as of the day and year first written above.

\_\_\_\_\_  
**OWNER** (Signature)  
 « »  
 \_\_\_\_\_  
 (Printed name and title)

\_\_\_\_\_  
**CONTRACTOR** (Signature)  
 « »  
 \_\_\_\_\_  
 (Printed name and title)

# AIA® Document A201® - 2017

## General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

«Egner Hall (Building 685) Renovations»

« »

### THE OWNER:

(Name, legal status and address)

West Point Association of Graduates of the United States Military Academy (USMA)  
d/b/a West Point Association of Graduates, located at 698 Mills Road, West Point, NY  
10996-1607

The Owner's Designated Representative:

Tectonic Engineering with offices located at 118-35 Queens Boulevard, 10<sup>th</sup> Floor, Suite  
1000 Forest Tectonics, NY 11375

### THE ARCHITECT:

(Name, legal status and address)

Mark B. Thompson Associates LLC located at 502 South 24<sup>th</sup> Street, Philadelphia, PA  
19146

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- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
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- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS

### 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.

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

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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14      **TERMINATION OR SUSPENSION OF THE CONTRACT**

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8.3, 15.1.6.2

#### **Work, Definition of**

##### **1.1.3**

Written Consent

1.5.2, 3.4.2, 3.7.4, 3.12.8, 3.14.2, 4.1.2, 9.3.2, 9.10.3,  
13.2, 13.3.2, 15.4.4.2

Written Interpretations

4.2.11, 4.2.12

Written Orders

1.1.1, 2.4, 3.9, 7, 8.2.2, 12.1, 12.2, 13.4.2, 14.3.1

## 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, Special, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, Design & Construction Master Schedule Dated XXX,XX, 2022 attached hereto, Architect's Issue Documents for Bid Dated XXX,XX, 2022 other documents listed in this Agreement, the Invitation to Bid dated XXX,XX, 2022, Exhibits A, B, C, D and E, and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. In case of conflicts between the Contract Documents, the order of precedence shall be as follows

1.1.1 a. Approved modifications, changes last in time

1.1.1 b. Exhibits A, B,C,D and E

1.1.1 c. *The A101-2017 Standard Form of Agreement Between Owner and Contractor*

1.1.1 d. *Addenda*

1.1.1 e. *Special Conditions, if any*

1.1.1 f. *Addendum of these General Conditions*

1.1.1 g. *These general conditions*

1.1.1 h. *technical specifications*

1.1.1i. *Drawings: as between figures given on drawings and the scaled measurements, the figures shall govern; as between large scale drawings and small-scale drawings, the larger scale shall govern; as between detailed drawings and standard plates bound within the specifications, the detailed drawings shall govern.*

1.1.1j. In the event provisions of codes, safety orders, Contract Documents, referenced manufacturer's specifications or industry standards are in conflict, the more restrictive and higher quality shall govern. The Architect, Owner and Owner's Representative shall be consulted for approval of design intent, provided that Contractor is not responsible for design and that if it believes there is extra cost due to a discrepancy between such codes and the Contract Documents, it may make claim as provided in Article 7 and Article 15.

#### § 1.1.2 The Contract

The Contract Documents form the Contract for Construction (the "Contract"). The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Contractor and Tectonic or Tectonics' consultants, (3) between the Owner and a Subcontractor or a Sub-subcontractor, (4) between the Owner and the Architect or the Architect's consultants or (5) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### § 1.1.3 The Work

The term "Work" means the construction and services required by or reasonably inferable from the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligation's and to ensure a complete and proper job as intended by the Contract Documents. The Contractor shall perform construction and services under the Contract in accordance with the Performance Expectations.

#### § 1.1.4 The Project

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

### **§ 1.1.5 The Drawings**

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

### **§ 1.1.6 The Specifications**

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

### **§ 1.1.7 Instruments of Service**

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

### **§ 1.1.8 Initial Decision Maker**

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

### **§ 1.1.9 Miscellaneous Definitions**

**§ 1.1.9.10** "Governmental Authority" or "Governmental Authorities" shall mean, as applicable, the United States of America, the State of New York, the County of Orange, the City of West Point and any political subdivision thereof and any agency, department, commission, board, bureau or instrumentality of any of the foregoing, now existing or hereafter created, having jurisdiction over the Project or any portion thereof or the curbs, sidewalks, and immediately adjacent curbs.

**§ 1.1.9.11** "Laws" shall mean all laws, rules, orders, ordinances, regulations, statutes, requirements, codes and lawful orders of all Governmental Authorities, including, but not limited to, USMA, and of any applicable fire rating bureau, or other body exercising similar functions, affecting the Project (or reasonably anticipated to do so in the future) or the maintenance, use or occupation thereof, or any street, avenue or sidewalk comprising a part of or in front thereof or any vault in or under the same, or requiring removal of any encroachment. Laws may be referred to herein as a Law in the singular.

## **§ 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.

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

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

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

**§ 1.2.4** The approval by the Owner or any of its agents of any action, document or other item of the Contractor or Architect shall not relieve either of their respective obligations under the Contract Documents except as expressly set forth in a Modification.

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

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

### § 1.6 Notice

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

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

### § 1.7 Transmission of Data in Digital Form

Transmitting Instruments of Service or any other information or documentation in digital form will be determined prior to the start of construction and agreed upon by all parties, 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 Section 4.2.1, the Architect does not have such authority. The term “Owner” means the Owner or the Owner’s authorized representative.

### § 2.2 NOT USED.

### § 2.3 Information and Services Required of the Owner

§ 2.3.1 The Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfil the Owner’s obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require and (2) the Contractor identifies in writing a reasonable concern regarding the Owner’s ability to make payment when due.

### § 2.3.2 NOT USED.



**§ 2.3.3 NOT USED.**

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

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

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

**§ 2.4 Owner's Right to Stop the Work**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity. The Contractor shall be responsible for any and all costs associated with the stoppage of any Work under section 2.4. The Owner's right to stop the Work shall be in addition to any other rights pursuant to Article 14 hereof.

**§ 2.5 Owner's Right to Carry Out the Work**

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

**§ 2.5.1** If there is an emergency and an immediate need to correct such deficiencies that affect the safety of persons or property, the Owner may proceed to correct them without notice to the Contractor.

**ARTICLE 3 CONTRACTOR**

**§ 3.1 General**

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

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

**§ 3.1.3** The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the 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** By executing the Agreement, the Contractor represents that it has examined the job site and the Drawings and Specifications, has satisfied itself as to the conditions under which it will be obliged to operate in performing the Work, including any obstructions, difficulties and restrictions attending the execution of the Work at the site; amount of Work; character and nature of the Work; the equipment and facilities needed preliminary to and during the prosecution of the Work; the accommodation of the Work to and/or by work that may be performed by or for the Owner under other contracts, all required connections of any sort to such work under other contracts, and scheduling

of Work as required in coordination with such work under other contracts; and any other consideration which may affect the Work in any manner. Subject to the terms and conditions of this Agreement, Contractor acknowledges and agrees that it is responsible for completion of the Work for the Contract Sum and within the Contract Time. Contractor represents and warrants that it has reviewed and fully understands the scope of work set forth in the Drawings and Specifications. Notwithstanding anything to the contrary contained elsewhere in these General Conditions, no increase in the Contract Sum or extension of the Contract Time shall be permitted to the extent such representation is discovered to have been false.

**§ 3.2.2** The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner and shall at once report to the Owner and Architect errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized or should have recognized (if acting in accordance with the Performance Expectations) such error, inconsistency or omission and failed to report it to the Architect and Owner. If the Contractor performs any construction activity and knows or should know (if acting in accordance with the Performance Expectations) that it involves an error, inconsistency or omission in the Contract Documents without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such performance and shall bear the costs for correction. Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect, but 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. Nothing contained herein is intended to impose design liability on Contractor.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable Laws, but the Contractor shall promptly report to the Owner, Architect, and Tectonic any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable Laws.

**§ 3.2.5** Whenever Drawings show existing or other construction not required as part of the Work, the Contractor may rely upon them but only to the extent reasonable under the circumstances and only to the extent the Contractor has exercised a reasonable degree of due diligence in investigating actual conditions, in accordance with the Performance Expectations. Contractor shall make itself familiar with all conditions affecting the nature and manner of conducting the Work.

### **§ 3.3 Supervision and Construction Procedures**

**§ 3.3.1** The Contractor shall supervise and direct the Work in accordance with the Performance Expectations and using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner, Tectonic and Architect, and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the contractor, the Owner shall be solely responsible for any loss or damage arising solely from those owner-required means, methods, techniques, sequences or procedures.

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

§ 3.3.3 Before commencing its Work, and from time to time as the Work progresses, Contractor shall examine the work installed by others, insofar as it may affect Contractor's Work, and shall promptly notify Owner, Tectonic and Architect in writing if any condition exists that will prevent Contractor from complying with the requirements of this Agreement. Should Contractor start its Work without such notification, Contractor shall be deemed to have accepted all preceding work. Further, if by any reason of such action, it is found necessary to reconstruct any part of its Work, Contractor shall remove and rebuild the same at its sole cost and expense.

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

§ 3.3.5 Contractor, its employees, Subcontractors, suppliers, representatives, invitees and agents will be subject to such rules and regulations for the conduct of Work as Owner may establish, including those set forth in these subsections. Contractor will be responsible for the compliance with and strict enforcement among its employees and Subcontractors of Owner's instructions and requirements, including no smoking on Owner's premises, interfering with Owner's operations, limitations on movement and use of Owner's real and personal property and behaving in a courteous and respectful manner. Contractor shall be responsible for maintaining labor harmony among the workers and subcontractors engaged by or through Contractor for the Project. Although Contractor shall have no obligation to prevent any third party strike or jurisdictional dispute targeting the Project, Contractor shall not be entitled to any extension of the Contract Time or increase in the Contract Sum as a result of any such strike or dispute. Contractor shall continue the Work in the event of any such strike or dispute.

§ 3.3.6 Neither the Contractor nor any Subcontractor nor any other person employed at the Project site shall sell, use, permit or suffer intoxicating drink or illegal drugs upon or about the Project site, nor shall Contractor or any Subcontractor permit the playing of unreasonably loud music.

#### § 3.4 Labor and Materials

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

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

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. Owner shall have the right to remove any employee of the Contractor from the Project site upon written notice. Any and all personnel and replacement personnel assigned to the Project by Contractor shall be subject to Owner's approval, which shall not be unreasonably withheld.

§ 3.4.4 Contractor warrants to the Owner that the Work as performed by the Contractor and its Subcontractors shall comply with all applicable Laws existing or which can be reasonably anticipated as of the date of this Agreement, including but not limited to any construction requirements promulgated by Governmental Authorities, and specifically including the requirements of the Americans with Disabilities Act and the Occupational Safety and Health Act of 1970, all of which are incorporated into the Contract Documents (including any requirements for permits, licenses or governmental approvals of any kind). Subject to and as more specifically provided in Subsection 3.12 of the General Conditions, Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering and Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

§ 3.4.4.1 Historical lack of enforcement of any Law shall not constitute a waiver of Contractor's responsibility for compliance with such Law.

§ 3.4.5 Upon execution of the Agreement, the Contractor will be expected to place firm orders with vendors for needed product with the Owner's approval. If necessary to ensure timely delivery of such product, the Contractor,

with the prior approval of the Architect and the Owner, may accept delivery of such product at any time and may include the cost of such product in its next monthly Application for Payment, provided such product has actually been delivered to the Contractor and properly stored by it with approval or under the direction of the Architect and the Owner either at the site or in approved storage, the cost of which is included in the Contract Sum.

§ 3.4.5.1 If such product is stored off site, the Contractor shall provide adequate insurance coverage and furnish proof of title.

§ 3.4.5.2 The Contractor warrants that it has good title to all product used as part of the Work. No product or other supplies shall be purchased by the Contractor or any of his Subcontractors which are subject to a chattel mortgage, conditional sale, or other agreement by which an interest is retained by the seller.

§ 3.4.6 The Contractor shall ensure that no employee or applicant for employment is discriminated against because of race, color, religion, sex, gender, national origin, or any other protected characteristic, including (without limitation) in actions relating to: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The Contractor shall place this same requirement on those under his direction and control on the Project, including Subcontractors.

§ 3.4.7 The Contractor shall prepare and file all reports concerning non-discrimination as may be required under applicable Laws.

§ 3.4.8 The Contractor shall hold regularly scheduled coordination and safety meetings with Subcontractors.

§ 3.4.9 The Contractor, along with the Architect, shall report project status and discuss any problems at regularly scheduled construction meetings.

§ 3.4.10 Normal working hours shall be [REDACTED] Monday - Friday, subject to any schedule that may be established by Owner and to any applicable Laws. All Work shall be scheduled for these hours. Except where Work outside the normal working hours is required by the Contract Documents, Contractor shall be liable for all changes resulting from such Work, including but not limited to additional security and maintenance.

### § 3.5 Warranty

§ 3.5.1 The Contractor warrants to the Owner and Architect for a period of 1-year from Final Acceptance, that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 The warranty shall include all parts and labor and other replacement costs, both on and off site, together with all necessary transportation and shipping charges. The foregoing one-year warranty by Contractor shall not reduce the warranty period under any warranty provided by subcontractors and material suppliers. In the event any product warranty runs to the benefit of the ultimate user of the product in question, Owner shall reasonably cooperate with Contractor to provide Contractor access to such warranty protection for the purposes of satisfying Contractor's warranty obligations hereunder. However, Contractor acknowledges that it bears primary responsibility to Owner for the one-year warranty period and for ensuring that the Work conforms to the requirements of the Contract Documents.

§ 3.5.3 Contractor shall, at its expense (including, without limitation, payment of all in-and-out-costs, and similar charges) remedy all deficiencies appearing within the warranty period and, at its option, repair or replace all defective work as required to accomplish this. All such repair and/or replacement work shall be warranted for one year following the date such repair and/or replacement was completed and accepted by Owner. If the Contractor fails to remedy such deficiencies within a reasonable time after written notice from Owner, the Owner may cause such remedies to be performed and charge the expense thereof to the Contractor.

§ 3.5.4 All required maintenance of Work shall be the Contractor's responsibility until Final Completion, all material maintenance and user's manuals have been turned over to the Owner, and until the Owner's designated personnel have been instructed in the maintenance and operation of all applicable product. This maintenance shall include a complete turnover procedure at the time of Final Completion, including reasonable cleaning, testing and adjustment and at a meeting called by Contractor to explain such procedures and related matters to Owner.

§ 3.5.5 If, at the end of Contractor's one-year warranty period, any manufacturer or vendor warranty remains in effect that do not, by their terms, run to the benefit of the ultimate user of the product in question, then Contractor shall assign such warranty to Owner. When securing any such warranties, Contractor shall ensure they are assignable without any charge to Owner, without additional consent from the applicable manufacturer or vendor, and without limiting the coverage provided by such warranty.

§ 3.5.6 Owner originated service calls which are demonstrated as not covered by warranty will be compensated at the Contractor's direct costs for materials and labor plus any agreed allowance for overhead and profit, provided they are approved in writing after submission of a detailed not-to-exceed estimate and schedule. The Owner will designate persons authorized to request service and will not compensate the Contractor for unauthorized calls.

§ 3.5.7 The warranties provided by this Section are not limited by the remedy provisions of Article 12.

### § 3.6 Taxes

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

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

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as any and all 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 applicable to performance of the Work.

§ 3.7.3 The Contractor shall review the Contract Documents for compliance with applicable Laws. If the Contractor observes that any of the Contract Documents are at variance therewith in any respect, it shall promptly notify the Architect and Owner in writing, and any necessary changes shall be accomplished by appropriate Modification and no portion of the Work shall be commenced until the changes are accomplished, unless the Owner otherwise directs, provided; however, that Contractor is required to continue with work not affected by the modification. Subject to and as more specifically provided in Subsection 3.12 of the General Conditions, Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering and Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents. If the Contractor performs Work contrary to applicable Laws, and without such notice to the Architect and the Owner and direction from Owner to proceed, the Contractor shall assume full responsibility therefor and shall bear all costs attributable thereto and penalties, if any.

### § 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, Tectonic and the Architect before conditions are disturbed and in no event later than 5 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified,

the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

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

### § 3.8 Allowances

§ 3.8.1 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 allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order.

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

### § 3.9 Superintendent

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

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

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

### § 3.10 Contractor's Construction and Submittal Schedules

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

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

Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

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

§ 3.10.4 The Contractor will schedule and otherwise perform its Work as required so as not to interrupt or disturb the activities of the Owner or other contractors employed at the site conducted within or about the Owner's buildings and lands adjacent to the site. The following are, without limitation, examples of prohibited interruptions and disturbances: creating noxious or offensive odors; causing blockage of vehicular or pedestrian traffic by the Contractor's personnel, equipment, vehicles, debris or materials; causing loud noises near occupied areas; and causing interruption of utilities or services essential to the Owner's activities.

§ 3.10.5 All expenses for overtime or premium costs for product or shipping necessary for adherence to the Project Schedule shall be the responsibility of the Contractor, who shall notify the Owner immediately of any delays that might affect the Project Schedule; unless Contractor is entitled to an extension of the Contract Time in accordance with the terms of the Agreement or these General Conditions, in which case Owner shall have the right to elect to pay expenses for overtime or premium costs in lieu of granting an extension of the Contract Time.

§ 3.10.6 The Contractor shall take minutes of all job coordination and other Project meetings highlighting action items and responsibilities and shall distribute copies to all attendees and to absentees to ensure the receipt of the minutes within five (5) days after the date of the meeting.

### § 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### § 3.12 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. All Shop Drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the Shop Drawing is prepared and, if required by the Contract Documents or by applicable law, by a licensed engineer.

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

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

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

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

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

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

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

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

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

### § 3.13 Use of Site

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable Laws and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 Security of all product or tools wherever stored or installed shall be the responsibility of the Contractor, who shall provide such temporary locks, gang boxes, and other security devices as it may deem necessary for the security of such items and other goods and those of its Subcontractors. All such security arrangements are subject to the advance approval of the Owner's Representative. Where exterior storage is authorized, the Contractor shall be solely responsible for suitable protection of the stored goods. Both location and design of such facilities are subject



to the approval of the Owner's Representative in advance. Such facilities shall be kept clean and orderly at all times.

**§ 3.13.3** Security of all product or tools wherever stored or installed shall be the responsibility of the Contractor, who shall provide such temporary locks, gang boxes, and other security devices as it may deem necessary for the security of such items and other goods and those of its Subcontractors. All such security arrangements are subject to the advance approval of the Owner's Representative. Where exterior storage is authorized, the Contractor shall be solely responsible for suitable protection of the stored goods. Both location and design of such facilities are subject to the approval of the Owner's Representative in advance. Such facilities shall be kept clean and orderly at all times.

### **§ 3.14 Cutting and Patching**

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

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

### **§ 3.15 Cleaning Up**

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

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

### **§ 3.16 Access to Work**

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

### **§ 3.17 Royalties, Patents and Copyrights**

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

### **§ 3.18 Indemnification**

**§ 3.18.1** To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the Owner, the United States Military Academy, and their respective managers, members, partners, officers, directors, agents, employees and representatives (collectively, "Indemnitees" and individually, each an "Indemnitee") from and against all liabilities, claims, damages, losses, and expenses, including but not limited to reasonable attorneys' fees (whether incurred as the result of a third party claim or a claim by an Indemnitee), arising out of or resulting from Contractor's performance or failure to perform the Work or this Agreement to the extent that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease, death, loss of use, economic injury or destruction of property (including, but not limited to, the Project), and (2) is caused by or arises from, in whole or in part, any act, error, omission or willful misconduct of Contractor, anyone directly or indirectly employed by Contractor, or anyone for whose acts or omissions Contractor may be liable. For the avoidance of doubt, nothing herein shall require Contractor to indemnify an Indemnitee to the extent the liability, claim, damage, loss or expense

is caused by the negligence of the Indemnitee and indemnification of such Indemnitee is precluded by applicable Laws.

**§ 3.18.2** In any and all claims against the Owner, any of its agents or employees or any Indemnitee by any employee of the Contractor, a Subcontractor, a Sub-subcontractor at any tier, anyone directly or indirectly employed or retained by any of them or anyone for whose acts any of them may be liable, the Contractor's indemnification obligations under Section 3.18.1 or the Contract Documents shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor, the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 General**

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

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

### **§ 4.2 Administration of the Contract**

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

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

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

### **§ 4.2.4 Communications Facilitating Contract Administration**

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

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

**§ 4.2.6** The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to

exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

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

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

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

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

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

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

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

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

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

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

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

§ 5.2.1 Except for those Subcontractors previously approved in writing by Owner, Contractor will use only its employees for the Work. Contractor will not utilize any Subcontractor in performing any portion of the Work unless and until the Owner gives its specific prior written approval. As between Owner and Contractor, Contractor shall be legally obligated to prosecute and perform the Work notwithstanding that the Contract Documents may permit performance by a Subcontractor. Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

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

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

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

## § 5.3 Subcontractual Relations

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

§ 5.3.2 Any part of the Work performed for the Contractor by a Subcontractor shall be pursuant to a written subcontract between the Contractor and such Subcontractor. Each such subcontract shall contain provisions requiring:

- .1 maintenance of insurance in accordance with the requirements of the Contract Documents;
- .2 execution of conditional lien waivers acceptable to Owner as a condition of payment by the Contractor and unconditional lien waivers upon receipt of payment from the Contractor, and
- .3 compliance with all other relevant provisions of the Contract Documents.

The Subcontractor shall not be a third-party beneficiary of this Agreement. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with its Sub-Subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the Subcontract, copies of the Contract Documents to which the Subcontractor will be bound by this Section 5.3, and identify to the Subcontractor any

terms and conditions of the proposed Subcontract which may be at variance with the Contract Documents. Each Subcontractor shall similarly make copies of such Documents available to its 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; 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, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

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

#### **§ 5.5. Payment to Subcontractors by the Contractor**

**§ 5.5.1** The Contractor shall pay each Subcontractor in accordance with the applicable subcontract and in no event later than is required by applicable Laws. Contractor shall pay Subcontractors an amount equal to the percentage of completion allowed to the Contractor on account of such Subcontractors' work, less the percentage retained from payments to the Contractor and amounts withheld for uncompleted Punch List items. Contractor shall also require each Subcontractor to make payments to its Sub-subcontractors on no less favorable terms. Notwithstanding any other provision of the Contract Documents, however, Owner shall not be required to pay Contractor any amount for any Subcontractor to the extent such Subcontractor has not delivered any required lien waiver (in form and substance satisfactory to Owner) or to the extent Contractor is withholding payment for such Subcontractor. Upon removal of such impediments, Owner shall promptly pay Contractor the amount that would have otherwise been paid if such impediment had not existed.

#### **§ 5.6 Payments to Subcontractors by the Owner.**

**§ 5.6.1** In the event the Contractor fails to discharge or bond off any lien placed upon the Work within thirty (30) days after its filing, the Owner shall have the right to bond off the lien. So long as Owner has not wrongfully withheld payments attributable to the Work for which the lien has been filed in breach of this Agreement, any costs incurred by the Owner in bonding such lien shall be credited against amounts due Contractor or repaid by the Contractor in the manner set forth in Section 2.4 if insufficient credit exists.

**§ 5.6.2** The Owner shall have no obligation to pay, or to see to the payment of, any monies to any Subcontractor. Nothing contained in Sections 5.5 or 5.6 shall be deemed to create any contractual relationship between Owner and any Subcontractor or Sub-subcontractor.

### **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

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

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

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

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

## § 6.2 Mutual Responsibility

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

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

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

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

## § 6.3 Owner's Right to Clean Up

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

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 General

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents. The Contractor shall, acting in accordance with the Performance Expectations, minimize the impact of additive change order proposals.

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

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

### § 7.2 Change Orders

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

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

### § 7.3 Construction Change Directives

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

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

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

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .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 7.3.4.

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

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

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

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

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

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

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

reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

#### **§ 7.4 Minor Changes in the Work**

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

### **ARTICLE 8 TIME**

#### **§ 8.1 Definitions**

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

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

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

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

#### **§ 8.2 Progress and Completion**

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

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

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

#### **§ 8.3 Delays and Extensions of Time**

**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine, provided, however, that an extension of the Contract Time will only be permitted if (i) Contractor would not have otherwise been delayed as a result of its own acts or omissions, (ii) the delay could not have reasonably been anticipated by the Contractor, and (iii) the Contractor took all reasonable steps to mitigate the impact of such delay.

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

**§ 8.3.3** Contractor shall not be entitled to any damages for any delay in its Work arising, in whole or in part, from any act or omission of Owner, the Architect or their respective employees, agents, representatives or Separate Contractors, or anyone under the direction or control of the foregoing, except to the extent the Owner, the Architect or their respective employees, agents, representatives or Separate Contractors, or anyone under the direction or control of the foregoing, acts in an unreasonable or dilatory fashion. Notwithstanding the foregoing, if Contractor is



entitled to an extension of time under Section 8.3.1 above, then Contractor shall be entitled to an equitable increase in the Contract Sum if any delay contemplated in Section 8.3.1 gives rise to additional Project-related costs. However, the Contractor waives any claim for lost profits or extended home office overhead on account of any such delay.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 Contract Sum**

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

### **§ 9.2 Schedule of Values**

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

### **§ 9.3 Applications for Payment**

**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

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

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

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

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

**§ 9.3.4** Each Application for Payment shall be accompanied by duly executed unconditional waivers of liens from Contractor and each Subcontractor for any amounts included in the previous month's Application for Payment and duly executed conditional waivers of liens from Contractor and each Subcontractor for any amounts included in the current Application for Payment. All such waivers shall be in the form attached to the Agreement as an exhibit.

## **§ 9.4 Certificates for Payment**

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

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

## **§ 9.5 Decisions to Withhold Certification**

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

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

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

## **§ 9.6 Progress Payments**

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

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

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

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

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

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

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

## **§ 9.8 Substantial Completion**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when (i) the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work (or a designated portion thereof) for its intended use (ii) all remaining Punch List items can reasonably and ordinarily be expected to be completed within thirty (30) days and (iii) all necessary governmental approvals of the Work including, without limitation, a Temporary Certificate of Occupancy (having terms acceptable to the Owner in its sole discretion) have been received.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect and Owner a comprehensive list of items to be completed or corrected prior to final payment (as modified in accordance with Section 9.8.3 below, the "Punch List"). Failure to include an item on such Punch List does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

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

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Final 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 the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of 4% of the retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

### § 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 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

### § 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner and Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, (6) final prints for record drawing use, marked by Contractor with record information as set forth in the Contract Documents, together with other pertinent job records, certificates, and operation and instruction manuals, (7) final conditional lien waivers from all Subcontractors and from Contractor in the form attached to the Agreement, and (8) 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 together with interest thereon at Owner's primary cost of borrowing.

§ 9.10.2.1 In addition to the requirements set forth in Section 9.10.2 above, recommendation for final payment shall not be issued by the Architect until the following have occurred: (a) acceptance of the Work by the Owner as fully performed under the terms of the Contract Documents; and (b) all Punch List items have been satisfactorily completed.

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

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 defects in the Work which could not be determined at the time of Substantial Completion or Final Completion.

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

§ 9.10.6 Within ten (10) days after receipt of final payment from Owner, Contractor shall provide to Owner, from itself and each Subcontractor, unconditional final lien waivers reflecting full and final payments for the Work. Such lien waivers shall be in the form attached to the Agreement. This obligation shall survive the making of final payment and other expiration or termination of the Agreement.

## 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.

### § 10.2 Safety of Persons and Property

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

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

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable Laws bearing on safety of persons or property or their protection from damage, injury, or loss.

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

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

§ 10.2.5 The Contractor shall promptly remedy damage and loss to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either

of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

**§ 10.2.5.1** If Contractor fails to take corrective action within seven (7) days of notice from the Architect or Owner of any unsafe condition or deficiency in the Work, or any failure to meet the obligations of Subsections 10.1.1 through 10.2.5, the Owner may take all necessary corrective action at Contractor's expense.

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

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

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

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 5 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

**§ 10.2.9** Contractor recognizes that certain Laws may impose liability upon the Owner without fault on its part for injuries to Contractor's or Subcontractor's employees. As between Contractor, Owner and Architect, Contractor agrees that it has the responsibility of providing a safe place to work. To the fullest extent permitted by Law, however, Contractor shall hold harmless, defend and indemnify Owner and Architect from any liability for damages arising from the Contractor's failure to provide a safe place to work or to comply with applicable Laws.

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

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

**§ 10.2.12** The Contractor shall provide and maintain in good operating condition suitable and adequate fire protection equipment and services, and shall comply with all reasonable recommendations regarding fire protection made by the representatives of the fire insurance company carrying insurance on the Work or by the local fire chief or fire marshal. The area within the site shall be kept orderly and clean, and all combustible rubbish shall be promptly removed from the site. The Contractor, in connection with its performance of the Work or otherwise, shall not interfere in any manner with the operation of any business adjacent to the site including, without implied limitation, any interference with traffic, access and egress, parking and cleanliness. Contractor shall protect adjoining private or municipal property from any adverse impact related to the Work and shall provide barricades and temporary fences, required to protect the safety of passersby, as required by prudent construction practices, applicable Laws, or the Contract Documents.

**§ 10.2.13** The Contractor shall remove snow or ice which might result in damage or delay related to the Work.

**§ 10.2.14** The Contractor shall take all reasonable and prudent precautions necessary to prevent loss or damage to the Project or the property of the Owner caused by vandalism, theft, burglary, pilferage, or unexplained disappearance of property of the Owner located within those areas of the Project to which the Contractor has accessed, affected or control over. The Contractor shall have full responsibility for the security of such property of the Owner and maintaining the function of existing security measures associated with or located in such areas and shall reimburse the Owner for any such loss, damage or injury caused by the Contractor's failure to do so, negligence and/or willful misconduct of its employees, Subcontractors and Sub-subcontractors, except such as may be directly caused by agents or employees of the Owner. This provision is not intended to reinstate subrogation which shall be waived under the Contractors and Sub-contractors insurances and the Owners Protective Liability insurance of the Owner.

§ 10.2.15 The Contractor shall furnish the Owner and the Architect, in writing, the names, addresses and telephone numbers of the appropriate members of the Contractor's organization, directly involved in the project and as agreed to by the Owner, to be called in the event of an out-of-hours emergency at the site.

§ 10.2.16 Contractor shall take all necessary steps, at Contractor's sole cost and expense, to minimize, contain and remove all dust, debris and related items so that such items do not adversely affect the residential and commercial nature of the area surrounding the Project or conflict with any Laws. In connection with determining what is required under this Subsection 10.2.16, Owner shall have the authority (but not the obligation) to determine what is required to be undertaken by Contractor in the nature of protective measures and Contractor shall provide, in accordance with this Subsection 10.2.16, all such protective measures so required.

### § 10.3 Hazardous Materials and Substances

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

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately.

§ 10.3.3 Not Used.

§ 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.

### § 10.4 Emergencies

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

## ARTICLE 11 INSURANCE AND BONDS

### § 11.1 Contractor's Insurance and Bonds

**§ 11.1.1** The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

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

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

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

**§ 11.1.4** The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, USMA, Tectonic, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's acts or omissions during the Contractor's completed operations.

## **§ 11.2 Owner's LIABILITY Insurance**

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

## **§ 11.3 PROPERTY INSURANCE**

**11.3.1** The Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire



Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, USMA, Architect, Tectonic, the Contractor, Subcontractors and Sub-subcontractors in the Project.

11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's and Contractor's services and expenses required as a result of such insured loss

11.3.1.2 This property insurance shall cover portions of the Work stored off site and portions of the Work in transit.

NOT USED

#### 11.3.2 LOSS OF USE INSURANCE

The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused.

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

#### 11.3.5 WAIVER OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

11.3.6 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any ap mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity; shall require Subcontractors to make payments to their Sub-subcontractors in similar manner. The Contractor shall be responsible for any deductibles or self-insured retentions of the Owner's insurance policies.

11.3.7 The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

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

#### 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 as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

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.

### ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

#### § 12.1 Uncovering of Work

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

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

#### § 12.2 Correction of Work

##### § 12.2.1 Before Substantial Completion

The Contractor shall promptly correct Work rejected by the Architect 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. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's and Tectonics' services and expenses made necessary thereby, shall be at the Contractor's expense.

##### § 12.2.2 After Substantial Completion

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Final Acceptance of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

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

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

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

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

### § 12.3 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 affected 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 place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### § 13.2 Successors and Assigns

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

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

### § 13.3 Rights and Remedies

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

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

### § 13.4 Tests and Inspections

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

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection,

or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect and Tectonic of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

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

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

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

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

§ 13.5 NOT USED.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Owner for Cause

§ 14.1.1 The Owner may terminate the Contract if the Contractor

- .1 refuses or fails to supply enough properly skilled workers or proper materials.
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 disregards applicable Laws; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.1.2 When any of the above reasons exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' 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.

§ 14.1.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.1.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

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

### § 14.2 Suspension by the Owner for Convenience

§ 14.2.1 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.

§ 14.2.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.2.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

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

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

### § 14.3 Termination by the Owner for Convenience

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

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

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

§ 14.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work properly executed, and costs incurred by reason of such termination, through the date of such termination including reasonable overhead and profit on the Work performed.

## 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. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

#### § 15.1.2 NOT USED

#### § 15.1.3 Notice of Claims

§ 15.1.3.1 Claims by either the Owner or Contractor must be made by written notice. Claims by either party must be made within thirty (30) days after occurrence of the event giving rise to such Claim or within thirty (30) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims not made in the manner described above will be waived.

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

#### § 15.1.4 Continuing Contract Performance

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

#### § 15.1.5 Claims for Additional Cost

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

§ 15.1.5.1 Owner reserves the right to set off against any claims by Contractor any counterclaims or corresponding claims which Owner may have against Contractor.

§15.1.5.2 All written claims for damage or extra Work shall include time of occurrence, location, and other identifying factors and shall be supported by letters, journals or diaries, instructions, vouchers, signed time and material slips or other pertinent and applicable records.

**§ 15.1.6 Claims for Additional Time**

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

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

**§ 15.2 Initial Decision**

**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

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

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties Tectonic and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.