



Board Agenda Item #	Agenda II B – Action Item
Date:	October 23, 2017
To:	Magnolia Board of Directors
From:	Caprice Young, Ed.D., CEO & Superintendent
Staff Lead:	Erdinc Acar, Regional Director
RE:	Bid Award for MSA-SA Gym Project General Contractor

**Proposed Board Recommendation**

I move that the board authorizes Caprice Young, CEO & Superintendent to award **TBD** as the General Contractor for MSA Santa-Ana Phase II Gymnasium and Cafeteria construction project.

**PHASE I BACKGROUND**

Since 2010 MPS has been working a long term signature school facility for the Santa Ana school. As part of Charter School Facilities Program **Proposition 1D program**, a government program whereby the State of California sells bonds that are used to fund school construction for public (charter and non-charter) schools, MPS was awarded bonds totaling \$17.4 million in June 2015 (received May 2016). Half of the state bonds came to MPS as an outright grant, and MSA Santa Ana pays the other half back over 30 years at an extremely low interest rate of 3 percent. General Information on the State of California's Charter School Facilities Proposition 1D Program can be found at <http://www.dgs.ca.gov/opsc/Programs/charterschoolfacilitiesprogram.aspx>

**Phase I** Construction (instructional building and grounds) managed by **NEFF Construction, Inc.**, as the official construction management firm for the project. **RC Construction Services** served as the General Contractor for Phase 1 construction. **Berliner Architect** designed the original plans including Phase 1 and II scopes.

With Prop 1D funding, MSA-SA built designed and built a two-story facility totaling 48,353 square feet with 33 classrooms on a lot of 2.68 Acres at 2840 W 1st Street in the City of Santa

Ana in Orange County. Original site plans also included a 6,509 square foot gym with cafeteria, shade structures and a playground. Because Prop 1D funds were not enough to cover these Phase II projects, they were scheduled to be completed later paid for by private financing.

## **CURRENT SCOPE – PHASE II**

**Phase II** (current) construction revised scope includes construction of the **gymnasium building**, connecting utilities for the pull boxes already existing at the site as shown in the drawings and portion of site work including cafeteria area playground area and equipment as shown in drawings/specifications. The gymnasium building is a 6,509 sqft, Type VA (Protected Wood Frame), fully sprinklered building with automatic fire alarm system. It is a CMU (Concrete Masonry Unit) building with steel and metal deck roof structure and metal stud framing.

Phase II construction is funded through 2017A Series private bond financing. Construction project soft and hard costs are budgeted as \$3,859,379.70. Please see **attachment for the board approved and most recently updated budget**.

The drawings and specifications including the general conditions are already approved by **California Division of State Architect (DSA)** -providing design and construction oversight for K-12 schools, community colleges, and various other state-owned and leased facilities. Portion of the DSA approved buildings and site is already built. The area built is already updated with DSA by the Inspection of Records (IOR) and the A-E consultants. The site has existing functional school building with finished site work, parking, fire lane, landscaping and utilities.

## **CURRENT PROJECT STATUS**

The project is currently open (approved for a specific period of time) with the California Division of Architect (Application Number 04-112861 and File Number 30-25.) The project needs to **resume construction by Oct 31, 2017** in order not to lose the status with DSA.

**On April 11, 2017, Berliner Architects** were awarded the re-bid to resume architecture services per the schedule and scope as suggested and planned by NEFF, Phase I Construction Management Services (Contract Attached.)

**On August 8, 2017**, Magnolia Educational and Research Foundation selected **GAFCON Construction Management (CM)** firm to carry out the construction management services for

the second phase of the project (contract attached.) The scope of GAFCON work includes general tasks such as working with Magnolia Public Schools staff, architects, consultants, general contractors, sub-contractors and all other required agencies, tasks during the bid/award construction management phase, construction management phase and contract close-out phase. **Mike Langel, Senior Construction Manager, GAFCON** is the assigned project manager. Mike has been a design and construction project manager for the past 27 years and has a broad-base of project management experience in educational facilities and public work projects. He has also delivered several successful gymnasium projects. Weekly construction meetings have been held at MSA-SA between Magnolia staff, Architect and CM.

**On October 4, 2017** Magnolia Educational and Research Foundation asked responses for DSA Inspector of Record Services (IOR) and Special Testing and Inspection services.

**On October 12, 2017**, Magnolia board approved scope changes to exclude shade structures, cafeteria tables, and VCT floors from the project.

**GENERAL CONTRACTOR AWARD**

**On October 6**, Magnolia Educational and Research Foundation posted RFP for the Gym, play area and equipment project. Bid docs can be located at [https://order.e-arc.com/arcEOC/Pwell\\_Project\\_Main.asp?show=yes&SessionFlag=Y&pub=29-11-15761](https://order.e-arc.com/arcEOC/Pwell_Project_Main.asp?show=yes&SessionFlag=Y&pub=29-11-15761) Bids are due October 23 at 2:00 pm. These bid documents include a contract pre-approved by our attorney, Hal Block, and our banker’s representative.

Five general contractors attended the mandatory pre-bid conference and job walk on October 11, 2017. Bid responses were opened and reviewed by GAFCON Construction Management Services and Magnolia Staff. The following bids were received from prequalified bidders on the project:

<b>Organization</b>	<b>Bid</b>
R.J Daum Construction	X
RC Construction	X
Enviser/Southland	X
Oltmans	X
Thompson Engineering	X

GAFCON Construction Management Services, serving as the official construction management firm for the project, has reviewed the low bidders bid for responsiveness and on that basis has forwarded the attached recommendation to award the project to [REDACTED]

Staff concurs with this recommendation and asks the Board to award a contract to [REDACTED] in the amount shown above. Magnolia's legal counsel also reviewed the bid award.

### **Project Information**

**Project Lead:** Magnolia Educational and Research Foundation

**Project:** Magnolia Science Academy Santa Ana Gym, Cafeteria, Play area and Equipment

**Location:** 2840 W First Street, Santa Ana, CA

**Construction Manager:** GAFCON Construction Management

**Architect:** Berliner and Associates

### **Project Financials**

Project Finance: 2017 Series A Bond Financing

Total Project Budget: \$3,859,380

### **Profiles of the bidders:**

**To be included on Monday**

### **Budget Implications**

Attached are relevant project budget documents. Total project budget is \$3,859,380 which include earlier incurred architectural and other preparation expenses enumerated and a 5% project hard construction cost contingency. Magnolia will use the 2017 Series A bond proceeds to repay the construction cost.

### **Funding Source**

2017 Series Bonds

### **How Does This Action Relate/Affect/Benefit All MSAs?**

2017 Series Bonds are used to fund other ongoing construction projects at MSA-1 and MSA-SD.

**Name of Staff Originator:** Erdinc Acar, Regional Director

**Attachments**

1. MSA-SA Gym Construction Project Description and General Contractor Award
2. Lowest high quality response to bid **(To be included on Monday)\***
3. BID documents And Addendums

\*Bids are due on Monday, October 23, 2017 at noon. The evaluation team and attorney are meeting to review bids and select an awardee Monday afternoon prior to the board meeting and will present their findings and recommendation to the board.



**MAGNOLIA PUBLIC SCHOOLS  
MAGNOLIA SCIENCE ACADEMY-SANTA ANA  
GYM, CAFETERIA AND PLAY AREA**

**PROJECT DESCRIPTION &  
GENERAL CONTRACTOR AWARD**

Monday, October 23, 2017  
Erdinc Acar, Regional Director

## A- PROJECT SUMMARY

### BACKGROUND

Since 2010 MPS has been working a long term signature school facility for the Santa Ana school. As part of Charter School Facilities Program **Proposition 1D program** - a government program whereby the State of California sells bonds that are used to fund school construction for charter schools, MPS was awarded bonds totaling \$17.4 million. The state's half of the money comes to MPS as an outright grant and half of the money needs to be paid back over 30 years at an extremely low interest rate of %3. General Information on the State of California's Charter School Facilities Proposition 1D Program can be found at

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Bids are due October 23 at 2:00 pm.

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Organization	Bid
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RC Construction	X
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Thompson Engineering	X





# B- PROJECT SCHEDULE (AS OF OCT 6, 2017)

Magnolia Public Schools  
**Magnolia Science Academy - Gymnasium Project**  
 Project Schedule

ID	Task Name	BIC	% Complete	Duration	Start	Finish	4th Quarter	1st Quarter	2nd Quarter	3rd Quarter	Aug	Sep
1	<b>MSP GYMNASIUM PROJECT</b>		<b>31%</b>	<b>254 days</b>	<b>Tue 9/12/17</b>	<b>Fri 8/31/18</b>						
2	<b>BID AWARD PHASE</b>		<b>76%</b>	<b>36 days</b>	<b>Tue 9/12/17</b>	<b>Tue 10/31/17</b>						
3	Project Kick Off Meeting #01	Team	100%	0 days	Tue 9/12/17	Tue 9/12/17						
4	Out Reach to General Contractors	Gafcon	100%	7 days	Thu 9/14/17	Fri 9/22/17						
5	Advertisement for Bids	Gafcon	100%	10 days	Mon 9/18/17	Fri 9/29/17						
6	Prepare Pre-Construction Cost Estimate	Gafcon	100%	8 days	Mon 9/18/17	Wed 9/27/17						
7	Complete Contract Documents	Berliner	100%	11 days	Wed 9/13/17	Wed 9/27/17						
8	Printing of Bid Documents	Gafcon	100%	2 days	Thu 9/28/17	Fri 9/29/17						
9	Distribute Bid Documents to Contractors	Gafcon	50%	6 days	Mon 10/2/17	Mon 10/9/17						
10	Mandatory Pre-Bid Site Walk	Gafcon	0%	0 days	Tue 10/10/17	Tue 10/10/17						
11	Prepare and Issue Addendum	Berliner	0%	3 days	Wed 10/11/17	Fri 10/13/17						
12	<b>Bid Opening</b>	Team	0%	0 days	Mon 10/23/17	Mon 10/23/17						
13	Bid Evaluation	Gafcon	0%	1 day	Tue 10/24/17	Tue 10/24/17						
14	Prepare GC Contract Agreement	Owner	0%	2 days	Wed 10/25/17	Thu 10/26/17						
15	Board Meeting to Award Project	Owner	0%	1 day	Thu 10/26/17	Thu 10/26/17						
16	NTP issued to General Contractor	Gafcon	0%	1 day	Fri 10/27/17	Fri 10/27/17						
17	IOR to Submit Forms to DSA	IOR	0%	2 days	Mon 10/30/17	Tue 10/31/17						
18												
19	<b>CONSTRUCTION PHASE</b>		<b>0%</b>	<b>195 days</b>	<b>Wed 11/1/17</b>	<b>Tue 7/31/18</b>						
20	GC Starts Site Mobilization	GC	0%	5 days	Mon 10/30/17	Fri 11/3/17						
21	GC Submits Bond & Insurance	GC	0%	3 days	Wed 11/1/17	Fri 11/3/17						
22	Construction Kick Off Meeting	Gafcon	0%	1 day	Tue 11/7/17	Tue 11/7/17						
23	Shop Drawing Submittal Process	GC	0%	13 days	Wed 11/1/17	Fri 11/17/17						
24	Develop Project Punchlist	Berliner	0%	1 day	Mon 7/2/18	Mon 7/2/18						
25	Contractor Complete Punchlist	GC	0%	14 days	Tue 7/3/18	Fri 7/20/18						
26	IT Set Up	Owner	0%	10 days	Mon 7/16/18	Fri 7/27/18						
27	Facilities Training	GC	0%	2 days	Mon 7/30/18	Tue 7/31/18						
28												
29	<b>Occupancy &amp; Project Closeout</b>		<b>0%</b>	<b>23 days</b>	<b>Wed 8/1/18</b>	<b>Fri 8/31/18</b>						
30	Over Move in & Set Up		0%	8 days	Wed 8/1/18	Fri 8/10/18						
31	Project Close Out		0%	23 days	Wed 8/1/18	Fri 8/31/18						

Legend:

- Green: Berliner
- Blue: Gafcon
- Red: Owner
- Purple: GC

Task Summary Legend:

- Project Summary: Blue bar
- Inactive Task: Dotted bar
- Inactive Milestone: Diamond
- Inactive Summary: Grey bar
- Manual Task: Teal bar
- Duration-only: White bar
- Manual Summary Rollup: Teal bar with outline
- Manual Summary: Grey bar with outline
- Start-only: Teal bar with left outline
- Finish-only: Teal bar with right outline
- External Task: Teal bar with outline
- External Milestone: Diamond
- Deadline: Green arrow
- Progress: Blue bar
- Manual Progress: Teal bar

Project: MSP Gymnasium Project  
 Date: Fri 10/6/17

# C- SITE PLANS

## PACIFIC TECHNOLOGY SCHOOL - SANTA ANA

### SITE PLAN

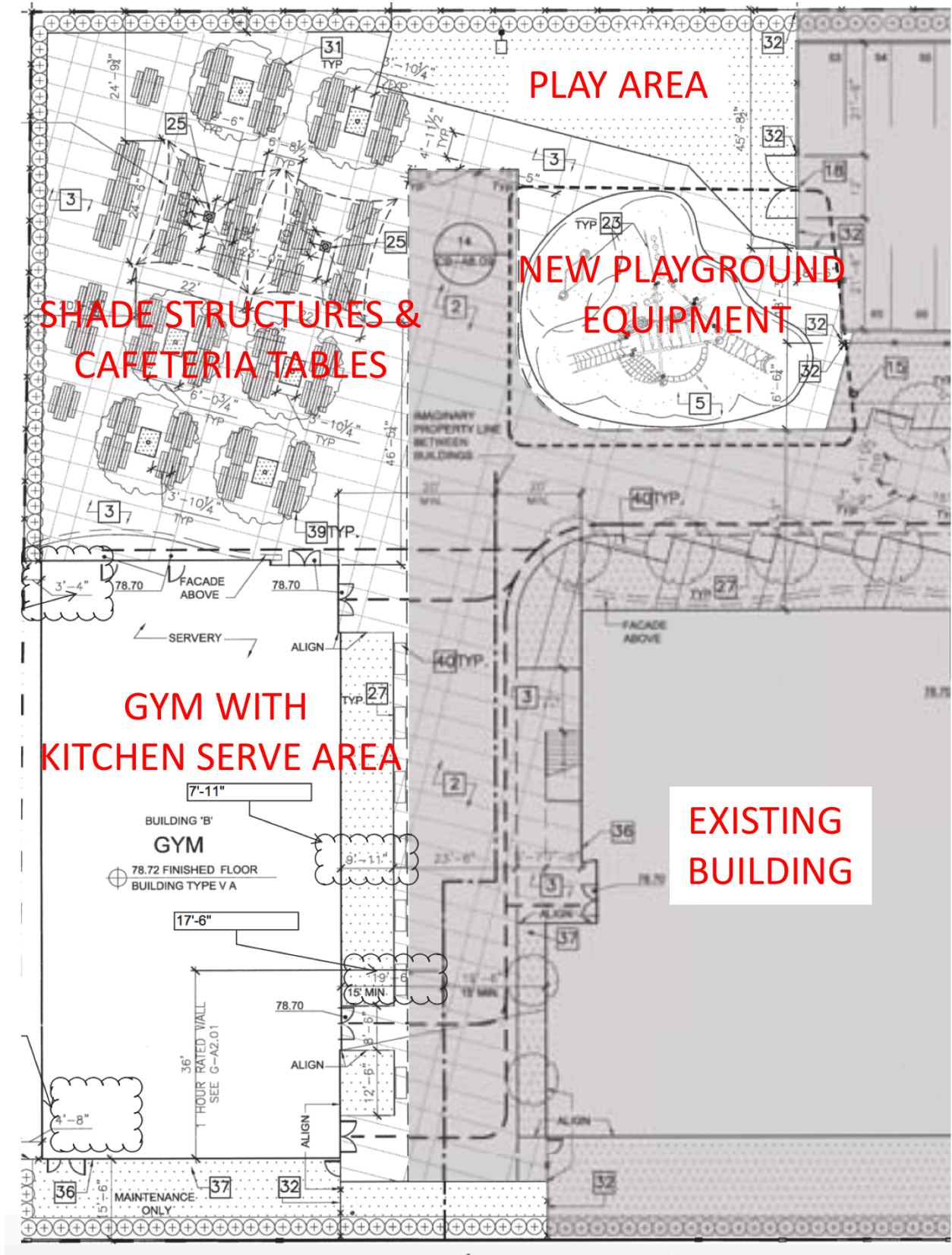
In 2012, Magnolia Public Schools chose Berliner and Associates Architecture (Berliner) to provide master planning and design services for Magnolia Public School's Pacific Technology School in Santa Ana, California.

The two-story, K-12 school will house 750 students in 34 classrooms. The design incorporates standard classrooms, lab classrooms, administration areas, and a gymnasium/multi-purpose room.



# D- PLANNED CHANGES MARKED IN THE CURRENT CONSTRUCTION PLANS

Planned construction is only non-gray colored areas.



E- BUDGET (8/10/17 Board approved and 10/19/17 updated)

**MSA - SANTA ANA GYM BUDGET (UPDATED 10/19/2017)**

Uses		\$			
Soft Costs	\$	559,379.70			
Hard Costs	\$	3,300,000.00			
Total Project Costs	\$	3,859,379.70			
<b>Site Development Budget (Board date: 8-10-17)</b>					
Use	Amount	Notes	10/19 UPDATE	Under/(Over)	Site Development Budget Update date: 10-19-17
Soft Costs					
Construction Management (Gatcon)	\$	203,500	\$ 203,500.00	\$ -	
Architect (Berliner)	\$	230,027	\$ 221,027.00	\$ 9,000	
Inspection Services	\$	40,000	\$ 150,000.00	\$ (110,000)	9 month project with special inspection and materials testing
LEGAL			\$ 10,000.00	\$ (10,000)	
Agency Fees	\$	35,000	\$ 15,000.00	\$ 20,000	DSA, District, City Fees (if applicable)
Subtotal Soft Cost	\$	508,527	\$ 599,527.00	\$ (91,000)	
Contingency @ 10%	\$	50,853	\$ -	\$ -	No contingency left - except agency fees
<b>Total Soft Cost</b>	<b>\$</b>	<b>559,380</b>	<b>\$ 599,527.00</b>	<b>\$ (40,147)</b>	Use Hard cost contingency and savings
Hard Costs					
Site Improvement:	\$	3,000,000	\$ 2,899,592.37	\$ 100,408	TBD Oct 23- Scope reduced to include FFE
Grading & Paving	included		included	included	
Utilities	included		included	included	
Landscaping	included		included	included	
Demolition and Grading	Included		Included	Included	
Testing	included		included	included	
FFE	\$	-	\$ 207,650.21	\$ (207,650)	Including FFE, cafeteria tables, Floor, Shade, LV improvements
Subtotal Hard Cost	\$	3,000,000	\$ 3,052,202.49		TBD (Oct 23, 2017)
Contingency	\$	300,000	\$ 152,610.12	\$ -	Contingency revised 5% per BID docs and agreement
<b>Total Hard Cost</b>	<b>\$</b>	<b>3,300,000</b>	<b>\$ 3,259,852.70</b>	<b>\$ -</b>	
<b>Total Soft and Hard Cost</b>	<b>\$</b>	<b>3,859,380</b>	<b>\$ 3,859,379.70</b>	<b>\$ -</b>	

## F- Furniture, Fixture and Equipment Budget

Total of **\$207,650.21** are estimated to cover Furniture, Fixture and Equipment including, cafeteria tables, gym floor, shade structures and, low voltage improvements.

Item	Quantity	Estimated Cost
Lockers for teachers	2	\$1,035.00
Side Basketball Hoops (installation not included)	4	\$13,800.00
Volleyball posts and nets (installation not included)	1	\$1,725.00
Wall Mats (installation not included)	120	\$9,660.00
Grill covers for light fixtures and thermostats	10	\$517.50
Meal Serving tables	2	\$644.00
Kitchen Shelving	4	\$506.00
Kitchen Warmer	4	\$506.00
Kitchen Refrigerator	1	\$2,530.00
Kitchen Freezer	1	\$1,321.35
Shades/canopy - to cover lunch area	1	\$6,900.00
Fencing cover-permanent-Grid woven into fence	1	\$2,300.00
Lunch tables	30	\$24,456.36
Lunch tables ADA	4	\$3,749.00
Floor Multi sport Athletic Surface , and striping	1	\$115,000.00
Security cameras	4	\$3,500.00
Cabling		\$5,000.00
PA system		\$2,500.00
HP Switches		\$12,000.00
	<b>Total</b>	<b>\$207,650.21</b>

Magnolia Science Academy  
Gym, Cafeteria and Playground Area Construction

**BID DOCUMENTS**

Magnolia Science Academy  
Gym, Cafeteria and Playground Area Construction

**NOTICE TO CONTRACTORS CALLING FOR BIDS**



## NOTICE TO CONTRACTORS CALLING FOR BIDS

**OWNER: MAGNOLIA EDUCATIONAL & RESEARCH FOUNDATION** of Orange County, California, (hereinafter "OWNER").

**Bid Deadline: 2:00 p.m. on Friday, the 20<sup>th</sup> day of October 2017**

NOTICE IS HEREBY GIVEN that the OWNER, acting by and through its Governing Board, will receive up to, but not later than the above-stated time, unless extended by addendum, sealed bids for the award of a contract for the Project.

**Project Identification Name: MAGNOLIA SCIENCE ACADEMY SANTA ANA – GYMNASIUM PROJECT**

**Contract Time:** is 195 days

CONTRACTOR should consult the General Conditions, Supplementary Conditions and General Requirements regarding Milestones and Liquidated damages.

**Bid Opening:** Bids shall be opened publicly and read aloud following the Bid Deadline stated above.

**Place of Bid Receipt and Opening:** Magnolia Public Schools 250 East 1<sup>st</sup> street Suite 1500, Los Angeles, CA 90012, (hereinafter, "OWNER OFFICE").

Prospective Bidders are encouraged to telephone in advance to determine the availability of Bid Documents. Bids must be submitted to the OWNER on the Contract Bid Forms, which are a part of the Bid Package for the Project. To obtain the project documents, please contact  
American Reprographics Company (ARC) Document Management  
934 Venice Boulevard, Los Angeles, CA 90015  
(213) 745-3145.

This Bid Package contains, among other important things, the Bid Form which MUST be used to submit a prime bid to the OWNER.

This project is subject to DIR Public Works Funding Legislation - SB 854. To bid on this Project, the CONTRACTOR and all of its lower-tier subcontractors are required to be registered online as a "Public Works Contractor" with the California Department of Industrial Relations at [www.dir.ca.gov/public-works/publicworks.html](http://www.dir.ca.gov/public-works/publicworks.html), and each shall pay an annual, non-refundable fee of \$300.00.

Consistent with Public Contract Code Section 20103.8 and Section 13 of the Information for Bidders form relating to the use of alternate bids, the lowest responsible Bidder for the Project shall be determined using the method indicated below. Please note that this method is used to calculate the bids and does not address issues of responsiveness or responsibility:

- The lowest bid shall be the lowest bid price on the base bid without consideration of the prices on the additive or deductive items.

Once the lowest responsible Bidder has been selected, the OWNER may determine to add to or deduct from the contract any of the additive or deductive items.

In accordance with the provisions of California Public Contract Code Section 3300, the OWNER requires that the Bidders possess the following classification of CONTRACTOR'S license at the time that the contract is awarded:

Category	License
30 - Multiple Trades	B

Subcontractors must possess the appropriate licenses for each specialty subcontracted. Failure to satisfy this requirement shall disqualify Bidder. The successful Bidder and its subcontractors must maintain the license throughout the duration of the contract and warranty period.

Prime CONTRACTORS bidding this Project shall require, pursuant to Public Contract Code Section 4108, the following subcontractors providing labor or labor and materials to supply an original signature on a fully executed 100% Faithful Performance Bond and 100% Payment Bond:

- |                  |                 |                     |
|------------------|-----------------|---------------------|
| Concrete         | Glass & Glazing | Masonry             |
| Structural Steel | HVAC            | Low Voltage Systems |
| Rough Carpentry  | Plumbing        | Fire Sprinkler      |
| Gypsum & Plaster | Electrical      |                     |

Each Bid shall be accompanied by a certified or cashier's check or bid bond executed by an admitted surety insurer, as defined in California Code of Civil Procedure Section 995.120, in an amount not less than ten percent (10%) of the total bid price, payable to the OWNER as a guarantee that the Bidder, if its proposal is accepted, shall promptly execute the Agreement, furnish a satisfactory Performance Bond in an amount not less than one hundred percent (100%) of the total bid price, furnish a Payment Bond in an amount not less than one hundred percent (100%) of the total bid price, and furnish certificates evidencing that the required insurance is in effect in the amounts set forth in the General Conditions. In the event the successful Bidder fails to enter into the contract and execute the required documents, such bid security will be forfeited. The Performance Bond shall remain in full force and effect through the guarantee period as specified in the General Conditions.

The OWNER reserves the right to extend the bid closing date, reject any or all bids or to waive any irregularities or informalities in any bids or in the bidding.

Each Bidder agrees that if its bid is accepted, it shall comply with all applicable provisions of: (1) the California Labor Code (2) the DIR'S CMU and (3) SBX2-9.

No Bidder may withdraw any bid for a period of one hundred and twenty (120) days after the date set for the opening of bids, but in no event shall the Bidder be required to keep its bid open beyond sixty (60) days after the date of the award. The OWNER may not hold the security of Bidder longer than sixty (60) days from the time the award is made. In the event the OWNER should request an extension of the above-stated deadline, such extension shall also include the extension of the duration of the bid security.

**JOB WALK AND PRE-BID CONFERENCE:** A pre-bid conference will be held at the site for attendance by any interested Bidder with representatives of the OWNER, ARCHITECT and CONSTRUCTION MANAGER. **A mandatory pre-bid conference and job walk will commence at 10:00 a.m. on Tuesday, October 10, 2017. All attendees shall meet at Magnolia Science Academy Santa Ana jobsite, 2840 West First Street, Santa Ana, CA 92703. At the main entrance to the school.**

employee shall then either: (a) prepare a separate tabulation of each bid, to include only the assigned number and amounts of the base bid and all alternate bids, or (b) photocopy the page(s) of each Bid Form containing the base bid and alternate bid amounts, which page(s) shall not contain the name of the Bidder. The designated employee will then replace each original Bid Form back into the bid envelope. The complete Bid Forms shall remain in the custody of the designated employee until the OWNER determines the low apparent Bidder based upon each Bidder's base bid and alternate bid amounts. All bid protests received prior to notification of the low apparent Bidder will be required to be in writing and delivered to the attention of the designated employee who shall retain the bid protests until the low apparent Bidder has been determined. Upon the selection of the low apparent Bidder, such determination shall be reduced to writing and retained by the OWNER, and the designated employee shall thereafter deliver the bid envelopes containing the original Bid Forms, and any bid protests received, to the \_\_\_\_\_ or his/her designee. After the assigned numbers have been matched with the names of the Bidders and the Bid Forms and any bid protests have been reviewed, the Bidders who submitted bids shall be notified of the low apparent Bidder either by telephone, fax or mail. Any bid protests submitted after the low apparent Bidder has been announced must be directed to the attention of the \_\_\_\_\_.

Once the lowest responsible Bidder has been selected, the OWNER may determine to add to or deduct from the contract any of the additive or deductive items.

In accordance with the provisions of California Public Contract Code Section 3300, the OWNER requires that the Bidders possess the following classification of CONTRACTOR'S license at the time that the contract is awarded:

Category	License
General Contractor	B

The CONTRACTOR'S California State License number shall be clearly stated on the Bid Form.

No payment shall be made for work or material under the contract unless and until the Registrar of Contractors verifies to the OWNER that the CONTRACTOR was properly licensed at the time the contract was awarded and CONTRACTOR continues to be so licensed throughout the term of the contract. Any CONTRACTOR not so licensed is subject to penalties under the law. If the license classification specified hereinabove is that of a "specialty CONTRACTOR" as defined in Section 7058 of the California Business and Professions Code, the specialty CONTRACTOR awarded the contract for this work shall itself construct a majority of the work, in accordance with the provisions of California Business and Professions Code Section 7059.

Subcontractors must possess the appropriate licenses for each specialty subcontracted. Failure to satisfy this requirement shall disqualify Bidder. The successful Bidder and its subcontractors must maintain the license throughout the duration of the contract and warranty period.

Time for completion of the entire Project, inclusive of all categories of work set forth herein, shall be \_\_\_\_\_ (\_\_\_\_\_) **consecutive calendar days** following the start date established in the OWNER'S Notice to Proceed for the Project. Said Notice shall not be issued prior to five (5) days after award of the contract(s) comprising the Project, and shall not require work to be commenced less than forty-eight (48) hours following the CONTRACTOR'S receipt of the Notice to Proceed. All work comprising the Project shall be performed in Pacific Technology Center

Notice to Contractors Calling for Bids

accordance with the durations and sequences shown in the Project Construction Schedule as contained in Section 01310 of the Project Specifications. Time is of the essence. Failure to complete the work within the time set forth herein will result in the imposition of liquidated damages for each day of delay, in the amount set forth in the Information for Bidders form.

Each Bidder agrees that, if its bid is accepted, it shall perform at least 15% of the work, exclusive of supervisory and clerical work, without the services of any subcontractor. Bidder shall designate in its bid those portions of the contract Bidder intends to perform without the services of any subcontractor, which satisfies the aforementioned 15% requirement.

Each Bidder shall submit, on the form furnished with the Contract Documents, a list of the proposed subcontractors on this Project as required by the Subletting and Subcontracting Fair Practices Act at Public Contract Code Section 4100 et seq.

Prime CONTRACTORS bidding this Project shall require, pursuant to Public Contract Code Section 4108, the following subcontractors providing labor or labor and materials to supply an original signature on a fully executed 100% Faithful Performance Bond and 100% Payment Bond:

All such subcontractor bonds shall be delivered by the Prime CONTRACTOR to the OWNER through the CONSTRUCTION MANAGER within thirty (30) calendar days following the Prime CONTRACTOR'S receipt of notification of the award of the contract(s) for the Project. The failure by or refusal of a subcontractor to comply with this requirement may result in that subcontractor's substitution consistent with Public Contract Code Sections 4108(b) and 4107(a)(4). All Prime CONTRACTORS bidding on the Project must specify this requirement for subcontractor bonds in their written or published request for subcontractor bids.

All submittals will be collected by the OWNER, stamped with date and time, and will remain unopened until the time of the Bid Opening.

Each Bid shall be accompanied by a certified or cashier's check or bid bond executed by an admitted surety insurer, as defined in California Code of Civil Procedure Section 995.120, in an amount not less than ten percent (10%) of the total bid price, payable to the OWNER as a guarantee that the Bidder, if its proposal is accepted, shall promptly execute the Agreement, furnish a satisfactory Performance Bond in an amount not less than one hundred percent (100%) of the total bid price, furnish a Payment Bond in an amount not less than one hundred percent (100%) of the total bid price, and furnish certificates evidencing that the required insurance is in effect in the amounts set forth in the General Conditions. In the event the successful Bidder fails to enter into the contract and execute the required documents, such bid security will be forfeited. The Performance Bond shall remain in full force and effect through the guarantee period as specified in the General Conditions.

The OWNER reserves the right to extend the bid closing date, reject any or all bids or to waive any irregularities or informalities in any bids or in the bidding.

No specifications for bids in connection with the letting of contracts for the construction, alteration, or repair of public works shall be drafted (1) in a manner that limits the bidding, directly or indirectly, to any one specific concern, or (2) calling for a designated material, product, thing, or service by specific brand or trade name unless the specification is followed by the words "or equal" so that Bidders may furnish any equal material, product, thing, or service. In applying this Section, the OWNER shall, if aware of an equal product manufactured in

California, name such product in the specification. CONTRACTOR shall, no later than 4:30 p.m. on the second business day following the bid deadline set forth herein, submit data substantiating a request for substitution of "an equal" item.

Pursuant to Public Contract Code Section 3400 (c), in the event the OWNER makes a finding below that a particular material, product, thing, or service is designated by a specific brand or trade name in order to (a) match other products in use on a particular public improvement either completed or in the course of completion, or (b) obtain a necessary item that is only available from one source, the OWNER shall not be required to comply with the provisions of the preceding paragraph.

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Each worker on the Project must be paid not less than the applicable prevailing rates of per-diem wages in the locality in which the Work is to be performed for each craft or type of worker needed to execute the Contract ("Prevailing Wages"). A copy of the applicable rates of Prevailing Wages is on file and available for review at the Place for Submitting Bids, and a copy will be posted at the Project Site. The Work will be subject to monitoring by the California Department of Industrial Relations ("DIR") and/or the Compliance Monitoring Unit of the DIR ("CMU"). The OWNER will conduct a mandatory conference for the purpose of describing labor-law requirements.

Each Bidder agrees that if its bid is accepted, it shall comply with all applicable provisions of: (1) the California Labor Code (2) the DIR'S CMU and (3) SBX2-9.

The successful Bidder and all subcontractors utilized by the successful Bidder on the project shall maintain and furnish to the DIR on a periodic basis as directed by the DIR, but in no event less frequent than once each month, certified copies of weekly payroll reports signed under penalty of perjury. The DIR shall review the payroll reports to verify compliance with the prevailing wage requirements and shall conduct audits and onsite investigation as it deems necessary. The prevailing rate of per diem wages and a description of employer payments are on file at the DISTRICT OFFICE and are available to any interested party upon request. If the payroll records or reports are delinquent or inadequate, the DISTRICT shall withhold contract payments. Additionally, if after an investigation it is established that an underpayment occurred, the DISTRICT shall withhold contract payments equal to the amount of underpayment and applicable penalties. The DISTRICT thereafter shall follow the requirements regarding notice to the Prime CONTRACTOR or subcontractor as provided in Labor Code Section 1771.6.

As required by Sections 1773 and 1773.2 of the California Labor Code, the Director of the DIR has determined the general prevailing rates of wages in the locality in which the work is to be performed. Copies of these wage rate determinations, entitled PREVAILING WAGE SCALE, are maintained at the OWNER'S office and are available to any interested party upon request. They are also available from the Director of the DIR. The CONTRACTOR shall post a copy of this document at each job site. The CONTRACTOR and any subcontractor under it shall pay not less than the specified prevailing rates of wages to all workers employed in the execution of the contract. Certified payroll records will be required and will be checked by the OWNER, or its assigned third party representative.

No Bidder may withdraw any bid for a period of one hundred and twenty (120) days after the date set for the opening of bids, but in no event shall the Bidder be required to keep its bid open beyond sixty (60) days after the date of the award. The OWNER may not hold the security of Bidder longer than sixty (60) days from the time the award is made. In the event the OWNER should request an extension of the above-stated deadline, such extension shall also include the extension of the duration of the bid security.

A Payment Bond and a Performance Bond shall be required prior to execution of the contract and shall be in the form set forth in the Contract Documents.

Pursuant to Section 22300 of the Public Contract Code, the successful Bidder is permitted to substitute securities for any moneys withheld by the OWNER to ensure performance under the contract. At the request and expense of the CONTRACTOR, securities equivalent to the amount withheld shall be deposited with the OWNER, or with a state or federally chartered bank as the escrow agent, who shall then pay such moneys to the CONTRACTOR. Upon satisfactory completion of the contract, the securities shall be returned to the CONTRACTOR. Alternatively, the successful Bidder may request and the OWNER shall make payment of retention earned directly to the escrow agent at the expense of the successful Bidder.

Each bid submitted in response to this Notice shall contain, as a bid item, adequate sheeting, shoring, and bracing, or equivalent method, for the protection of life and limb in trenches and open excavation, which shall conform to applicable safety orders.

Consistent with the requirements of the federal Clean Water Act, the Project is subject to storm water pollution prevention requirements, which may include the implementation of a Storm Water Pollution Prevention Plan and/or implementation of local storm water requirements, which prohibit the discharge of pollutants from the Project site. Bidders will be required to submit, with their bid, the Storm Water Pollution Prevention Certification included with the bid package, which must be signed by the Bidder under penalty of perjury and notarized.

**JOB WALK AND PRE-BID CONFERENCE:** A pre-bid conference will be held at the site for attendance by any interested Bidder with representatives of the OWNER, ARCHITECT and CONSTRUCTION MANAGER. Although the job walk is highly recommended, it is not mandatory. **The pre-bid conference and job walk will commence at \_\_\_\_\_ a.m. on \_\_\_\_\_, 20\_\_\_\_. All attendees shall meet at PROJECT NAME, \_\_\_\_\_.**

Governing Board of the  
MAGNOLIA EDUCATIONAL FOUNDATION

By: \_\_\_\_\_

Bids Due: \_\_\_\_\_

Bids Opened: \_\_\_\_\_

## INFORMATION FOR BIDDERS

WARNING:  
(READ THIS DOCUMENT CAREFULLY.  
DO NOT ASSUME THAT IT IS THE  
SAME AS OTHER SIMILAR DOCUMENTS  
YOU MAY HAVE SEEN, EVEN IF FROM  
THE SAME OWNER.)

1. PREPARATION OF BID FORM: The **MAGNOLIA EDUCATIONAL FOUNDATION** (“OWNER”) invites bids on the form attached to be submitted at the time and place stated in the Notice to Contractors Calling for Bids. Bids shall be submitted on the prescribed Bid Form, completed in full. All bid items and statements shall be properly filled out. Numbers shall be stated both in words and in figures where so indicated, and where there is a conflict in the words and the figures, the words shall govern. The signatures of all persons signing the bid shall be in longhand and in permanent blue ink. Prices, wording and notations must be in ink or typewritten. Erasures or other changes shall be noted over by signature of the Bidder.
2. FORM AND DELIVERY OF BIDS: The bid shall be made on the Bidding Schedule provided, and the complete bid, together with any and all additional materials as required by the contract documents, as defined in the Agreement (“Contract Documents”), shall be enclosed in a sealed envelope, addressed and delivered or mailed to the MAGNOLIA EDUCATIONAL FOUNDATION, 13950 Milton Avenue, Suite 200B, Westminster, CA 92683, and must be received on or before the time set forth in the Notice to Contractors Calling for Bids for the opening of bids. The envelope shall be plainly marked in the upper left-hand corner with the Bidder’s name, address, the contract designation, category number, and the date and time for the opening of bids. It is the Bidder’s sole responsibility to ensure that its bid is received prior to the scheduled closing time for receipt of bids. In accordance with Government Code Section 53068 and Public Contract Code Section 4104.5, any bid received after the scheduled closing time for receipt of bids or after any extension due to material changes shall be returned to the Bidder unopened. At the time set forth in the Notice to Contractors Calling for Bids for the opening of bids, the sealed bids will be opened and read aloud at the OWNER’S office.
3. BID SECURITY/DELIVERY OF DOCUMENTS: Each bid shall be accompanied by a certified or cashier’s check or bid bond issued by an admitted surety insurer, as defined in Civil Procedure Code Section 995.120, in the amount of not less than ten percent (10%) of the total bid amount stated in the bid. Said check or bond shall be made payable to the OWNER and shall be given as a guarantee that the Bidder, if awarded one or more categories of work, will enter into an Agreement within five (5) calendar days of receiving Notice of Award of the contract(s), and will furnish, on the prescribed forms, those documents listed in the Bid Form. In case of refusal or failure to enter into the Agreement or return the documents as required by the OWNER, the check or bid bond, as the case may be, shall be forfeited to the OWNER and the OWNER may in its discretion either award the contract to the second lowest responsible Bidder or reject all bids. If the Bidder elects to furnish a bid bond as its bid security, the Bidder shall use the Bid Bond form included herein.

4. SIGNATURE: Any signature required on the Contract Documents must be signed in the name of the Bidder, must bear the signature of the person or persons duly authorized to sign the documents, and must be in permanent blue ink. If Bidder is a corporation, the legal name of the corporation shall first be set forth, together with either: (a) two (2) signatures: one (1) from among the chairman of the board, president or any vice president (collectively, the "Operational Officers") and one (1) from among the secretary, any assistant secretary, chief financial officer, or any assistant treasurer (collectively, the "Financial Officers"); or (b) one (1) signature, provided that the corporate officer holds at least one office as an Operational Officer and one (1) office as a Financial Officer for the corporation; or (c) one (1) signature of an officer or agent, provided that a properly executed corporate resolution authorizing such person to sign on behalf of and bind the corporation is submitted with the Bid Form. Such documents shall include the title of such signatories below the signature and shall bear the corporate seal. If Bidder is a joint venture or partnership, there shall be submitted with the bid, certifications signed by authorized officers of each of the parties to the joint venture or partnership, naming the individual who shall sign all necessary documents for the joint venture or partnership and, should the joint venture or partnership be the successful Bidder, the individual who shall act in all matters relative to the contract resulting therefrom for the joint venture or partnership. If Bidder is an individual, his/her signature shall be placed on such documents.
5. MODIFICATIONS: Changes in or additions to the Bid Form, recapitulations of the work bid upon, alternative proposals, or any other modification of the Bid Form which is not specifically called for in the Contract Documents may result in the OWNER'S rejection of the bid as not being responsive to the invitation to bid. No oral or telephonic modification of any bid submitted will be considered and a telegraphic modification may be considered only if the postmark evidences that a confirmation of the telegram duly signed by the Bidder was placed in the mail prior to the opening of bids.
6. ERASURES, INCONSISTENT OR ILLEGIBLE BIDS: The bid submitted must not contain any erasures, interlineations or other corrections unless each such correction creates no inconsistency and is suitably authenticated by affixing in the margin immediately opposite the correction the signature or signatures of the person or persons signing the bid. In the event of inconsistency between words and figures in the bid price, words shall control figures. In the event the OWNER determines that any bid is unintelligible, inconsistent or ambiguous, the OWNER may reject such bid as not being responsive to the invitation to bid.
7. EXAMINATION OF SITE AND CONTRACT DOCUMENTS: At its own expense and prior to submitting its bid, each Bidder shall examine the Contract Documents; visit the site and determine the local conditions which may in any way affect the performance of the work, including the prevailing wages and other relevant cost factors; familiarize itself with all Federal, State and local laws, ordinances, rules, regulations and codes affecting the performance of the work, including the cost of permits and licenses required for the work; make such surveys and investigations, including investigation of subsurface or latent physical conditions at the site; determine the character, quality, and quantities of the work to be performed and the materials and equipment to be provided; and correlate its observations, investigations and determinations with the requirements of the Contract Documents. The Contract Documents show and describe the existing conditions as they are believed to have been used in the design of the work. The OWNER shall not be liable for any loss sustained by the CONTRACTOR resulting from any variance between the conditions and design data given in the Contract Documents and the actual



conditions revealed during the Bidder's examination or during the progress of the work. The failure or omission of any Bidder to receive or examine any contract document, form, instrument, addendum, or other document or to visit the site and become acquainted with conditions there existing shall in no way relieve any Bidder from any obligation with respect to his bid or to the contract. The submission of a bid shall be incontrovertible evidence that the Bidder has complied with all the requirements of this provision of the Information for Bidders. Bidders shall not at any time after submission of the bid, dispute, complain or assert that there were any misunderstandings with regard to the nature or amount of work to be done.

8. WITHDRAWAL OF BIDS: Any bid may be withdrawn, either personally, by written request or by telegraphic request confirmed in the manner specified above for bid modifications, at any time prior to the scheduled closing time for receipt of bids. All requests for bid withdrawal must be accompanied with a power-of-attorney or other proof acceptable to the OWNER which authorizes the individual requesting the bid withdrawal to so act on behalf of the Bidder. The bid security for bids withdrawn prior to the scheduled closing time for receipt of bids, in accordance with this Section shall be returned on demand therefore. As specified in the Notice to Contractors Calling for Bids, no Bidder may withdraw any bid for a period of one hundred and twenty (120) calendar days after the date set for the opening of bids.
  
9. AGREEMENTS AND BONDS: The Agreement form which the successful Bidder, as CONTRACTOR, will be required to execute, and the form of the payment bond which such CONTRACTOR will be required to furnish in accordance with Civil Code Section 3247 prior to execution of the Agreement, are included in the Contract Documents and should be carefully examined by the Bidder. Unless otherwise specified in the Special Conditions, if any, the payment bond shall be in the amount of one hundred percent (100%) of the amount of the contract. The CONTRACTOR will also be required to furnish a performance bond in the amount of one hundred percent (100%) of the amount of the contract and in the form included in the Contract Documents, and Certificates of Insurance as required in the contract, all prior to execution of the contract. The payment and performance bonds must be executed by an admitted surety insurer.
  
10. INTERPRETATION OF PLANS AND DOCUMENTS: If any prospective Bidder is in doubt as to the true meaning of any part of the Contract Documents, or finds discrepancies in, or omissions from the drawings and specifications, a written request for an interpretation or correction thereof may be submitted to the CONSTRUCTION MANAGER. The Bidder submitting the request shall be responsible for its prompt delivery. In case of disagreement or conflict between or within standards, specifications, and drawings, the more stringent, higher quality and greater quantity of work shall be included in the bid. Any interpretation or correction of the Contract Documents will be made solely at OWNER'S discretion and only by written addendum duly issued by the ARCHITECT and approved by the OWNER, and a copy of such addendum will be hand delivered, mailed, e-mailed or faxed to each Bidder known to have received a set of the Contract Documents. No person is authorized to make any oral interpretation of any provision in the Contract Documents, nor shall any oral interpretation be binding on the OWNER. Requests for clarification or explanation should be submitted to CONSTRUCTION MANAGER no later than the seventh (7<sup>th</sup>) calendar day preceding the date set for submission of bids. If discrepancies on drawings, or in specifications, or conflicts between drawings and specifications are not covered by addenda, Bidder shall include in the bid the method of construction and materials resulting in the higher bid. Bidder shall become familiar with the plans, specifications and drawings. SUBMITTAL

OF A BID WITHOUT CLARIFICATIONS SHALL BE INCONTROVERTIBLE EVIDENCE THAT THE BIDDER HAS DETERMINED THAT THE PLANS, SPECIFICATIONS AND DRAWINGS ARE SUFFICIENT FOR BIDDING AND COMPLETING THE JOB; THAT BIDDER IS CAPABLE OF READING, FOLLOWING AND COMPLETING THE JOB IN ACCORDANCE WITH THE PLANS, SPECIFICATIONS AND DRAWINGS; AND THAT THE PLANS, SPECIFICATIONS AND DRAWINGS FALL WITHIN AN ACCEPTABLE STANDARD FOR PLANS, SPECIFICATIONS AND DRAWINGS.

11. ADDENDA: Addenda issued during time of bidding shall be included in bid and shall be made a part of the contract. Bidder shall list in the Bid Form each addendum received.
- A. Addenda will be prepared and issued to Bidders at the option of the ARCHITECT.
  - B. Name and telephone number of the individual who is responsible for the bidding procedure and the receipt of Addenda shall be filed at the pick-up location.
  - C. Addenda will be issued only to Bidders who have obtained bid sets at the designated pick-up location and to Plan Rooms where bid documents are on file.
  - D. Addenda issued more than four (4) working days prior to the day bids are designated to be opened shall be mailed to Bidders and Plan Rooms via UPS, with no prior telephone notification.
  - E. Bidders who have obtained bid sets at the designated pick-up location will be notified by telephone when any Addendum is issued less than four (4) working days prior to day bids are to be opened. The Addendum will be transmitted to Bidders and Plan Rooms via UPS.
  - F. In the event a material change is made by addendum within 72 hours prior to the bid deadline, the date and time to submit bids will be extended by at least 72 hours.
  - G. Addenda will NOT be transmitted to Bidders or Plan Rooms via Facsimile Copier (FAX).
  - H. Bidders shall be responsible for confirming they are in receipt of all addenda.
12. BIDDERS INTERESTED IN MORE THAN ONE BID: No person, firm or corporation shall be allowed to make or file, or be interested in more than one (1) bid for the same work unless alternate bids are specifically called for. If alternate bids are not called for and if the OWNER has reasonable grounds for believing that any Bidder is interested in more than one proposal for the work will be cause for rejecting all proposals in which such Bidder is interested and the Bidder will forfeit its bid security to the OWNER. A person, firm, or corporation that has submitted a sub-proposal to a prime Bidder, or that has quoted prices of materials to a prime Bidder, is not thereby disqualified from submitting a sub-proposal or quoting prices to other prime Bidders, but is then prohibited from making a prime proposal. The OWNER intends to award a contract for lowest responsive and responsible Bidder.

13. AWARD OF CONTRACT: The OWNER reserves the right to reject any or all bids, or to waive any irregularities or informalities in any bids or in the bidding. If two identical low bids are received from responsible Bidders, the OWNER will determine which bid will be accepted pursuant to Public Contract Code Section 20117. The award of the contract, if made by the OWNER, will be by action of the governing board and to the lowest responsible Bidder therefore from among those Bidders responsive to the call for bids. In the event an award is made to a Bidder and such Bidder fails or refuses to execute the contract and provide the required documents within five (5) calendar days after notification of the award of the contract to Bidder, the OWNER may award the contract to the next lowest Bidder or release all Bidders. Each bid must conform and be responsive to the Contract Documents.

14. ALTERNATES: If alternate bids are called for, the Notice to Contractors Calling for Bids shall specify which one (1) of the following methods will be used to determine the lowest bid:

- A. The lowest bid shall be the lowest bid price on the base bid without consideration of the prices on the additive or deductive items;
- B. The lowest bid shall be the lowest total bid prices on the base bid and those additive or deductive items that are specifically identified in the Notice to Contractors Calling for Bids as being used for the purpose of determining the lowest bid price;
- C. The lowest bid shall be the lowest total of the bid prices on the base bid and those additive or deductive items taken in order from the specifically identified list of those items, depending upon available funds, as identified in the Notice to Contractors Calling for Bids and provided that said additive and/or deductive items when added to or subtracted from the base bid, are less than, or equal to, the funding amount publicly disclosed by the OWNER before the first bid is opened; or
- D. The lowest bid shall be determined in a manner that prevents any information that would identify any of the Bidders or proposed subcontractors from being revealed to the OWNER before the ranking of all Bidders from lowest to highest has been determined.

A responsible Bidder who has submitted the lowest bid as determined by this Section shall be awarded the contract, if it is awarded. This Section does not preclude the OWNER from adding to or deducting from the contract any of the additive or deductive items after the lowest responsible Bidder has been determined.

15. COMPETENCY OF BIDDERS: In selecting the lowest responsible Bidder, consideration will be given not only to the financial standing but also to the general competency of the Bidder for the performance of the work covered by the bid. Each Bidder agrees that, if its bid is accepted, it shall perform that portion of work designated in its bid which shall constitute at least 15% of the work, exclusive of supervisory and clerical work, without the services of any subcontractor. By submitting a bid, each Bidder agrees that the OWNER, in determining the successful Bidder and its eligibility for the award, may consider the Bidder's experience and facilities, conduct and performance under other contracts, financial condition, reputation in the industry, and

other factors which could affect the Bidder's performance of the work. Unless already prequalified by the OWNER within one (1) year of submitting the OWNER'S prequalification documents, each bid shall be further supported by the OWNER'S prequalification questionnaire comprised of the CONTRACTOR'S Statement of Experience and Financial Condition, Affidavit of CONTRACTOR and Certificate of Accountant. Pursuant to Public Contract Code Section 20111.5, the information in the prequalification documents will be kept confidential, and ratings of individual firms will only be disclosed upon written request of that firm.

The OWNER may also consider the qualifications and experience of subcontractors and other persons and organizations (including those who are to furnish the principal items of material and equipment) proposed for those portions of work. Operating costs, maintenance considerations, performance data and guarantees of materials and equipment may also be considered by the OWNER. In this regard, the OWNER may conduct such investigations as the OWNER deems necessary to assist in the evaluation of any bid and to establish the responsibility, qualifications and financial ability of the Bidder, proposed subcontractors, and other persons and organizations to do the work in accordance with the Contract Documents to the OWNER's satisfaction within the prescribed time; and the OWNER reserves the right to reject the bid of any Bidder who does not pass any such evaluation to the satisfaction of the OWNER. No bid for the work will be accepted from a CONTRACTOR who is not licensed in accordance with applicable State law.

16. LISTING SUBCONTRACTORS: Each Bidder shall submit with the bid, on the form furnished with the Contract Documents, a list of the proposed subcontractors, license numbers and locations of the places of business of each subcontractor who will perform work or labor or render service to the Bidder in or about the Project or a subcontractor who, under subcontract to the Bidder, specially fabricates and installs a portion of the work in an amount in excess of one-half of one percent ( $\frac{1}{2}\%$ ) of the Bidder's total bid, as required by the Subletting and Subcontracting Fair Practices Act (Public Contract Code Section 4100 et seq.). If alternate bids are called for and the Bidder intends to use different or additional subcontractors, a separate list of subcontractors must be submitted for each such alternate. As provided by Public Contract Code Section 6109, no Bidder shall list or otherwise permit a subcontractor who is ineligible to bid or work on, or be awarded, a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code to bid on, be awarded, or perform work as a subcontractor on the Project. If the Bidder fails to specify a subcontractor for any portion of the work in excess of one half of one percent ( $\frac{1}{2}\%$ ) of the Bidder's total bid, the Bidder agrees that he/she is fully qualified to perform that work and agrees to perform that portion of the work. Violation of this requirement (including the procurement of a subcontractor for the Project if no subcontractor is specified) can result in the OWNER invoking the remedies of Public Contract Code Sections 4110 and 4111.

Prime CONTRACTORS bidding this Project shall require, pursuant to Public Contract Code Section 4108, the following subcontractors providing labor or labor and materials to supply an original signature on a fully executed 100% Faithful Performance Bond and 100% Payment Bond:

All such subcontractor bonds shall be delivered by the Prime CONTRACTOR to the OWNER through the CONSTRUCTION MANAGER within thirty (30) calendar days following the Prime CONTRACTOR'S receipt of notification of the award of the contract(s) for the Project. The failure by or refusal of a subcontractor to comply with this requirement may result in that subcontractor's substitution consistent with Public Contract Code Sections 4108(b) and 4107(a)(4). All Prime CONTRACTORS bidding on the Project must specify this requirement for subcontractor bonds in their written or published request for subcontractor bids.

The practice of issuing separate purchase orders and/or subcontractors for the purpose of circumventing the subcontractor bonding requirement shall not serve to exempt the CONTRACTOR from these requirements.

No payments, except for a reimbursement payment to the Prime CONTRACTOR for the cost of the Prime CONTRACTOR'S own Faithful Performance and Payment Bonds, shall be made to the Prime CONTRACTOR until the Prime CONTRACTOR provides the aforementioned subcontractor bonds to the OWNER through the CONSTRUCTION MANAGER.

17. WORKERS' COMPENSATION: In accordance with the provisions of Section 3700 of the Labor Code, the successful Bidder, as CONTRACTOR, shall secure the payment of compensation to all employees. CONTRACTOR shall sign and file with OWNER the following certificate prior to performing the work under the contract: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and I will comply with such provisions before commencing the performance of the work of this contract." The form of such certificate is included as a part of the Contract Documents.
18. CONTRACTOR'S LICENSE: If, at the time the bids are opened, Bidder is not licensed to perform the Project in accordance with Division 3, Chapter 9 of the Business and Professions Code of the State of California and the Notice to Contractors Calling for Bids, such bid will be rejected as non-responsive (Public Contract Code Section 3300). Pursuant to Business and Professions Code Section 7028.15, no payment shall be made for work or materials under the contract unless and until the Registrar of Contractors verifies to the OWNER that the Bidder was properly licensed at the time the bid was submitted. Any Bidder not so licensed is subject to penalties under the law and the contract will be considered void and OWNER shall have the right to bring an action against the unlicensed Bidder awarded the contract for recovery of all compensation paid under the contract (Business and Professions Code Section 7031(b)). If the license classification specified hereinafter is that of a "specialty CONTRACTOR" as defined in Section 7058 of the Business and Professions Code, the specialty CONTRACTOR awarded the contract for his work shall construct a majority of the work, in accordance with the provisions of Business and Professions Code Section 7059. The Bidder may not use the CONTRACTOR license of a third party for this bid. The CONTRACTOR and its subcontractors must maintain the license throughout the duration of the contract and warranty period.
19. ANTI-DISCRIMINATION: It is the policy of the OWNER that in connection with all work performed under contracts, there be no discrimination against any prospective or active employee engaged in the work because of race, color, ancestry, national origin, religious creed, sex, age, physical disability, mental disability, medical condition or

marital status. The CONTRACTOR agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act, beginning with Government Code Section 12900, and Labor Code Section 1735. In addition, the CONTRACTOR agrees to require like compliance by any subcontractors employed on the work by any such CONTRACTOR.

20. HOLD HARMLESS: The CONTRACTOR shall indemnify and hold harmless the OWNER, ARCHITECT, INSPECTOR OF RECORD, CONSTRUCTION MANAGER, their officers, agents, and employees from every claim or demand made, and every liability, loss, damage, or expense, of any nature whatsoever, which may be incurred by reason of:
- A. Liability for damages for (1) death or bodily injury to persons; (2) injury to, loss or theft of property; or (3) any other loss, damage or expense arising under either (1) or (2) above, sustained by the CONTRACTOR or any person, firm or corporation employed by the CONTRACTOR upon or in connection with the work called for in the Agreement, except for liability resulting from the sole negligence, or willful misconduct of the OWNER, ARCHITECT, INSPECTOR OF RECORD, CONSTRUCTION MANAGER, their officers, employees, agents or independent CONTRACTORS who are directly employed by the OWNER, and except for liability resulting from the active negligence of the OWNER, ARCHITECT, INSPECTOR OF RECORD or CONSTRUCTION MANAGER.
  - B. Any injury to or death of persons or damage to property caused by any act, neglect, default or omission of the CONTRACTOR, or any person, firm or corporation employed by the CONTRACTOR, either directly or by independent contract, including all damages due to loss or theft, sustained by any person, firm or corporation, including the OWNER, ARCHITECT, INSPECTOR OF RECORD or CONSTRUCTION MANAGER, arising out of, or in any way connected with the work covered by the Agreement, whether said injury or damage occurs either on or off OWNER property, if the liability arose from the negligence or willful misconduct of anyone employed by the CONTRACTOR, either directly or by independent contract, and not by the active negligence of the OWNER, ARCHITECT, INSPECTOR OF RECORD or CONSTRUCTION MANAGER.
  - C. Any failure or alleged failure to comply with any provision of law or the Contract Documents.
  - D. Any dispute between CONTRACTOR and CONTRACTOR'S subcontractors/suppliers/sureties, including, but not limited to any failure or alleged failure of the CONTRACTOR (or any person hired or employed directly or indirectly by the CONTRACTOR) to pay any subcontractor or materialman of any tier or any other person employed in connection with the work and/or filing of any stop notice or mechanic's lien claims.

- E. In the event CONTRACTOR is required to access the OWNER'S computer system or network in the performance of the contract, the CONTRACTOR shall provide 48-hours advance notification to the OWNER. In the event such access infects the OWNER'S computer network, system, or device with a virus, Trojan Horse, worm, or any other computer programming routine that is intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system data or personal information, CONTRACTOR agrees to indemnify OWNER and pay for any and all losses, damages and expenses incurred by OWNER to remedy any such infection.

The CONTRACTOR, at CONTRACTOR'S own expense, cost and risk shall defend any and all actions, suits or other proceedings that may be brought or instituted against the OWNER, ARCHITECT, INSPECTOR OF RECORD, CONSTRUCTION MANAGER, their officers, agents or employees, or any such claim or liability, and shall pay or satisfy any judgment that may be rendered against the OWNER, ARCHITECT, INSPECTOR OF RECORD or CONSTRUCTION MANAGER, their officers, agents or employees in any action, suit or other proceedings as a result thereof.

21. SURETY QUALIFICATIONS: All surety companies which are admitted surety insurers, pursuant to California Code of Civil Procedure Section 995.120 and comply with the provisions of California Code of Civil Procedure Sections 995.630 and 995.660, shall be satisfactory to the OWNER.
22. TIME PERIOD FOR COMPLETION OF THE WORK AND LIQUIDATED DAMAGES: All work must be completed within the time limits set forth in the Notice to Contractors Calling for Bids. It is agreed that damages for the failure of the CONTRACTOR to complete the total work described herein within the time limits required are impossible to ascertain but that the sum of \_\_\_\_\_ **DOLLARS (\$ \_\_\_\_\_)** per day is a reasonable estimate. Should the work not be completed within the specified time for completion, the CONTRACTOR shall be liable for liquidated damages, payable to the OWNER, in an amount of \_\_\_\_\_ **DOLLARS (\$ \_\_\_\_\_)** for each calendar day of delay in completion, as well as actual additional out-of-pocket costs and expenses incurred by the OWNER as set forth in Section 6 of the Agreement.

CONTRACTOR is to refer to Section 01310 Project Construction Schedule for duration of individual activities contained within the \_\_\_\_\_ (\_\_\_\_\_) **consecutive calendar day** Project requirement. Liquidated damages may be assessed if any individual activity duration exceeds the time indicated for that activity on the Project Construction Schedule.

23. DRUG-FREE WORKPLACE CERTIFICATION: Pursuant to Government Code Section 8350 et seq., the successful Bidder will be required to execute a Drug-Free Workplace Certificate upon execution of the Agreement. The CONTRACTOR will be required to take positive measures outlined in the certificate in order to ensure the presence of a drug-free workplace. Failure to abide with the conditions set forth in the Drug-Free Workplace Act could result in penalties including termination of the Agreement or suspension of payment thereunder.

24. REQUIRED CERTIFICATIONS WITH BID FORM: All Bidders are required to execute and submit together with the Bid Form, the following certifications:
- A. Non-Collusion Declaration, identified herein as Attachment No. 1 to Bid Form as required by Public Contract Code Section 7106.
  - B. Site Visit Certification, identified herein as Attachment No. 2 to Bid Form.
  - C. Designation of Subcontractors, identified herein as Attachment No. 3 to Bid Form.
  - D. Certified or Cashier's Check consistent with Section 3 above or Bid Bond, identified herein as Attachment No. 4 to Bid Form.
  - E. Bidder's Acknowledgement of Project Schedule, identified herein as Attachment No. 5 to Bid Form.
  - F. Storm Water Pollution Prevention Certification, identified herein as Attachment No. 6 to Bid Form.
25. REQUIRED CERTIFICATIONS WITH AGREEMENT: Concurrent with submission of the Agreement, the successful Bidder shall submit the following documents:
- A. Performance Bond, identified herein as Attachment No. 1 to Agreement.
  - B. Payment Bond, identified herein as Attachment No. 2 to Agreement.
  - C. Worker's Compensation Certification, identified herein as Attachment No. 3 to Agreement.
  - D. Drug-Free Workplace Certification, identified herein as Attachment No. 4 to Agreement.
  - E. Conduct Rules for Contractors, identified herein as Attachment No. 5 to Agreement.
  - F. Asbestos and Other Hazardous Materials Certification, identified herein as Attachment No. 6 to Agreement. Each successful Bidder shall be required to execute and submit to the OWNER an Asbestos and Other Hazardous Materials Certification prior to commencing Work on the Project.
  - G. Lead-Based Paint Certification, identified herein as Attachment No. 7 to Agreement. Pursuant to the Lead-Safe Schools Protection Act (Education Code Section 32240 et seq.) and other applicable law, each successful Bidder will be required to complete a Lead-Based Paint Certification prior to commencing Work on the Project.
  - H. Criminal Records Check Certification, identified herein as Attachment No. 8 to Agreement. If any portion of the Work for the Project is to be performed at an operating school, each successful Bidder and its subcontractors shall be required to comply with the applicable



requirements of Education Code Section 45125.2 with respect to fingerprinting of employees who may have contact with the OWNER'S pupils. Successful Bidders and their subcontractors will be required to complete the Criminal Records Check Certification Form prior to commencing Work on the Project.

26. PREVAILING WAGES:

Each worker on the Project must be paid not less than the applicable prevailing rates of per-diem wages in the locality in which the Work is to be performed for each craft or type of worker needed to execute the Contract ("Prevailing Wages"). A copy of the applicable rates of Prevailing Wages is on file and available for review at the Place for Submitting Bids, and a copy will be posted at the Project Site. The Work will be subject to monitoring by the California Department of Industrial Relations ("DIR") and/or the Compliance Monitoring Unit of the DIR ("CMU"). The OWNER will conduct a mandatory conference for the purpose of describing labor-law requirements.

Each Bidder agrees that if its bid is accepted, it shall comply with all applicable provisions of: (1) the California Labor Code (2) the DIR'S CMU and (3) SBX2-9.

The successful Bidder and all subcontractors utilized by the successful Bidder on the project shall maintain and furnish to the DIR on a periodic basis as directed by the DIR, but in no event less frequent than once each month, certified copies of weekly payroll reports signed under penalty of perjury. The DIR shall review the payroll reports to verify compliance with the prevailing wage requirements and shall conduct audits and onsite investigation as it deems necessary. The prevailing rate of per diem wages and a description of employer payments are on file at the DISTRICT OFFICE and are available to any interested party upon request. If the payroll records or reports are delinquent or inadequate, the DISTRICT shall withhold contract payments. Additionally, if after an investigation it is established that an underpayment occurred, the DISTRICT shall withhold contract payments equal to the amount of underpayment and applicable penalties. The DISTRICT thereafter shall follow the requirements regarding notice to the Prime CONTRACTOR or subcontractor as provided in Labor Code Section 1771.6.

As required by Sections 1773 and 1773.2 of the California Labor Code, the Director of the DIR has determined the general prevailing rates of wages in the locality in which the work is to be performed. Copies of these wage rate determinations, entitled PREVAILING WAGE SCALE, are maintained at the OWNER'S office and are available to any interested party upon request. The CONTRACTOR shall post a copy of this document at each jobsite. The CONTRACTOR and any subcontractor under it shall pay not less than the specified prevailing rates of wages to all workers employed in the execution of the contract. Certified payroll records will be required and will be checked by the OWNER, or its assigned third party.

27. EMPLOYMENT OF APPRENTICES: The CONTRACTOR and all subcontractors shall comply with the OWNER'S or its third party consultant's LCP, as applicable, and provisions of the California Labor Code including, but not limited to, Sections 1777.5, 1777.6 and 1777.7 concerning the employment of apprentices. The CONTRACTOR and all its subcontractors shall comply with the requirements of said Sections, including applicable portions of all subsequent amendments in the employment of apprentices. The CONTRACTOR shall have full responsibility for compliance with said Labor Code Sections, for all apprenticeable occupations, regardless of any other contractual or employment relationship alleged to exist.

28. NON-COLLUSION DECLARATION: Public Contract Code Section 7106 requires Bidders to submit a declaration of non-collusion with their bids. This form is included with the bid package and must be signed and dated by the Bidder under penalty of perjury.
29. STORM WATER POLLUTION PREVENTION CERTIFICATION: Consistent with the requirements of the federal Clean Water Act, the Project is subject to storm water pollution prevention requirements, which may include the implementation of a Storm Water Pollution Prevention Plan and/or implementation of local storm water requirements, which prohibit the discharge of pollutants from the Project site. Bidders shall submit, with their bid, the Storm Water Pollution Prevention Certification included with the bid package, which must be signed by the Bidder under penalty of perjury and notarized.
30. NO TELEPHONE OR FACSIMILE AVAILABILITY: No telephone or facsimile machine will be available to Bidders on the OWNER premises at any time.
31. JOB WALK AND PRE-BID CONFERENCE: A pre-bid conference will be held at the site for attendance by any interested Bidder with representatives of the OWNER, ARCHITECT and CONSTRUCTION MANAGER. Although the job walk is highly recommended, it is not mandatory. **The pre-bid conference and job walk will commence at \_\_\_\_\_ a.m. on \_\_\_\_\_, 20\_\_ . All attendees shall meet at the PROJECT NAME, \_\_\_\_\_.**

**END OF SECTION**

Magnolia Science Academy  
Gym, Cafeteria and Playground Area Construction

**BID DOCUMENT  
ADDENDUMS**

**ADDENDUM NUMBER 01**  
**to the**  
**CONSTRUCTION DOCUMENTS**  
**October 17, 2017**

**General**

The following clarifications, changes, additions, or deletions shall be made to the following documents as indicated; and all other conditions shall remain the same:

**I. Notice Inviting Bids**

- A. Notice to Contractors Calling for Bids Page 1: Change the Bid Deadline to 12 PM Noon, on Monday the 23<sup>rd</sup> day of October 2017**

**II. Responses to Pre-Bid Questions (Request for Clarification)**

- A. For Questions and Responses please reference:**
1. Magnolia Public Schools – Gymnasium Project Contractor Pre-Bid Questions and Responses

**III. Changes to the Bidding Documents:**

- A. Remove Agreement and Attachment #1 and #2 to the Agreement pages 1 to 16 inclusive and replace with AIA Document A102 – 2017 pages 1 to 17 inclusive and Exhibit A Payment and Performance Bond pages 1 to 2 inclusive**
1. No subcontractor payment or performance bonds will be required.
  2. Liquidated damages shall be \$1000 per calendar day
  3. The contract form shall be on a Cost of the Work plus a Fee with a Guaranteed Maximum Price basis, AIA A 102 (2017) form modified as per the attached.
  4. The general conditions and supplementary conditions shall be per the attached.
  5. The contract price will include a 3% contractor contingency with potential sharing of savings at the end of the project. See contract form.
  6. The fee mark up for the general contractor shall be 7%. Maximum subcontractor mark up will be 15%.

7. The contract includes a potential sharing of savings at the end of the project if the final contract price is less than the adjusted GMP at the end of the project.

8. Retention shall be 5%.

- B. Remove General Conditions Section 00700 pages 1 to 101 inclusive and replace with AIA General Conditions A201 – 2017 pages 1 to 15 inclusive
- C. Add Magnolia Charter\_ Supplementary General Conditions pages 1 to 4 inclusive

**IV. Change to the project manual (Specifications)**

- A. Section 01 50 00-Construction Facilities, Part 1 - General, Paragraph 1.09- Temporary Job Office; Remove this paragraph and replace with the following;

**“ 1.09 Temporary Job Office and Storage Facilities”**

- A. CONTRACTOR shall provide and maintain a separate field office of approximately 600 square feet for use by PROJECT OWNER, CONSTRUCTION MANAGER, INSPECTOR OF RECORD, LABOR COMPLIANCE PROVIDER, and ARCHITECT until removal is authorized by PROJECT OWNER. Field office should include two (2) offices, restroom, conference room table, two (2) desks and chairs. CONTRACTOR shall further provide a bookcase and plan rack for storage of Contract Documents and reference materials, a 3’ x 5’ desk, three (3) office chairs, a 3’ x 6’ reference table and stool, one (1) four-drawer legal file cabinet, a telephone with separate line and answering machine, lighting, heating and cooling and internet service. The office shall be of substantial waterproof construction with adequate natural light and ventilation by means of stock operable windows. Doors shall have a key-type lock or padlock hasp. CONTRACTOR shall maintain a similar on-site facility for his/her use.
- B. CONTRACTOR to provide weekly clean up and maintenance of Project Owner field office facility.

**V. Changes to the Drawing:**

- A. 07-Magnolia Santa Ana Gym \_ Addendum 9 narrative 2017-10-16
- B. 08-Magnolia Santa Ana Gym \_ Addendum 9 2017-10-16 Drawings
- C. 09-Magnolia Santa Ana Gym \_ Addendum 10 narrative 2017-10-16
- D. 10-Magnolia Santa Ana Gym \_ Addendum 10 2017-10-16 Drawings
- E. 11-Magnolia Santa Ana Gym \_ reference narrative 2017-10-16
- F. 12-Magnolia Santa Ana Gym \_ REFERENCE dwgs 2017-10-16 Drawings



Magnolia Science Academy  
Gym, Cafeteria and Playground Area Construction

**GC CONTRACT**

# DRAFT AIA® Document A102™ – 2017

## *Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price*

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

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

Magnolia Education and Research Foundation  
DBA Magnolia Public Schools  
250 East 1<sup>st</sup> St., Suite 1500  
Los Angeles, CA 90012

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

« »  
« »  
« »  
« »

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

Magnolia Education Science Academy – Santa Ana  
AKA Magnolia Pacific Technology Center  
2840 W. 1<sup>st</sup> St.  
Santa Ana, CA 92703

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

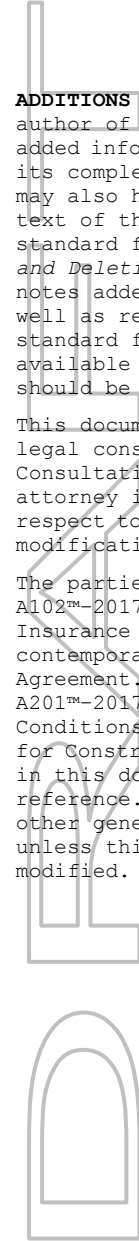
Berliner Architects  
5976 Washington Blvd.  
Culver City, CA 90232

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 A102™-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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## TABLE OF ARTICLES

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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, other documents listed in this Agreement 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. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 16.

### 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.

### ARTICLE 3 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 the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration 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 and 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.

**ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

§ 4.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

[ « » ] The date of this Agreement.

[ X ] A date set forth in a notice to proceed issued by the Owner.

[ « » ] Established as follows:

(Insert a date or a means to determine the date of commencement of the Work.)

[ « » ]

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 4.2 The Contract Time shall be measured from the date of commencement of the Work.

**§ 4.3 Substantial Completion**

§ 4.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

[ X ] Not later than ( 195 ) calendar days from the date of commencement of the Work.

[ « » ] By the following date: « »

§ 4.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

**Portion of Work**

**Substantial Completion Date**

§ 4.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 4.3, liquidated damages, if any, shall be assessed as set forth in Section 5.1.6.

**ARTICLE 5 CONTRACT SUM**

§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Contractor's Fee.

§ 5.1.1 The Contractor's Fee:

(State a lump sum, percentage of Cost of the Work, or other provision for determining the Contractor's Fee.)

7% of the cost of the work

§ 5.1.2 The method of adjustment of the Contractor's Fee for changes in the Work:

7% if net additive or deductive

§ 5.1.3 Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

15%

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed eighty percent (80%) of the standard rental rate paid at the place of the Project.

§ 5.1.5 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)
------	-----------------------	-------------------------

**§ 5.1.6** Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

(i) General: the Contractor and Owner acknowledge that in the event that the Contractor fails to achieve Substantial Completion of the work by the Guaranteed Date of Substantial Completion, as adjusted, in accordance with Section 4.3.1(b), the Owner will incur substantial damages and to the extent of such damages shall be incapable of accurate measurement. Nonetheless, the parties acknowledge that on the date of this Agreement, the amount of liquidated damages set forth below represents a good faith estimate as to the actual potential damages that the Owner would incur as a result of late Substantial Completion of the Project. Such liquidated damages shall be the sole and exclusive remedy of the Owner for late completion of the Project, and the Owner hereby waives all other remedies available at law or in equity with respect to losses resulting from late completion. The amount of the liquidated damages calculated hereunder does not include any penalty.

(ii) Amount of Liquidated Damages: If the Contractor fails to achieve Substantial Completion of the Work on or before the Date of Substantial Completion, as adjusted, for any reason other than excusable Delays, the Contractor shall pay to the Owner liquidated damages in the amount of \$1,000 plus any attorneys' fees and expert fees assessed in connection with the enforcement of any provision of this agreement, per Calendar Day for each Calendar Day the date of Substantial Completion is delayed beyond the Substantial Completion. To the extent the Owner takes legal occupancy of the Project and has the opportunity to use the Project for its intended purpose after the Date of Substantial Completion; payment of liquidated damages shall be made contemporaneously with the Owner's required payment to the Contractor at Final Completion; and such payments may be offset against each other. Notwithstanding such offset, the Contractor reserves the right to challenge its liability for liquidated damages pursuant to the dispute resolution procedures of this Agreement.

**§ 5.1.7** Other:

(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

**Contingency:** The GMP shall include a contractor controlled contingency of 3% and an Owner controlled contingency of 3%. The Contractor controlled contingency can be used at the Contractor's discretion but cannot be used for a) additional general conditions costs, or b) amounts to repair or replace defective workmanship or materials. Any savings of unused Contractor contingency at the end of the Project shall be split 75% Owner / 25% Contractor.

**GMP Savings:** At the end of the Project, if the final as adjusted total cost of the Work plus any mark-ups (less any contingencies contained in the GMP) falls below the adjusted GMP amount, the savings shall be split 75% Owner / 25% Contractor.

**§ 5.2 Guaranteed Maximum Price**

**§ 5.2.1** The Contract Sum is guaranteed by the Contractor not to exceed « » (\$ « »), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

**§ 5.2.2 Alternates**

**§ 5.2.2.1** Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price
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**§ 5.2.2.2** Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.

(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
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§ 5.2.3 Allowances, if any, included in the Guaranteed Maximum Price:  
(Identify each allowance.)

Item	Price
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§ 5.2.4 Assumptions, if any, upon which the Guaranteed Maximum Price is based:  
(Identify each assumption.)

**Prevailing Wages.** This project is subject to prevailing wage. Each worker on the Project must be paid not less than the applicable prevailing rates of per-diem wages in the locality in which the Work is to be performed for each craft or type of worker needed to execute the Contract (“Prevailing Wages”). A copy of the applicable rates of Prevailing Wages is on file and available for review at the Place for Submitting Bids, and a copy will be posted at the Project Site. The Work will be subject to monitoring by the California Department of Industrial Relations (“DIR”) and/or the Compliance Monitoring Unit of the DIR (“CMU”). The Owner will conduct a mandatory conference for the purpose of describing labor-law requirements.

Contractor and all subcontractors shall comply with all applicable provisions of: (1) the California Labor Code (2) the DIR’s CMU and (3) SBX2-9.

Contractor and all subcontractors utilized on the project shall maintain and furnish to the DIR on a periodic basis as directed by the DIR, but in no event less frequent than once each month, certified copies of weekly payroll reports signed under penalty of perjury. The DIR shall review the payroll reports to verify compliance with the prevailing wage requirements and shall conduct audits and onsite investigation as it deems necessary. The prevailing rate of per diem wages and a description of employer payments are on file at the Owner’s office and are available to any interested party upon request. If the payroll records or reports are delinquent or inadequate, the owner shall withhold contract payments. Additionally, if after an investigation it is established that an underpayment occurred, the Owner shall withhold contract payments equal to the amount of underpayment and applicable penalties. The Owner thereafter shall follow the requirements regarding notice to the Prime Contractor or subcontractor as provided in Labor Code Section 1771.6.

§ 5.2.5 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 5.2.6 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 5.2.4. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 5.2.4 and the revised Contract Documents.

**ARTICLE 6 CHANGES IN THE WORK**

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Article 7 of AIA Document A201™–2017, General Conditions of the Contract for Construction.

§ 6.2 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to “cost” and “fee,” and not by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term “fee” shall mean the Contractor’s Fee as defined in Section 5.1.1 of this Agreement.

§ 6.4 If no specific provision is made in Article 5 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Article 5 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

§ 6.5 Allowable contractor mark-ups shall be as follows:

.1	Contractor Labor	7%
.2	Contractor Materials and Equipment	7%
.3	Subcontractor Work	7%
.4	Insurance	_%
.5	Bond	_%

§6.6 Allowable subcontractor mark-ups shall be:

.1	Subcontractor labor, materials and equipment	15%
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## ARTICLE 7 COSTS TO BE REIMBURSED

### § 7.1 Cost of the Work

§ 7.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in the proper performance of the Work. The Cost of the Work shall include only the items set forth in this Article 7.

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Contractor shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard paid at the place of the Project, except with prior approval of the Owner.

### § 7.2 Labor Costs

§ 7.2.1 Wages or salaries of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Contractor's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

*(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)*

« »

§ 7.2.3 Wages or salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Contractor, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments, and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

### **§ 7.3 Subcontract Costs**

Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

### **§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ 7.4.1** Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

**§ 7.4.2** Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Contractor. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

### **§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ 7.5.1** Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Contractor shall mean fair market value.

**§ 7.5.2** Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Contractor, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

**§ 7.5.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

**§ 7.5.4** Costs of the Contractor's site office, including general office equipment and supplies.

**§ 7.5.5** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner's prior approval.

### **§ 7.6 Miscellaneous Costs**

**§ 7.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

**§ 7.6.1.1** Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

**§ 7.6.1.2** Costs for insurance through a captive insurer owned or controlled by the Contractor, with the Owner's prior approval.

**§ 7.6.2** Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Contractor is liable.

**§ 7.6.3** Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Contractor is required by the Contract Documents to pay.

**§ 7.6.4** Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201-2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

**§ 7.6.5** Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

**§ 7.6.5.1** The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Contractor resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Contractor had reason to believe that the required design, process or product was an infringement of a copyright or a patent, and the Contractor failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements, shall not be included in the Cost of the Work used to calculate the Contractor's Fee or subject to the Guaranteed Maximum Price.

**§ 7.6.6** Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

**§ 7.6.7** Costs of document reproductions and delivery charges.

**§ 7.6.8** Deposits lost for causes other than the Contractor's negligence or failure to fulfill a specific responsibility in the Contract Documents.

**§ 7.6.9** Legal, mediation and arbitration costs, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

**§ 7.6.10** Expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary living allowances of the Contractor's personnel required for the Work, with the Owner's prior approval.

**§ 7.6.11** That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

#### **§ 7.7 Other Costs and Emergencies**

**§ 7.7.1** Other costs incurred in the performance of the Work, with the Owner's prior approval.

**§ 7.7.2** Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

**§ 7.7.3** Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence of, or failure to fulfill a specific responsibility by, the Contractor, and only to the extent that the cost of repair or correction is not recovered by the Contractor from insurance, sureties, Subcontractors, suppliers, or others.

#### **§ 7.8 Related Party Transactions**

**§ 7.8.1** For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Contractor; (2) any entity in which any stockholder in, or management employee of, the Contractor holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Contractor; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Contractor.

**§ 7.8.2** If any of the costs to be reimbursed arise from a transaction between the Contractor and a related party, the Contractor shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Contractor shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 10. If the Owner fails to authorize the transaction in writing, the Contractor shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 10.

### **ARTICLE 8 COSTS NOT TO BE REIMBURSED**

**§ 8.1** The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 15;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Contractor's principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Article 7;
- .5 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Contractor, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Article 7; and
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

## **ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS**

**§ 9.1** Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

**§ 9.2** Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

## **ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS**

**§ 10.1** Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Contractor shall deliver such bids to the Architect and Owner with an indication as to which bids the Contractor intends to accept. The Owner then has the right to review the Contractor's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 10.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

**§ 10.1.1** When a specific subcontractor or supplier (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

**§ 10.2** 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 Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, 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 in Article 11.

## **ARTICLE 11 ACCOUNTING RECORDS**

The Contractor shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit



and copy, the Contractor's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Contractor shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

## ARTICLE 12 PAYMENTS

### § 12.1 Progress Payments

§ 12.1.1 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.

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

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§ 12.1.3 Provided that an Application for Payment is received by the Architect not later than the first day of the month, the Owner shall make payment of the amount certified to the Contractor not later than the 1<sup>st</sup> day of the following month. 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 receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

§ 12.1.4 **Applications for Payment.** Unless otherwise agreed, Contractor shall submit to the Owner once a month while the Work is actively in progress, an application utilizing an AIA A 702/703 form for payment based on the approved schedule of values for the Work put in place during that time period, including Change Orders. At Owner's discretion, all applications for payment are subject to approval by Architect. Accumulated retainage of five percent (5%), and approved Change Orders, will be shown as separate items in the application. Payment shall be based on the percentage completion of the Work, less the aggregate of previous payments. As a condition precedent to receiving any payment, Contractor shall include with each application for payment:

1. A current sworn statement from the Contractor setting forth all Subcontractors and material suppliers with whom Contractor has subcontracted, the amount of each subcontract, the amount requested for each Subcontractor and supplier in the payment application, and the balance remaining on the subcontract;
2. Completed and executed form of Conditional Waiver and Release of Rights Upon Progress Payment in accordance with California Civil Code § 8132, from Contractor and its Subcontractors covering the amount of the current Application for Payment;
3. Completed and executed forms of Unconditional Waiver and Release of Rights Upon Progress Payment in accordance with California Civil Code § 8134, from Contractor and all Subcontractors and other persons eligible to file mechanics' liens and stop notices in connection with the portion of the Work covering the amount of the previous Application for Payment;
4. Copies of all licenses, leases, permits, approvals and agreements relating to the construction of the Project and not previously delivered to Owner;
5. Certification from Owner and Contractor that Record Documents (including, without limitation, as-built drawings) have been updated with current Project information;
6. Such other documentation as the Owner may reasonably request.

No payment shall be made for materials or equipment not yet incorporated into the Work without the Owner's advance written consent. Contractor shall promptly pay each Subcontractor.

§ 12.1.5 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 Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee.

§ 12.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 12.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 12.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

§ 12.1.5.3 When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Architect.

§ 12.1.6 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. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work and for which the Contractor has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 12.1.7 In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 12.1.7.1 The amount of each progress payment shall first include:

- .1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- .2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- .4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 12.1.7.1.1 and 12.1.7.1.2 at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 12.1.7.1.1 and 12.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 12.1.7.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017;
- .5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Retainage withheld pursuant to Section 12.1.8.

## § 12.1.8 Retainage

§ 12.1.8.1 For each progress payment made prior to Substantial Completion of the Work, the Owner will 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.)*

5%

§ 12.1.8.1.1 The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

Payment and performance bond costs.

§ 12.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 12.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)*

Not applicable.

§ 12.1.8.3 Except as set forth in this Section 12.1.8.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 12.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)*

Owner shall withhold 150% of the reasonable value of all remaining work to be completed and punch list work to be completed.

§ 12.1.9 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201-2017.

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

§ 12.1.11 Contractor will withhold retention from its subcontractors to the same extent that Owner withholds retention to the Contractor for the subcontractor's work.

§ 12.1.12 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 such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 12.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

## § 12.2 Final Payment

§ 12.2.1 Final Payment. Owner will pay Contractor the unpaid balance of the Contract Sum, including retention, less any sums retained under the Contract Documents or by law, after Contractor delivers for itself and each Subcontractor, Sub-subcontractor, material supplier and any other person who filed a preliminary notice on the Project, an executed (i) Conditional Waiver and Release upon Progress Payment or Unconditional Waiver and Release on Progress as applicable, for all Work performed through the date of Owner's last progress payment; and a (ii) Conditional Waiver and Release Upon Final Payment as applicable. Owner shall make such final payment at the earliest occurrence of the following: (i) forty-five (45) days after Final Completion as defined in the Contract Documents; (ii) thirty-five (35) days after the recording of a Notice of Completion by Owner in the office of the applicable County Recorder; or (iii) Owner's occupation or use of the Project accompanied by a cessation of labor for thirty (30) days. Within ten (10) days

of receipt of final payment, Contractor shall provide for itself and each Subcontractor, Sub-subcontractor, material supplier and any other person who filed a preliminary notice on the Project, an executed Unconditional Waiver and Release Upon Final Payment. In addition, neither final payment nor any retention shall become due until the Contractor submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of this Agreement, 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.

**§ 12.2.2** Within 30 days of the Owner's receipt of the Contractor's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

**§ 12.2.2.1** If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

**§ 12.2.2.2** Within seven days after receipt of the written report described in Section 12.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 12.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201-2017. The time periods stated in this Section 12.2.2 supersede those stated in Article 9 of AIA Document A201-2017. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

**§ 12.2.2.3** If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Contractor's final accounting, is less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201-2017. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

**§ 12.2.3** 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, or as follows:

« » Per paragraph 12.2.1 above.

**§ 12.2.4** If, subsequent to final payment, and at the Owner's request, the Contractor incurs costs, described in Article 7 and not excluded by Article 8, to correct defective or nonconforming Work, the Owner shall reimburse the Contractor for such costs, and the Contractor's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 5.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 12.2.4 in determining the net amount to be paid by the Owner to the Contractor.

### **§ 12.3 Interest**

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. *(Insert rate of interest agreed upon, if any.)*

seven (7%) per annum, .58% per month

## § 12.4 Mechanic's Liens or Stop Notice Claims.

**12.4.1. Duty.** The Contractor shall keep the Project and all materials and equipment free and clear of all liens, stop notices and charges arising out of performance of the Work, and shall indemnify, defend with counsel of Owner's choosing, and hold harmless the Owner and its employees and agents from the claims, suits, actions, losses and liabilities resulting or arising from any such lien, stop notice or charge. These duties are separate and independent of Contractor's general indemnity obligations and are triggered by the assertion of any claim within the scope of Contractor's indemnity obligations above. Within ten (10) days after receiving notice that a lien has been recorded or a stop notice has been received, Contractor shall at its sole cost (including attorneys' fees) and liability either: (i) satisfy the lien or stop notice and obtain a release; or (ii) if Contractor wishes to dispute the lien or stop notice, it shall obtain a bond releasing the mechanic's lien or stop notice and proceed to defend against the lien.

**12.4.2. Liability.** If at any time there shall be evidence of the existence of any stop notice, mechanics' lien, or claim arising out of or in connection with the performance or default in performance of this Contract or any subcontract or supply contract entered into by Contractor to perform this Contract, and if the Owner might become liable for the discharge of or satisfaction of such stop notice, mechanics lien or claim, then the Owner, if not caused by the Owner's failure to make payments due under this Agreement, shall have the right to retain out of any payment then due or thereafter to become due, in addition to the amounts set forth above, an amount sufficient to discharge such stop notice, mechanics' lien, or satisfy such claim and to reimburse the Owner and the representatives of the Owner for all costs and expenses in connection therewith, including attorneys' fees. Further, the Owner, in its sole discretion, shall have the right to discharge or satisfy such stop notice, mechanics' lien, or claim and pay all costs and expenses in connection therewith if the Contractor does not have such stop notice, mechanics' lien, or claim discharged or satisfied within ten (10) calendar days after receiving notice to remove the lien, stop notice, or claim from Owner or unless some other procedure for discharge or satisfaction of such lien or claim is agreed upon between Owner and Contractor. If the amounts retained are insufficient for the aforesaid purposes, or if such bonded stop notice, mechanics' lien, or claim remains undischarged or unsatisfied after all payments have been made to the Contractor, then the Contractor shall refund to the Owner all monies that may have been paid to discharge such lien or satisfy such claims, including the costs, expenses, and attorney's fees in connection therewith.

**12.4.3. Release of Payments Withheld.** The Owner shall release any payments withheld due to a mechanics' lien or stop notice claim if the Contractor obtains a release bond that is: (i) issued by a surety acceptable to Owner admitted to issue surety bonds by the Department of Insurance in California; (ii) is in form and substance satisfactory to the Owner; and (iii) is in an amount of not less than 125% of a mechanics' lien claim and 125% of the amount of any stop notice claim. If a bond is not provided, Owner will withhold 125% of the amount of the mechanic's lien or stop notice.

## ARTICLE 13 DISPUTE RESOLUTION

### § 13.1 Initial Decision Maker

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017, unless the parties appoint below another individual, not a party to the Agreement, to serve as Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

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### § 13.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201-2017, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

Arbitration pursuant to Section 15 of AIA Document A201-2017

Litigation in a court of competent jurisdiction

Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

**ARTICLE 14 TERMINATION OR SUSPENSION**

**§ 14.1 Termination**

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

**§ 14.1.2 Termination by the Owner for Cause**

**§ 14.1.2.1** If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Contractor under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- .2 Add the Contractor’s Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Contractor’s Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

**§ 14.1.2.2** The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

**§ 14.1.3 Termination by the Owner for Convenience**

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

*(Insert the amount of or method for determining the fee, if any, payable to the Contractor following a termination for the Owner’s convenience.)*

The reasonable costs of demobilization.

**§ 14.2 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term “profit” shall be understood to mean the Contractor’s Fee as described in Article 5 and Section 6.4 of this Agreement.

**ARTICLE 15 MISCELLANEOUS PROVISIONS**

**§ 15.1** 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.

**§ 15.2** The Owner’s representative:

*(Name, address, email address and other information)*

<< >>

<< >>

<< >>

<< >>  
<< >>  
<< >>

§ 15.3 The Contractor's representative:  
(Name, address, email address and other information)

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<< >>

§ 15.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

**§ 15.5 Insurance and Bonds**

§ 15.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A102™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, and elsewhere in the Contract Documents.

§ 15.5.2 The Contractor shall provide bonds as set forth in the attached Exhibit A, and elsewhere in the Contract Documents.

§ 15.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201-2017, may be given in accordance with AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203-2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

<< >>

§ 15.7 Other provisions:

<< >>

**ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS**

§ 16.1 This Agreement is comprised of the following documents:

- .1 AIA Document A102™-2017, Standard Form of Agreement Between Owner and Contractor
- .2 AIA Document A102™-2017, Exhibit A, Insurance and Bonds
- .3 AIA Document A201™-2017, General Conditions of the Contract for Construction
- .4 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:  
*(Insert the date of the E203-2013 incorporated into this Agreement.)*

<< >>

.5 Drawings

Number	Title	Date
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.6 Specifications

Section	Title	Date	Pages
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.7 Addenda, if any:

Number	Date	Pages
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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 16.

.8 Other Exhibits:  
(Check all boxes that apply.)

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
Supplementary General Conditions			

.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 A – surety bond requirements**

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)



# DRAFT AIA® Document A201™ – 2017

## General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

<< >>  
<< >>

THE OWNER:

(Name, legal status and address)

<< >>< >>  
<< >>

THE ARCHITECT:

(Name, legal status and address)

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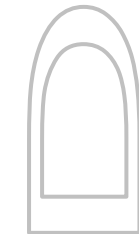
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**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information 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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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 Basic Definitions**

#### **§ 1.1.1 The Contract Documents**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

#### **§ 1.1.2 The Contract**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor. 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 the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### **§ 1.1.4 The Project**

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

#### **§ 1.1.5 The Drawings**

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

#### **§ 1.1.6 The Specifications**

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

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

Instruments of Service are representations, in any medium of expression now known or later developed, 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.

### **§ 1.2 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.

### § 1.3 Capitalization

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

### § 1.4 Interpretation

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

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

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

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

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

### § 1.8 Building Information Models Use and Reliance

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or

relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## **ARTICLE 2 OWNER**

### **§ 2.1 General**

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

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

### **§ 2.2 Evidence of the Owner's Financial Arrangements**

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

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

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

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

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

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

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

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

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

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

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

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

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

#### § 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. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

### 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 Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

#### § 3.2 Review of Contract Documents and Field Conditions by Contractor

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

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as

the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

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

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

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

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

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

### **§ 3.4 Labor and Materials**

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

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

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

### **§ 3.5 Warranty**

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

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

### **§ 3.6 Taxes**

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

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

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

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

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

### **§ 3.7.4 Concealed or Unknown Conditions**

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 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 Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

### § 3.9 Superintendent

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site 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.

### § 3.11 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.

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

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

### **§ 3.13 Use of Site**

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

### **§ 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 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 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, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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

## ARTICLE 4 ARCHITECT

### § 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

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. 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. The Contract Documents may specify other communication protocols.

§ 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 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

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.

## § 5.4 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.

## 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.

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

### § 6.2 Mutual Responsibility

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the 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.

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

### § 6.3 Owner's Right to Clean Up

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

§ 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 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.

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

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

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

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

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

### § 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.

#### § 9.4 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.

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

## § 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

## § 9.8 Substantial Completion

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

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

§ 9.8.3 Upon receipt of the Contractor's list, the Architect 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 Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

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

## § 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the 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 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 (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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

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

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

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

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 Safety Precautions and Programs

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

### § 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, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

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

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

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

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

§ 10.2.7 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, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

#### § 10.3 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.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed

by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

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

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

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

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

#### **§ 10.4 Emergencies**

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

### **ARTICLE 11 INSURANCE AND BONDS**

#### **§ 11.1 Contractor's Insurance and Bonds**

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

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

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

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the

procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

## § 11.2 Owner's Insurance

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

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

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

## § 11.3 Waivers of Subrogation

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

§ 11.3.2 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.

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

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

#### **§11.5 Adjustment and Settlement of Insured Loss**

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

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

### **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

#### **§ 12.1 Uncovering of Work**

**§ 12.1.1** If a portion of the Work is covered contrary to the 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.

**§ 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, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

#### **§ 12.2 Correction of Work**

##### **§ 12.2.1 Before Substantial Completion**

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

##### **§ 12.2.2 After Substantial Completion**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, 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.

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

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

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

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

### § 12.3 Acceptance of Nonconforming Work

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

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

The Contract shall be governed by the law of the 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, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect

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 tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

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

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

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract

Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

#### **§ 14.2 Termination by the Owner for Cause**

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

- .1 repeatedly 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 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

**§ 14.2.2** When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

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

#### **§ 14.3 Suspension by the Owner for Convenience**

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

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

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

#### **§ 14.4 Termination by the Owner for Convenience**

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

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

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

**§ 14.4.3** In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work

properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

## **ARTICLE 15 CLAIMS AND DISPUTES**

### **§ 15.1 Claims**

#### **§ 15.1.1 Definition**

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

#### **§ 15.1.2 Time Limits on Claims**

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

#### **§ 15.1.3 Notice of Claims**

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

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

#### **§ 15.1.4 Continuing Contract Performance**

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

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

#### **§ 15.1.6 Claims for Additional Time**

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

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

#### **§ 15.1.7 Waiver of Claims for Consequential Damages**

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

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

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

## § 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 and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

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

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### § 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section 15.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 15.3.3 Either party may, within 30 days from the date that mediation has been concluded without resolution of the dispute or 60 days after mediation has been demanded without resolution of the dispute, demand in writing that the other party file for binding dispute resolution. If such a demand is made and the party receiving the demand fails to file for binding dispute resolution within 60 days after receipt thereof, then both parties waive their rights to binding dispute resolution proceedings with respect to the initial decision.

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

### § 15.4 Arbitration

§ 15.4.1 If the parties have selected arbitration as the method for binding dispute resolution in the Agreement, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. The Arbitration shall be conducted in the place where the Project is located, unless another location is mutually agreed upon. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

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

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

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

### § 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party

provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 15.4.4.2 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.



## SUPPLEMENTARY GENERAL CONDITIONS

Modify the AIA A201 (2007) General Conditions as follows:

Delete section 3.5 “Warranty” and replace it with the following:

### **3.5 Warranties and Guarantees**

**3.5.1 General Representations and Warranties.** Contractor represents and warrants that it and its Subcontractors of any tier are and will be at all times fully qualified, licensed and capable of performing and completing all the Work in accordance with the Contract Documents, generally accepted professional standards of good and sound construction, and all applicable construction codes, standards, federal, state and local laws, licenses, and permits; and that the Work, including but not limited to each item of materials and equipment incorporated therein, shall be new, shall be of suitable grade of its respective kind for its intended use, and shall be free from defects in materials, construction and workmanship and, with respect to the Design- Build Work under Section 3.12.11, from defects in design and engineering.

**3.5.2 One Year General Warranty.** In addition to warranties required elsewhere in the Contract Documents, and except with respect to roof, waterproofing or any other special extended warranties under Article 3.5.4, Contractor hereby warrants that all manufactured articles, materials, and equipment shall be stored, applied, installed, tested, connected, erected, used, cleaned and conditioned by the Contractor as directed by the manufacturer unless otherwise specified. In addition to the warranties provided for in Section 3.5.1 and elsewhere in the Contract Documents, the Contractor further represents and warrants to Owner that all Work, materials and equipment furnished under this Agreement shall conform to the Contract Documents and will be free from faults and defects in workmanship or materials for a period of one (1) year from the date of Substantial Completion. All Work not conforming to these standards shall be considered defective. Further, the Contractor agrees that all guarantees or warranties of equipment or materials furnished to the Contractor or Subcontractors by any manufacturer or supplier shall be deemed to run to the benefit of, and are hereby assigned to, the Owner. All warranties provided in the Contract Documents and all provisions for correction of Work therein shall include Work of Subcontractors. Limitations on warranties and limitations on the Contractor’s obligation to correct Work shall not apply to latent defects in the Work nor to any specific warranties contained in or required by any of the Contract Documents. Failure of manufacturers to guarantee products will not relieve the Contractor of its obligations under the Contract Documents. The Contractor shall not be required to warrant a product that the manufacturer will not warrant due to its application as specified in the Contract Documents, provided the Contractor gives the Owner prompt written notice of such fact upon learning of the manufacturer’s position (in which event the Contractor should not proceed with the application directed by the Contract Documents until receiving further direction from the Owner and Architect). Subcontractors shall warrant their work to the Owner and Contractor. The Contractor shall be responsible for any costs or expenses arising in connection with or as a result of any defective and/or nonconforming Work, including the fees for any additional professional services of the Architect necessitated thereby. Notwithstanding anything to the contrary herein, Contractor shall have no liability for the failure of any product or equipment specified by the



Owner unless such failure is the result of the Contractor's defective and/or non-conforming Work.

**3.5.3 Contractor Repairs.** The Contractor shall repair or replace Work, and/or other work or property, that may have been damaged or displaced by the actions or omissions of the Contractor or its Subcontractors or to the extent caused by Work not in accordance with the Contract Documents, or Work that may be defective in its workmanship or material during the warranty period, at no expense to the Owner.

**3.5.3.1 Owner's Right to Make Repairs.** Owner may make repairs to Work it deems defective at Contractor's expense if, within fifteen (15) business days after mailing written notice of non-conforming Work to Contractor or its authorized agent, the Contractor neglects to make or undertake repair with due diligence; provided, however, that in case of leak or emergency where, in Owner's opinion, delay would cause a hazard to health or serious loss or damage, repairs may be made without notice being sent to the Contractor, and the Contractor shall pay the cost thereof.

**3.5.4 Extended Warranties.** If any guaranty exceeding one year is provided by the supplier or manufacturer of any equipment or materials used in this Project or is otherwise required by the Contract Documents, then the Contractor's guarantee for such items shall be extended for such term. The Contractor shall supply the Owner with all warranty and guarantee documents relative to equipment and materials incorporated into the Project and guaranteed by their suppliers or manufacturers. Unless the warranty or guarantee is directly to the owner (Owner), such as with kitchen appliances, the Contractor expressly agrees to act as co-guarantor of such equipment and materials, and the Contractor shall supply the Owner with all warranty and guarantee documents relative to equipment and materials incorporated into the Project and guaranteed by their suppliers or manufacturers.

**3.5.5 No Encumbrances on Work.** No material, supplies, or equipment for Work shall be purchased subject to any chattel mortgage, security agreement, or under a conditional sale or other agreement by which the seller or supplier retains an interest therein, provided however, that nothing in this Paragraph shall impair lien or stop payment notice rights, as applicable, otherwise provided by law.

**3.5.6 Latent Defects.** Notwithstanding anything to the contrary contained herein with respect to warranties or with respect to Contractor's obligations to correct Work as required by this Agreement, it is understood and agreed that neither the warranties in this Article 3.5 nor such obligations to correct Work shall affect, limit or impair the Owner's rights against the Contractor with regard to latent defects in the Work which do not appear within the applicable warranty/correction period and which could not, by the exercise of reasonable care and due diligence, be ascertained or discovered by the Owner within such warranty period. The Contractor shall correct and cure any such latent defects which are reported to the Contractor by the Owner in writing within ninety (90) days after such latent defect first appears or could, by the exercise of reasonable care and due diligence, be ascertained or discovered by the Owner and/or any tenant.

Insert new par. 3.12.11:

**3.12.11 Design/Build.** To the extent that project elements delineated in the drawings and specifications designed for the Project will be on a Design/Build basis, the Contractor's Design/Build subcontractors shall be responsible for (1) preparing Architectural, Engineering and other drawings and specifications for all components of its Design/Build Contract; (2) complying with the Project requirements and space limitations; (3) pro-actively coordinating and interfacing with other trades and Owner's consultants, and (4) obtaining approvals from authorities having jurisdiction over the Project. Contractor will not be responsible for the design of ancillary architectural or structural elements to support the Design/Build portions, such as roof supports for mechanical equipment. Contractor will provide, in a timely manner, all information necessary so that Owner can secure design and approval of these structural elements. The Design/Build Contractor or Subcontractor shall be the Architect and/or Engineer of Record for its portion of the Work. Contractor shall ensure that all Architects or Engineers for Design/Build Work shall carry sufficient professional liability coverage. Design/Build systems shall be reviewed by the Architect only for conformance with the aesthetic aspects of the design. The Architect does not assume responsibility for the design, installation or performance of these systems.

Modify par. 3.18.1 to read as follows:

### **3.18 Indemnification**

**3.18.1** To the fullest extent permitted by law the Contractor shall indemnify defend and hold harmless the Owner, Architect, Architect's consultants, Hamlin Capital Management, Gafcon, UMB Bank and agents and employees of any of them ("indemnities") from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property, but only to the extent caused by the negligent acts or omissions or breaches of this Agreement of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Contractor shall not be obligated to indemnify to the extent caused by the active negligence or willful misconduct of the Indemnitees. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

Replace the final two sentences of par. 11.1.5 with the following:

“Contractor shall provide to Owner an additional insured endorsement with its certificate of insurance naming Owner, Hamlin Capital Management, Gafcon and UMB Bank utilizing a combination of an ISO form CG 20 10 4/13 and a CG 20 37 4/13. The Contractor shall furnish Owner with a renewal

certificate and endorsement no less than fifteen (15) days prior to the expiration of said insurance.”

Replace the par. 13.1, “Governing Law”:

“The Contract shall be governed by the law of the State of California. Venue shall be Orange County, CA.”

Replace par. 13.6, “Interest” with the following:

“Payments due and unpaid under the Contract Documents shall bear interest from the date payments is due at the rate of seven (7) percent per annum (.58% per month).”

In par. 14.2.2 strike the phrase “... upon certification by the Initial Decision Maker that sufficient cause exists to justify such action ...” from the first sentence.

In par. 14.2.4 strike the phrase “... shall be certified by the Initial Decision Maker, upon application, and this obligation for payment ...”

In par. 14.2.5 add the phrase “... without any further action” to the end of the paragraph.

Add a new par. 14.2.6:

“If a termination for cause is found to be improper it shall automatically convert to a Termination for Convenience.”

Add to par. 15.3.8:

“However, any litigation filed to perfect the lien shall be voluntarily stated pending completion of dispute resolution procedures.”

# **EXHIBIT A**

## Payment and Performance Bonds

The Contractor shall furnish a Payment and Performance Bond meeting all of the statutory requirements of the State of California in form and substance satisfactory to the Owner and, without limitation, complying at a minimum with the following specific requirements:

- a. Except as otherwise required by statute, the form and substance of such bonds shall be satisfactory to the Construction Monitor, in the Construction Monitor's sole discretion.
- b. Bonds shall be executed by a responsible surety licensed in the State of California with a Best's rating of no less than "A+" and shall remain in effect for a period of not less than the date of Final Completion or the time required to resolve any items of incomplete Work and the payment of any disputed amounts, whichever time period is longer.
- c. The Payment and Performance bonds shall each be in an amount equal to the Contract sum including all contingencies and allowances.
- d. The Payment and Performance bonds shall list the Bondholder's Representative and Trustee as additional Obligees.
- e. The Payment and Performance Bonds shall be provided in the form of AIA Document A312 - 2010 or with a Rider as outlined below. Every Bond not provided in form AIA Document A312 - 2010 must display the Surety's Bond Number and a rider including the following provisions shall be attached to each Bond.
  - i. Surety Bond Rider
    - a. The Surety hereby agrees that it consents to and waives notice of any addition, alteration, omission, change, or other modification of the contract documents. Any addition, alteration, change, extension of time, or other modification of the Contract Documents, or forbearance on the part of either the Owner or the Contractor to the other, shall not release the Surety of its obligation hereunder, and notice to the Surety of such matters is hereby waived.
    - b. The surety further agrees that in the event of any default by the Owner in the performance of the Owner's obligations to the Contractor under the Contract Document, the Contractor or the surety shall cause written notice for such default (specifying said default in detail) to be given to the Owner, and the Owner shall have a reasonable period of time after the receipt of such notice within which to cure such default. Such notice of Default shall be sent by certified or registered U.S. Mail, return receipt requested, postage prepaid, to the Owner, Construction Monitor, and Bond Trustee.

- c. The Surety agrees it is obligated under the bonds to any successor or grantee, as assignee of the Owner.”

Magnolia Science Academy  
Gym, Cafeteria and Playground Area Construction

**ARCHITECT'S**

**ADDENDUMS**

# BERLINER

ARCHITECTS

## DELTA 9

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Project	MAGNOLIA SNATA ANA GYMNASIUM
Project Location	Santa Ana CA

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Addendum Number 9

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Project Number	12-27
Recipient	

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*Description / Reference / Dates*

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## DELTA 9

Per the previously bid documents dated 10/06/2017, the following sheets are the revisions:

**SHEET- A0.21/ C401/ C501/ G-A1.11/ G-A1.21/ M0.01/ G-M1.11/ EN-GB.01/ EN-GB.02/ P0.01/ G-P1.11/ E0.05/ E0.07/ G-E1.11/ G-E4.11/ L1.00/ L1.11/ L1.51/ A2.11/ L2.51 , TOTAL 20 SHEETS.**

- Only change issue information - No CCD-6 & CCD-7, it should be Delta 9 and Addendum 9.

## SHEET A0.00 & A0.002

- Title and issue information change

We had initially issued bid documents which consisted of only DSA approved drawings which is akin to permit set with DSA stamps and signs. As part of internal review, we had issued an addendum to be part of the bid document. As per owner request we combined all these information, however the DSA approved drawing were replaced by the addendum/revised drawings inadvertently. However, the original DSA approved drawing have to be part of the contract documents, otherwise the IOR or DSA field engineer will not be able to review the project. We shall be issuing original DSA approved drawings of these 20 sheets separately for reference only.

Prepared by JUSTIN ZHOU

Date Signed 10/16/2017

Project MAGNOLIA SNATA ANA GYMNASIUM

Every Space Counts

www.berliner-architects.com

T. 310.838.2100

5976 Washington Boulevard

Culver City, CA 90232

Berliner Architects will rely on these notes as the approved record of matters discussed and conclusions reached during this meeting unless written notice to the contrary is received by Berliner Architects within seven calendar days of the issue date of these meeting notes.



# BERLINER

ARCHITECTS

**DELTA 10**

---

Project	MAGNOLIA SNATA ANA GYMNASIUM
Project Location	Santa Ana CA

---

Addendum Number 10

---

Project Number 12-27

---

Recipient

---

*Description / Reference / Dates*

---

**DELTA 10**

Per the previously addendum 10 dated 10/16/2017, the following sheets are the revisions:

**SHEET A0.21-A & A0.23**

- Add notes for the area to refer to A0.21 site plan.

**SHEET A0.21**

- Add notes.

**SHEET C201**

- Revise notes 4.

**SHEET G-A1.11**

- Add sink with keynote 18 for servery room 2 and take off the cabinet accordingly.
- Add counter top outside for transaction window.
- Add floor drain in servery room.
- Add pipe rail cane detection.

**SHEET G-A1.21**

- Ceiling legend type D change to exposed ceiling

**SHEET G-A1.61**

- Change the flooring to CF-7 sealed concrete only

Prepared by JUSTIN ZHOU

Date Signed 10/16/2017

---

Project MAGNOLIA SNATA ANA GYMNASIUM

---

Every Space Counts

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T. 310.838.2100

5976 Washington Boulevard

Culver City, CA 90232

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# BERLINER

ARCHITECTS

## SHEET G-A2.01

- Revise the transaction window in elevation 4.
- Revise the keynote 3 and add keynote 9.
- Add air curtain and countertop outside in elevation 4.
- Add pipe rail cane detection.

## SHEET G-A2.11

- Add specification for basketball hoops and backboard in elevation 1A.
- Provide the dimension and needs to be V.I.F.

## SHEET G-A2.12

- Revise the elevation 1C and 1A according to the change in the Plan in G-A1.11.

## SHEET G-A3.13

- Add air curtain and countertop outside in section 4.

## SHEET G-A4.11

- Add information for ADA bench.

## SHEET G-A8.20

- Revise the TYPE D ceiling by taking off the panels

## SHEET L-A2.11

- Planting area is N.I.C.



## DESIGN WEST ENGINEERING

**Date:** October 16, 2017

**Company:** Berliner Architects  
5976 Washington Blvd.  
Culver City, CA 90232

**Attention:** Prithwish Gupta

**Subject:** Magnolia PTS Charter School – Addendum 10 Narrative  
Our Proposal #12-269

Prithwish,

Please see below for narrative of the changes made to the MEP sheet for the Addendum 10 revisions.

**G-M1.11**

- Added General Note #36.

**P0.01**

- Replaced S-3 with new 3-compartment sink.
- Added new TP-2.
- Replaced WH-2 with new DEL-30 electric water heater.

**G-P1.11**

- Revised Served with new S-3, HW-2, TP-2 and FD-1.
- Added construction note #25

**P4.12**

- Added detail #9, 3-Comp Sink Detail
- Added detail #10, Water heater connection.

**E0.05**

- Revised panel schedules L1GA and H1G

**E0.11**

- Added construction notes 17 and 18 for extension of existing conduits.

**G-E1.11**

- Added power to air curtain.
- Added power to new Water Heater

Feel free to call with any questions or concerns.

Respectfully,

**Jonathan Bianchet**  
Design West Engineering



**EXHIBIT A**

Magnolia Pacific Technology School, Santa Ana Vol1

PHASE II Plans for Gym, Cafeteria and Playground Area Construction



PROJECT

Magnolia Pacific Technology School Santa Ana

3840 West First Street Santa Ana, CA 92703

CLIENT

Woodward Clark Schools 15000 Woodside Avenue, Suite 2004 Westminister, CA 92683

ARCHITECT



CONTRACTS

Booker & Johnson 700 South Flower St, Suite 100 Los Angeles, CA 90017 Tel: (213) 294-9400

Julio Berglund 1100 West Orange Ave, Suite 100 West Hollywood, CA 91605 Tel: (310) 350-5111

David J. Hackett 6775 Hollywood Blvd Hollywood, CA 91605 Tel: (323) 842-2222

Daniel W. Robinson 271 W. Hollywood Blvd, Suite 100 Hollywood, CA 91605 Tel: (323) 462-8000

REGISTRATION

AGENCY APPROVAL

REGISTRATION STAMP DIV. OF THE STATE ARCHITECT AC 01-158-888-05-050 DATE FEB 11 2011

Table with columns: No., Submittal Date, Description. Includes entry 158-888-05-050 dated 01-14-2011.

Job Number: 13-27

General Notes

A0.01

BUILDING AND FIRE LIFE SAFETY

1. PROVIDE A DETAILED BUILDING AND FIRE LIFE SAFETY PLAN TO THE ARCHITECT AND APPROVED BY THE ARCHITECT AND THE FIRE DEPARTMENT. 2. THE FIRE DEPARTMENT SHALL HAVE A CONTRACTOR REVIEW ALL CONSTRUCTION TO BE COMPLETED BY THE ARCHITECT AND APPROVED BY THE ARCHITECT AND THE FIRE DEPARTMENT. 3. THE ARCHITECT SHALL PROVIDE A DETAILED BUILDING AND FIRE LIFE SAFETY PLAN TO THE ARCHITECT AND APPROVED BY THE ARCHITECT AND THE FIRE DEPARTMENT.

SIGNS AND IDENTIFICATION

1. THE ARCHITECT SHALL PROVIDE A DETAILED SIGN AND IDENTIFICATION PLAN TO THE ARCHITECT AND APPROVED BY THE ARCHITECT AND THE FIRE DEPARTMENT. 2. THE ARCHITECT SHALL PROVIDE A DETAILED SIGN AND IDENTIFICATION PLAN TO THE ARCHITECT AND APPROVED BY THE ARCHITECT AND THE FIRE DEPARTMENT. 3. THE ARCHITECT SHALL PROVIDE A DETAILED SIGN AND IDENTIFICATION PLAN TO THE ARCHITECT AND APPROVED BY THE ARCHITECT AND THE FIRE DEPARTMENT.

ROUTE OF TRAVEL

1. THE ARCHITECT SHALL PROVIDE A DETAILED ROUTE OF TRAVEL PLAN TO THE ARCHITECT AND APPROVED BY THE ARCHITECT AND THE FIRE DEPARTMENT. 2. THE ARCHITECT SHALL PROVIDE A DETAILED ROUTE OF TRAVEL PLAN TO THE ARCHITECT AND APPROVED BY THE ARCHITECT AND THE FIRE DEPARTMENT. 3. THE ARCHITECT SHALL PROVIDE A DETAILED ROUTE OF TRAVEL PLAN TO THE ARCHITECT AND APPROVED BY THE ARCHITECT AND THE FIRE DEPARTMENT.

FLOORS AND LEVELS

1. THE ARCHITECT SHALL PROVIDE A DETAILED FLOOR AND LEVEL PLAN TO THE ARCHITECT AND APPROVED BY THE ARCHITECT AND THE FIRE DEPARTMENT. 2. THE ARCHITECT SHALL PROVIDE A DETAILED FLOOR AND LEVEL PLAN TO THE ARCHITECT AND APPROVED BY THE ARCHITECT AND THE FIRE DEPARTMENT. 3. THE ARCHITECT SHALL PROVIDE A DETAILED FLOOR AND LEVEL PLAN TO THE ARCHITECT AND APPROVED BY THE ARCHITECT AND THE FIRE DEPARTMENT.

ENTRANCES AND EXITS

1. THE ARCHITECT SHALL PROVIDE A DETAILED ENTRANCE AND EXIT PLAN TO THE ARCHITECT AND APPROVED BY THE ARCHITECT AND THE FIRE DEPARTMENT. 2. THE ARCHITECT SHALL PROVIDE A DETAILED ENTRANCE AND EXIT PLAN TO THE ARCHITECT AND APPROVED BY THE ARCHITECT AND THE FIRE DEPARTMENT. 3. THE ARCHITECT SHALL PROVIDE A DETAILED ENTRANCE AND EXIT PLAN TO THE ARCHITECT AND APPROVED BY THE ARCHITECT AND THE FIRE DEPARTMENT.

CEILING NOTES

1. ALL CEILING NOTES SHALL BE PROVIDED TO THE ARCHITECT AND APPROVED BY THE ARCHITECT AND THE FIRE DEPARTMENT. 2. THE ARCHITECT SHALL PROVIDE A DETAILED CEILING NOTES PLAN TO THE ARCHITECT AND APPROVED BY THE ARCHITECT AND THE FIRE DEPARTMENT. 3. THE ARCHITECT SHALL PROVIDE A DETAILED CEILING NOTES PLAN TO THE ARCHITECT AND APPROVED BY THE ARCHITECT AND THE FIRE DEPARTMENT.

**PROJECT**  
**Magnolia Pacific Technology School**  
**Santa Ana**

3840 West Placer Street  
 Santa Ana, CA 92703

**CLIENT**  
 Santa Ana Schools  
 1000 East Main Street  
 Westminster, CA 92683

**ARCHITECT**  
 berrington and associates  
 2700 Wilshire Boulevard  
 Suite 300  
 Los Angeles, CA 90048  
 Tel: (310) 784-6000  
 Fax: (310) 784-6001  
 Email: info@berrington.com

**CONSULTANTS**  
**Structural**  
 Berrington & Associates  
 2700 Wilshire Boulevard  
 Suite 300  
 Los Angeles, CA 90048  
 Tel: (310) 784-6000

**Mechanical**  
 South Bay Mechanical, Inc.  
 4800 West Imperial Avenue  
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 Torrance, CA 90503  
 Tel: (310) 250-9111

**Electrical**  
 Berrington & Associates  
 2700 Wilshire Boulevard  
 Suite 300  
 Los Angeles, CA 90048  
 Tel: (310) 784-6000

**Registration**  
 Berrington & Associates  
 2700 Wilshire Boulevard  
 Suite 300  
 Los Angeles, CA 90048  
 Tel: (310) 784-6000

**AGENCY APPROVAL**  
 DIVISION OF STATE ARCHITECT  
 APPROVAL 11/26/11  
 DATE FEB 13 2012

No.	Submitted	Date
1	10/12/11	10/12/11

Job Number: 13-27

**Gym - Code Analysis**

**A0.12**

**NOTES**

- 1. REFER TO SHEET A0.11 FOR GENERAL NOTES AND SPECIFICATIONS.
- 2. REFER TO SHEET A0.10 FOR GENERAL NOTES AND SPECIFICATIONS.
- 3. REFER TO SHEET A0.09 FOR GENERAL NOTES AND SPECIFICATIONS.
- 4. REFER TO SHEET A0.08 FOR GENERAL NOTES AND SPECIFICATIONS.
- 5. REFER TO SHEET A0.07 FOR GENERAL NOTES AND SPECIFICATIONS.
- 6. REFER TO SHEET A0.06 FOR GENERAL NOTES AND SPECIFICATIONS.
- 7. REFER TO SHEET A0.05 FOR GENERAL NOTES AND SPECIFICATIONS.
- 8. REFER TO SHEET A0.04 FOR GENERAL NOTES AND SPECIFICATIONS.
- 9. REFER TO SHEET A0.03 FOR GENERAL NOTES AND SPECIFICATIONS.
- 10. REFER TO SHEET A0.02 FOR GENERAL NOTES AND SPECIFICATIONS.
- 11. REFER TO SHEET A0.01 FOR GENERAL NOTES AND SPECIFICATIONS.

**LEGEND**

- 1. HALL OR CORRIDOR
- 2. OCCUPANCY COURT
- 3. HALL AND STAIRS

**A. ALLOWABLE BUILDING HEIGHT AND AREA TABLES**  
 TABLE 105 - ALLOWABLE BUILDING HEIGHT AND AREA TABLES  
 TABLE 106 - ALLOWABLE BUILDING HEIGHT AND AREA TABLES  
 TABLE 107 - ALLOWABLE BUILDING HEIGHT AND AREA TABLES

**B. SUMMARY**

Room Name	Room Number	Area	Occupancy	Local	Design
			Group	Code	Capacity
GYM	1	4333 SF	A-3	7	648
OFFICE	2	148 SF	B	8	100
STORAGE	3	148 SF	B	8	100
RESTROOM	4	148 SF	B	8	100
BOYS LOCKER	5	99 SF	N/A		
BOYS LOCKER	6	313 SF	N/A		
BOYS LOCKER	7	248 SF	N/A		
STORAGE	8	453 SF	B	8	300
<b>TOTAL ROOMS</b>					
11					

**C. SUMMARY**

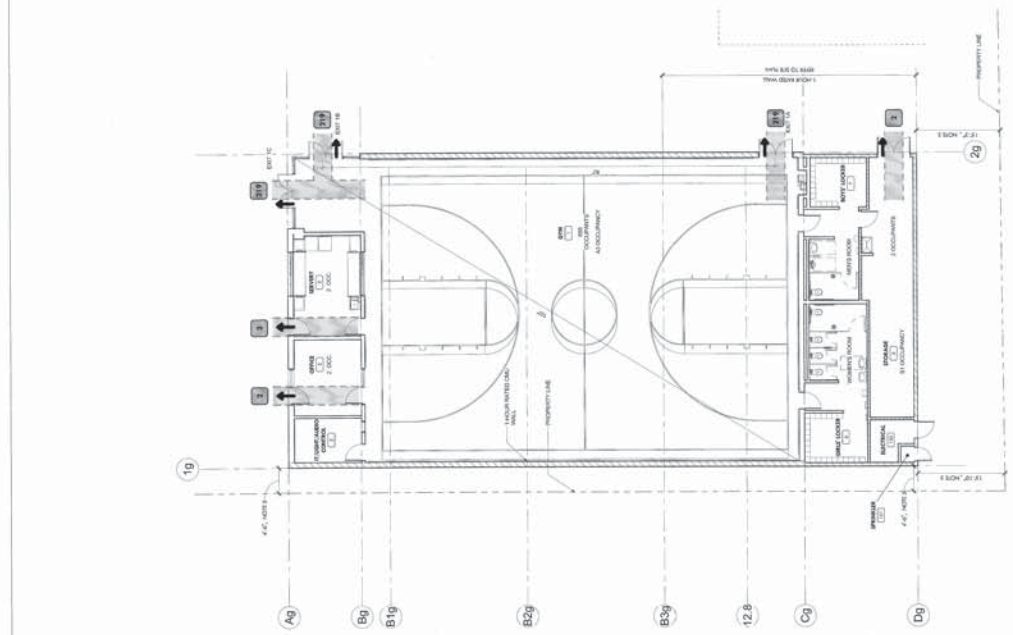
Room Name	Room Number	Area	Occupancy	Local	Design
			Group	Code	Capacity
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BOYS LOCKER	7	248 SF	N/A		
STORAGE	8	453 SF	B	8	300
<b>TOTAL ROOMS</b>					
11					

**D. OCCUPANCY CALCULATION**

Floor	Room	Occupancy	Design Capacity
1st Floor	Gym	648	648
1st Floor	Office	100	100
1st Floor	Storage	100	100
1st Floor	Restroom	100	100
1st Floor	Boys Locker	N/A	N/A
1st Floor	Boys Locker	N/A	N/A
1st Floor	Boys Locker	N/A	N/A
1st Floor	Storage	300	300
<b>TOTAL</b>			
1748			

**E. PLUMBING CALCULATIONS CLASSROOM ALSO APPLY**

REFER TO SHEET A0.11 CLASSROOM BUILDING CODE ANALYSIS



NOTES:  
 1. THE TOTAL NUMBER OF OCCUPANCY CALCULATED ROOMS SHALL BE AT LEAST EQUAL TO THE TOTAL NUMBER OF ROOMS LISTED IN TABLE 105, TABLE 106, TABLE 107 AND TABLE 108.

PROJECT

Magnolia Pacific  
Technology School  
Santa Ana

3840 West First Street  
Santa Ana, CA 92703

CLIENT

1800 South Main Street  
Westminster, CA 92683

ARCHITECT

and associates

CONSULTANTS

Richard A. Johnson  
700 South Orange Ave., Suite 1800  
Westminster, CA 92683  
Tel: (714) 794-4800  
Sanku Bhargava  
17744 E. Colton Ave., Suite 100  
Irvine, CA 92618  
Tel: (949) 250-9111  
Curtis J. Smith  
4770 MacArthur Blvd.  
Costa Mesa, CA 92626  
Tel: (714) 440-1100  
Dorothy M. Eberhardt  
271 W. Highways 100, Suite 100  
Westminster, CA 92683  
Tel: (909) 890-3700

REGISTRATION

AGENCY APPROVAL

REGISTRATION STAMP  
DIV. OF THE STATE ARCHITECT  
APPROVAL NUMBER  
AC 013 FEB 13 2014  
DATE

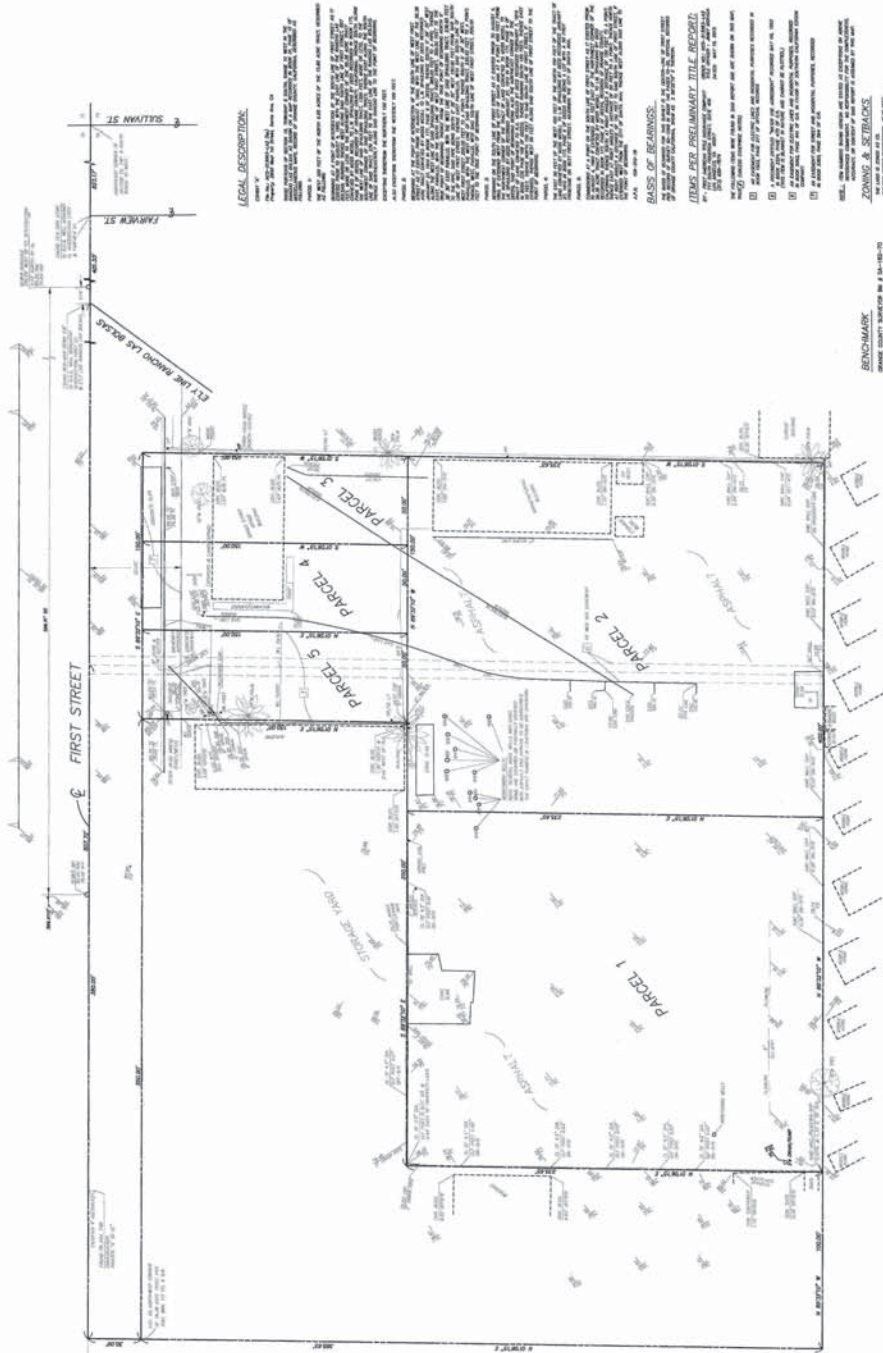
No.	Submitted	Date
1	USA MAG-CORP.	9/12/2014

Job Number: 13-27

Survey

A0.20

ALTA/A.C.S.M.  
LAND TITLE SURVEY  
IN THE CITY OF SANTA ANA, COUNTY OF ORANGE  
STATE OF CALIFORNIA



**LEGAL DESCRIPTION:**  
The above described parcels are situated in the City of Santa Ana, County of Orange, State of California, and are more particularly described as follows:  
Parcel 1: A certain lot or parcel of land, situated in the City of Santa Ana, County of Orange, State of California, containing approximately 1.23 acres, more or less, as shown on the attached plat of subdivision, and more particularly described as follows: [Detailed description of Parcel 1]

**BASES OF BEARINGS:**  
The bearings and distances shown on this plat were determined by the use of a theodolite and were found to be correct within the limits of the instrument used.

**ITEMS FOR PRELIMINARY TITLE REPORT:**  
1. A search of the records of the County of Orange, State of California, for all recorded instruments affecting the above described parcels, and for all recorded instruments affecting the parcels of the adjacent parcels, was made, and the following were found: [List of items found]

**REMARKS:**  
The above described parcels are situated in the City of Santa Ana, County of Orange, State of California, and are more particularly described as follows: [Detailed description of parcels]

**CONFORMING TO:**  
The above described parcels conform to the plat of subdivision, recorded in the County of Orange, State of California, as follows: [List of conforming documents]

**ADDITIONAL NOTES:**  
The above described parcels are situated in the City of Santa Ana, County of Orange, State of California, and are more particularly described as follows: [Detailed description of parcels]

**ADDITIONAL NOTES:**  
The above described parcels are situated in the City of Santa Ana, County of Orange, State of California, and are more particularly described as follows: [Detailed description of parcels]

**ADDITIONAL NOTES:**  
The above described parcels are situated in the City of Santa Ana, County of Orange, State of California, and are more particularly described as follows: [Detailed description of parcels]

**ADDITIONAL NOTES:**  
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The above described parcels are situated in the City of Santa Ana, County of Orange, State of California, and are more particularly described as follows: [Detailed description of parcels]

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The above described parcels are situated in the City of Santa Ana, County of Orange, State of California, and are more particularly described as follows: [Detailed description of parcels]

**ADDITIONAL NOTES:**  
The above described parcels are situated in the City of Santa Ana, County of Orange, State of California, and are more particularly described as follows: [Detailed description of parcels]

**ADDITIONAL NOTES:**  
The above described parcels are situated in the City of Santa Ana, County of Orange, State of California, and are more particularly described as follows: [Detailed description of parcels]

**LEGEND:**  
1. ALL DISTANCES ARE IN FEET AND DECIMALS THEREOF.  
2. ALL BEARINGS ARE TRUE BEARINGS.  
3. ALL CURVES ARE CIRCULAR.  
4. ALL CORNERS ARE TO BE MARKED WITH IRON PIPES OR IRON BOLTS.  
5. ALL CORNERS NOT MARKED AT THE TIME OF SURVEY ARE TO BE MARKED WITH IRON PIPES OR IRON BOLTS.  
6. ALL DISTANCES AND BEARINGS ARE TO BE MEASURED AND RUN AS SHOWN ON THIS PLAT.  
7. ALL DISTANCES AND BEARINGS ARE TO BE MEASURED AND RUN AS SHOWN ON THIS PLAT.  
8. ALL DISTANCES AND BEARINGS ARE TO BE MEASURED AND RUN AS SHOWN ON THIS PLAT.  
9. ALL DISTANCES AND BEARINGS ARE TO BE MEASURED AND RUN AS SHOWN ON THIS PLAT.  
10. ALL DISTANCES AND BEARINGS ARE TO BE MEASURED AND RUN AS SHOWN ON THIS PLAT.



**SURVEYOR'S CERTIFICATE:**  
I, Russell W. Geel, L.E., State of California, No. 14148, do hereby certify that the above described parcels are situated in the City of Santa Ana, County of Orange, State of California, and are more particularly described as follows: [Detailed description of parcels]

**SURVEYOR'S NOTE:**  
The above described parcels are situated in the City of Santa Ana, County of Orange, State of California, and are more particularly described as follows: [Detailed description of parcels]

**BENCHMARK:**  
BENCH MARK SURVEYED BY R. W. GEEL IN 1987  
ELEVATION: 120.45 FEET  
LOCATION: 100' WEST OF FIRST STREET, 100' SOUTH OF MAIN STREET

**CLIENT:**  
MAGNOLIA PACIFIC  
1800 SOUTH MAIN STREET  
WESTMINSTER, CA 92683  
CONTACT: (714) 890-3700  
FAX: (714) 890-3707  
(909) 452-2433

**PERFORMED BY:**  
RUSSELL W. GEEL, L.E.  
14148  
WESTMINSTER, CA 92683  
PHONE: (714) 890-3700 FAX: (714) 890-3707  
FEE: \$10,000.00

**ALTA/A.C.S.M.  
LAND TITLE SURVEY  
OF  
PARCELS OF FIRST STREET  
SANTA ANA, CA 92703**



**PROJECT**  
**Magnolia Pacific Technology School**  
**Santa Ana**

2024 West Hill Road  
 Santa Ana, CA 92705

**CLIENT**  
 Magnolia Public Schools  
 2000 North Harbor Blvd.  
 West Anaheim, CA 92785

**ARCHITECT**  
 DeLuzio and associates  
 10000 Wilshire Blvd., Suite 1000  
 Culver City, CA 90230  
 Tel: (310) 206-4000  
 Fax: (310) 206-4001  
 www.deluzio.com

**CONSULTANTS**  
 Reviewer: J. Johnson Associate  
 200 North Harbor Blvd., Suite 1000  
 West Anaheim, CA 92785  
 Tel: (714) 794-4000

Staff Engineer: John Lee, Suite 100  
 West Anaheim, CA 92785  
 Tel: (714) 794-4000

AMR Landscape Architects  
 10000 Wilshire Blvd., Suite 1000  
 Culver City, CA 90230  
 Tel: (310) 838-4444

**REGISTRATION STAMP**  
 CIVIL ARCHITECT  
 APPROX. 1/20/21

AC: \_\_\_\_\_  
 DATE: \_\_\_\_\_

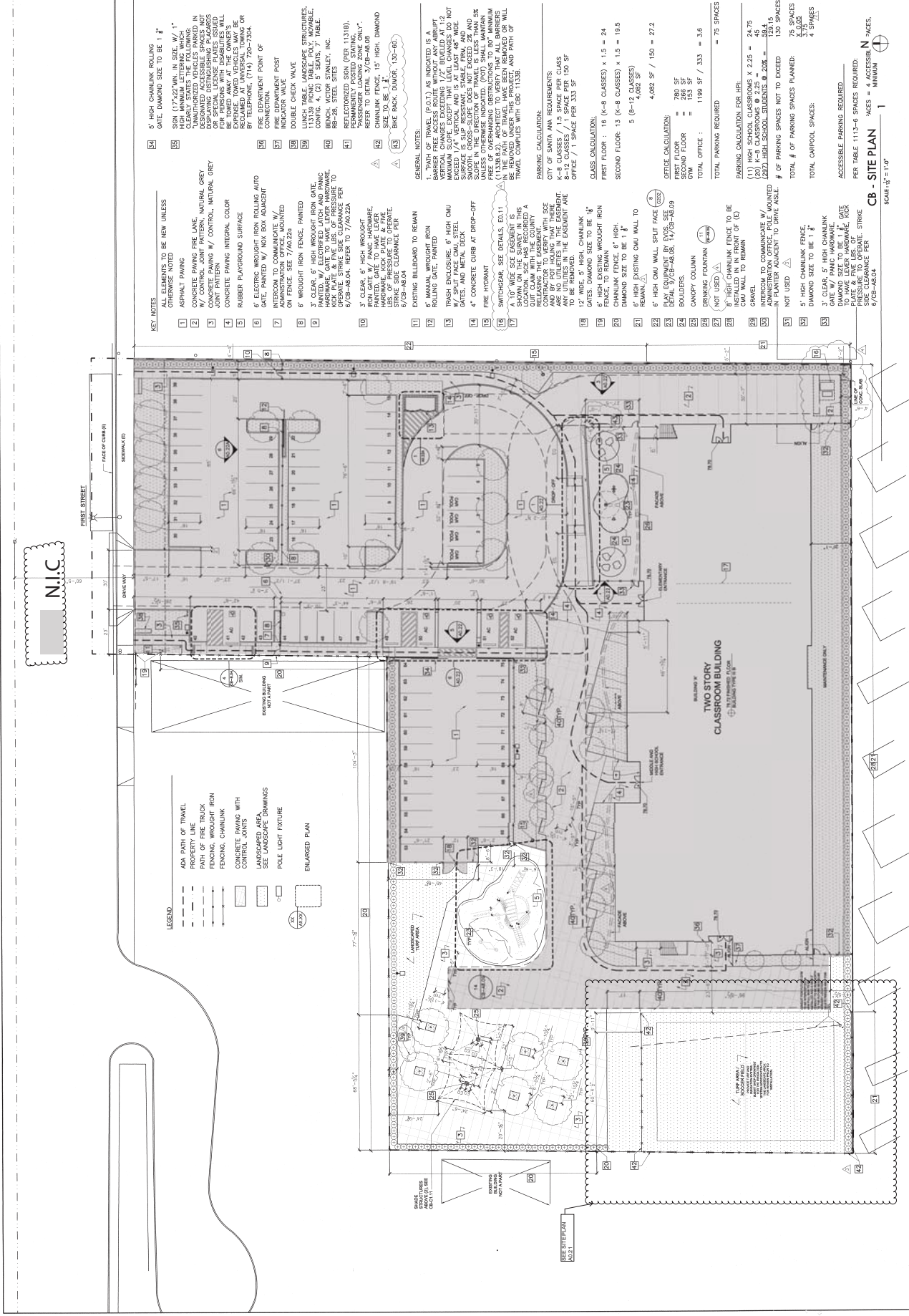


No.	Submittal	Date
1	DEVELOPMENT	02/01/21
2	ARCHITECTURAL	02/11/21
3	LANDSCAPE	02/11/21
4	ACCESSIBILITY	02/11/21
5	TRAVEL	02/11/21
6	TRUCK	02/11/21
7	TRUCK	02/11/21
8	TRUCK	02/11/21
9	TRUCK	02/11/21
10	TRUCK	02/11/21
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97	TRUCK	02/11/21
98	TRUCK	02/11/21
99	TRUCK	02/11/21
100	TRUCK	02/11/21

DATE OF REVISION: 02/11/21  
 REVISION: 1.0  
 DRAWING NO.: 2021-01  
 PROJECT NO.: 2021-01

**Site Plan**  
 Job Number: 19-27

**A0.21-A**



**KEY NOTES**

1. ALL ELEMENTS TO BE NEW UNLESS OTHERWISE NOTED
2. ASPHALT PAVING
3. CONCRETE PAVING FIRE LINE
4. CONCRETE PAVING W/ CONTROL, NATURAL GREY
5. CONCRETE PAVING INTERIOR COLOR
6. RUBBER PLAYGROUND SURFACE
7. 6" ELECTRIC WROUGHT IRON ROLLING AUTO OPERATED GATE TO COMMUNICATE W/ ADMINISTRATION OFFICE, MOUNTED ON FENCE. SEE 7/AJ225
8. WROUGHT IRON FENCE, PAINTED
9. 3" CLEAR, 6" HIGH WROUGHT IRON GATE, HARDWARE, LOCK PLATE & FIVE FOOT STRIKE CLEARANCE PER 6/03-AB04. REFER TO 7/AJ224
10. 3" CLEAR, 6" HIGH WROUGHT IRON GATE TO TRUCK LOWER, HARDWARE, LOCK PLATE & FIVE FOOT STRIKE CLEARANCE PER 6/03-AB04
11. EXISTING BILLBOARD TO REMAIN
12. 6" MANUFACTURED IRON
13. 12" WIDE, 5" HIGH CMU
14. 12" WIDE, 5" HIGH CMU
15. 4" CONCRETE CURB AT DROP-OFF
16. FIRE HYDRANT
17. SWITCHGEAR, SEE DETAILS, E0.11
18. 10" WIDE SIDE EASEMENT IS SHOWN ON THE ASSESSMENT. CONTRACTOR TO VERIFY WITH CITY AND UTILITIES IN THE EASEMENT. ARE NO UTILITIES IN THE EASEMENT. ANY UTILITIES IN THE EASEMENT ARE TO BE REMOVED.
19. 12" WIDE, 5" HIGH, CHAINLINK GATES, DIAMOND SIZE TO BE 18" (K-8 CLASSES) x 1.5 = 24"
20. 6" HIGH EXISTING WROUGHT IRON FENCING
21. CHAINLINK FENCE, 6" HIGH, DIAMOND SIZE TO BE 18"
22. 6" HIGH EXISTING CMU WALL TO REMAIN
23. 6" HIGH CMU WALL, SPOT FACE TO REMAIN
24. DETAIL 5/03-AB08, 1/2" CH-24.09
25. BOLLARDS
26. CANOPY COLUMN
27. DRINKING FOUNTAIN
28. NOT USED
29. 8" HIGH CHAINLINK FENCE TO BE MOUNTED ON CMU WALL TO REMAIN
30. GRAVEL
31. INTERCOM TO COMMUNICATE W/ ADMINISTRATION OFFICE, MOUNTED IN PLANTER ADJACENT TO DRIVE ANGLE
32. NOT USED
33. 5" HIGH CHAINLINK FENCE, DIAMOND SIZE TO BE 18"
34. 3" CLEAR, 5" HIGH CHAINLINK GATE W/ PANIC HARDWARE, DIAMOND SIZE TO BE 18"
35. 3" CLEAR, 5" HIGH CHAINLINK GATE W/ PANIC HARDWARE, PLATE & FIVE FOOT STRIKE CLEARANCE PER 6/03-AB04

**GENERAL NOTES**

1. PART OF TRAVEL (P.O.T.) AS INDICATED BY A VERTICAL CHANGES EXCEEDING 1/2" BEVELLED AT 1:2 SURFACE IS SUP. RESISTANT, STABLE, FIRM, AND EXCEEDS 1/2" VERTICAL AND IS AT LEAST 48" WIDE. SLOPE IN THE DIRECTION OF TRAVEL IS LESS THAN SIX PERCENT (6%).
2. (1338.4.2) ARCHITECT TO VERIFY THAT ALL BARRIERS BE REMOVED UNDER THIS PROJECT, AND PATH OF TRAVEL COMPLETES WITH CBC 11338.
3. CITY OF SANTA ANA REQUIREMENTS: K-8 CLASSES / 1.5 SPACE PER CLASS / OFFICE / 1 SPACE PER 333 SF
4. CLASS CALCULATION: FIRST FLOOR: 16 (K-8 CLASSES) x 1.5 = 24 SECOND FLOOR: 13 (K-8 CLASSES) x 1.5 = 19.5 TOTAL: 43.5 (K-8 CLASSES) 4,080 SF / 150 = 27.2
5. OFFICE CALCULATION: OFFICE: 700 SF SECOND FLOOR: 200 SF TOTAL: 900 SF TOTAL OFFICE: 1,199 SF / 333 = 3.6 TOTAL PARKING REQUIRED = 75 SPACES
6. PARKING CALCULATION FOR HPI: (11) HIGH SCHOOL CLASSROOMS x 2.25 = 24.75 (11) HIGH SCHOOL CLASSROOMS x 2.25 = 24.75 (227) HIGH SCHOOL STUDENTS @ 208 = 47,216 # OF PARKING SPACES NOT TO EXCEED = 130 SPACES TOTAL # OF PARKING SPACES PLANNED: 75 SPACES TOTAL CARPOOL SPACES: 4 SPACES
7. ACCESSIBLE PARKING REQUIRED PER TABLE 1113-6 SPACES REQUIRED: 4 ACCESSIBLE SPACES PER MINIMUM

**CB - SITE PLAN**  
 SPACES = 4 ACCESSIBLE SPACES PER MINIMUM

SCALE: 1/8" = 1'-0"



No.	Submitted	Date
1	10/28/09	10/28/09

