



# AIA® Document A201® – 2017

## General Conditions of the Contract for Construction

for the following PROJECT:

General Conditions, dated 3/20/2025

As stated in the A101 and B101 agreements for this project.

### THE OWNER:

Board of Regents of the University of Wisconsin System  
c/o UW System Administration - CPB  
780 Regent Street, Suite 239, Madison, WI 53715

### THE ARCHITECT:

*(Paragraph deleted)*

Architect as defined in A101 and B101 agreements for this Project.

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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. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

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, AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified and dated 3/20/2025 ("General Conditions"), any other Conditions of the Contract (Supplementary and other Conditions), Invitation to Bid the Project ("Invitation to Bid"), the Contractor's bid or proposal, Drawings, Specifications, Addenda, any changes in the Work approved by the Owner and Contractor 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 (as defined in section 7.4) issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include instructions to bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, or portions of Addenda relating to bidding or proposal requirements. Moreover, notwithstanding anything herein to the contrary, any and all terms or conditions contained in the Contractor's bid, proposal or response to the Invitation to Bid that were not explicitly solicited by the Owner in the Invitation to Bid is not included as part of the Contract Documents.

#### **§ 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.

**§ 1.1.2.1** The Owner and the Contractor hereby commit themselves to good faith negotiation, coordination, and cooperation to assure the timely completion of the Project.

#### **§ 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, dimensions, and character of the Work, generally including but not limited to 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, forms, 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

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accordance with Section 15.2. At the Owner's sole discretion, the Initial Decision Maker may be replaced at any time, for any reason. If the Initial Decision Maker is replaced, Owner shall provide notice to Contractor.

**§ 1.1.9 Contractor**

See 3.1.1 for definition.

**§ 1.1.10 Intentionally blank**

**§ 1.1.11 Delay**

A Delay is an event that causes an increase in the duration of the Project, or that changes the sequence of the Work or individual Work activities, thereby preventing completion of the Project within the time period specified in the Contract Documents.

**§ 1.1.12 Equal**

Equal means material, equipment or methods proposed and warranted by the Contractor as being equivalent to essential attributes of the material, equipment or method specified in the Contract Documents, and approved by the Architect and Owner's Representative.

**§ 1.1.13 Notice To Proceed**

Notice to Proceed is a written notice provided by the Owner to the Contractor authorizing the Contractor to proceed with Mobilization for the Work on a date specified therein and establishing the date for Substantial Completion of the Work.

**§ 1.1.14 Owner**

The Owner is the Board of Regents of the University of Wisconsin System. The Board of Regents of the University of Wisconsin System exercises the powers and duties prescribed by Wis. Stat. § 16.855. The terms "Board," "Board of Regents," or "The Board of Regents" as used in this document also refer to the Owner.

**§ 1.1.15 Reserved**

**§ 1.1.16 Owner's Representative**

Owner's Representative is the person or persons delegated authority to act on behalf of the Owner. The Owner's Representative will be designated in writing. Owner reserves the right to change its designated Owner's Representative at any time for any reason. If the Owner's Representative is changed, notice shall be provided.

**§ 1.1.17 Project Schedule**

The Project Schedule is a graphic and written analysis of activity duration and sequencing, which is required for successful completion of the Project within the time period identified in the Contract Documents. The Project Schedule shall be in sufficient detail to permit meaningful analysis of work tasks, durations and critical path to Substantial Completion in the sole opinion of the Owner's Representative.

**§ 1.1.18 Shop Drawing**

See 3.12.1 for definition.

**§ 1.1.19 Subcontractor**

The Subcontractor means a person or firm who enters into a contract with the Contractor or a Subcontractor to perform a portion of the Work. Unless otherwise specifically provided, the term Subcontractor includes Subcontractors of all tiers, and is equivalent to Sub-subcontractor for all provisions of this Contract.

**§ 1.1.20 Submittal**

Submittals includes Shop Drawings, Product Data, Samples, etc. submitted by the Contractor to the Architect regarding some portion of the Work.

**§ 1.1.21 Substitution**

Substitution means the use of material or equipment not specified in the Contract Documents, but that the Contractor proposes and warrants as suitable for the use intended and conforms to all other physical, functional, and performance requirements of the Contract Documents.

### § 1.1.22 Surety

Surety is a person or entity licensed to do business in the State of Wisconsin, who provides separate performance bonds and payment bonds to a Contractor to indemnify the Owner against all damages suffered by failure of the Contractor to perform the Work and to pay all lawful claims of Subcontractors, Material Suppliers, and laborers.

### § 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 with the standard of quality established by the Contract Documents and within the allowable time period specified. The Contract Documents are complementary, with technical provisions set forth in the Specifications and complemented by the Drawings 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. The failure of the Contractor to account for all aspects of the Work in its bid shall not relieve the Contractor from performing the Work. To the extent any terms or conditions in any of the Contract Documents conflict with one another, the more stringent or better quality requirement, in the Owner's sole discretion, shall be controlling without any increase in the Contract Time or Contract Sum.

§ 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, except for the provisions of the Single Prime Bid dictated by statute.

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

### § 1.2.4 Conflicting Conditions

§ 1.2.4.1 The Architect shall take all reasonable steps, and care common for the profession in the area, to assure that the Contract Documents are as accurate as possible, and provide information which, in the opinion of the Architect, is necessary in preparing bids and constructing the Project. However, it is mutually understood that discrepancies or conflicts in the Contract Documents may be identified, in which case:

- .1 addenda take precedence over the Specifications;
- .2 the Specifications take precedence over the Drawings;
- .3 stated dimensions take precedence over scaled dimensions;
- .4 large-scale detail drawings take precedence over small-scale drawings; and
- .5 schedules take precedence over other data on the plans.

§ 1.2.4.2 Architect has the right for first interpretation of any ambiguity in the Contract Documents. Ambiguities in the Contract Documents will be resolved by the Owner if the Contractor and Architect cannot come to an agreement.

§ 1.2.4.3 Where the terms "A/E," "Architect/Engineer," "Architect," or "Engineer" are used in technical Sections of the Specifications, the Contractor shall understand that actions indicated to be accomplished by such named parties are actions which are solely the responsibility of the professional technical advisor and consultant to the Owner and such actions thus require final approval by the Owner.

§ 1.2.4.4 Periodically, the Architect may provide the Contractor additional instructions and drawings necessary to perform the Work. The Architect shall make a good faith effort to coordinate such instructions and drawings with the Contract Documents, preparing them so they can be reasonably interpreted as a part thereof. If such additional

instructions change the scope of Work, provisions of Article 7, Changes in the Work, shall be followed.

### **§ 1.3 Capitalization**

Terms capitalized in these General Conditions and Contract Documents 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 Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Drawings, Specifications, and other 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 reserved ownership rights. Any Drawings, Specifications, and other Instruments of Service for this Project shall become the property of Owner on completion and/or acceptance of the work, or upon any basis of termination of the Contract.

**§ 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. 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, if necessary, 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 when there is reasonable evidence that the notice was read by the recipient.

**§ 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.

**§ 1.6.3** The Contractor's presentation to Owner's Representative, or mailing, of such notice to Owner's Representative is a condition precedent to any liability of the Owner for any actual or alleged breach of the Owner's contractual obligations hereunder. The Contractor's failure to give such written notice in the manner and time prescribed by the Contract Documents shall result in the waiver of any and all claims, demands and causes of action that the Contractor may have against the Owner arising from or in connection with the actual or alleged breach.

### **§ 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 may 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. In lieu of separate agreed upon digital form protocols, or the AIA Document E203, industry accepted standards shall govern the digital communication of data, as approved by the Owner.

### **§ 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 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. If Building Information Model and AutoCAD protocols are not established with the preceding, protocols will default to State of Wisconsin Department of Administration protocols.

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## 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 an Owner's Representative, who shall have express authority to bind the Owner with respect to matters requiring the Owner's approval or authorization, provided, however, that changes to the Contract Documents that modify the General Conditions, Contract cost, and/or Contract time shall only be executed by a person duly authorized with signatory authority by the Board of Regents of the University of Wisconsin System. Person(s) with signatory authority will be furnished upon request.

*(Paragraph deleted)*

§ 2.2 The Owner reserves the right to conduct a detailed audit of Contractor and Architect's documents, including, but not limited to: Change Orders and supporting documentation, Construction Change Directives and supporting documents, and any other documentation on the Project related to costs, timeline, and scope.

*(Paragraphs deleted)*

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

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

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture or engineering, or an entity lawfully practicing architecture or engineering, 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 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.

§ 2.3.7 The Owner shall furnish surveys described in Section 2.3.4 and other information prepared by third parties for the Project to the extent the Owner deems necessary for the performance of the Contractor's services, and shall not withhold any reasonable information. The Owner makes no representations or warranties as to the accuracy and/or the completeness of the information it obtains from third parties and provides to the Contractor pursuant to this Section 2.3. In addition, the Owner may provide the Contractor access to the Owner's records, which may contain information about the site and adjacent land and improvements that was not collected specifically for the Project. The Owner makes no representations as to the relevance, accuracy or completeness of information made available to the Contractor from the Owner's records. Contractor shall notify Owner of any discrepancies or information which is lacking in the information provided by the Owner of which Contractor is aware or reasonably should be aware.

§ 2.3.8 The Contractor shall attend all pre-construction meetings, which will be scheduled by the Owner's Representative and Architect.

§ 2.3.9 The Owner's Representative or Architect will schedule progress meetings with the Contractor. At each such progress meeting, the parties will discuss the above-mentioned items, cooperate with others to assure successful completion of the Work, and help to quickly resolve problems which arise.

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

In the event that any of the Work in progress, or Work already completed by the Contractor, or Subcontractors, is determined by the Owner's Representative to be of substandard quality, defective, or otherwise in violation of requirements of the Contract Documents, or 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 or refuses to carry out Work in accordance with the Contract Documents, the Owner may issue an order by written Notice to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4.1 The Contractor shall have ten (10) calendar days after the serving of such Notice within which to take corrective action or to make arrangements judged satisfactory by the Owner's Representative for the corrections to be made. If corrective actions or other arrangements are not judged satisfactory by the Owner's Representative, the Owner may terminate the Contract in accordance with the provisions of the General Conditions of the Contract.

§ 2.4.1.1 If, after suspension of the Work, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the suspension or termination had been issued for the convenience of the Owner under the Contract.

§ 2.4.2 The Owner's Representative may order the Contractor, in writing, to suspend or delay all or any part of the Work of the Contractor for the period of time that the Owner's Representative determines appropriate for the convenience of the Owner.

§ 2.4.2.1 If the Contractor determines that the cost of the Work is altered by such suspension, or the time for completion of such Work is altered or delayed, the Contractor shall provide Notice to the Owner's Representative of any such costs or delay;

§ 2.4.2.2 Such Notice shall be made within ten (10) calendar days of the order to stop or suspend Work;

§ 2.4.2.3 Provision of such Notice to the Owner's Representative shall be a condition precedent to any Owner liability for increased costs, delay, or time extension.

§ 2.4.3 The Owner may exercise any and all rights or remedies provided for herein, by law or in equity, either concurrently or singly in its sole discretion.

#### § 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. 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. Correction of such deficiencies shall not prevent the Owner from recovery of other damages or penalties sustained as a result of the Contractor's default or neglect. 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.

#### § 2.6 Owner's Responsibility For The Site

§ 2.6.1 Prior to start of construction, the Owner shall furnish land and rights-of-way necessary for the carrying out and completion of the Work to be performed under this Contract.

§ 2.6.2 Reserved.

§ 2.6.3 Reserved.

§ 2.6.4 The Owner's Representative shall act on any Notice as soon as practicable. If the Owner's Representative determines that the conditions reported by the Contractor differ materially from those indicated in the Contract Documents, or are of an unknown and unusual nature which could not have been discovered during a reasonable site investigation by the Contractor, then to the extent established by the Contractor and approved by the Owner, the Owner shall authorize an increase or decrease in the scope, cost, and/or time required for performing any part of the Work under this Contract.

§ 2.6.5 No request by the Contractor for an equitable adjustment to the Contract shall be allowed, unless the Contractor gives proper Notice, which is a condition precedent to any liability on the part of the Owner.

§ 2.6.6 In no event shall any claim by the Contractor for equitable adjustment to the Contract for differing site conditions be allowed if presented after final payment under this Contract is made.

### ARTICLE 3 CONTRACTOR

#### § 3.1 General

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement that has contracted with the Owner to perform the Work as required by the Contract Documents and enters into contracts with Subcontractors including mechanical, electrical, plumbing and fire protection subcontractors identified by the Owner during the Single Prime bidding process. The Contractor is referred to throughout the Contract Documents as if singular in number. The Contractor, and all Subcontractor and Sub-subcontractors 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, but does not include the Owner or the Architect.

§ 3.1.1.1 The Contractor represents and warrants that the scheduling, coordination, and monitoring activity for all Work will be placed under the direct control and supervision of a person experienced in construction scheduling, means and methods. If such experience and knowledge must be obtained by contracting with a separate scheduling consultant, the entire cost of such consultant shall be borne by the Contractor. Additionally, the Contractor fully agrees to cooperate in all respects with all Subcontractors and suppliers to provide all data required, and shall coordinate the activities of its own workforces and the work forces of the Subcontractors, in such manner and at such time as to not cause a delay in the Project

§ 3.1.1.2 The Contractor's bid price shall include the performance of all Work which:

- .1 in accordance with industry standards, customary practice, or by reasonable inference are details of Work that are necessary as part of the construction, operation, and coordination and interface of the Work;
- .2 would necessarily be readily apparent to one skilled in the trades; and
- .3 a component an experienced Contractor would recognize as part of its responsibility.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents and in a good and workmanlike manner in accordance with generally accepted standards of construction of projects similar to the Project.

§ 3.1.2.1 The Contractor has the full and complete responsibility for the accomplishment of all Work within the specified time indicated in the Contract Documents, except where the Contract Documents explicitly and specifically place a limited duty for completion on the Owner.

§ 3.1.2.2 The Contractor is hereby put on notice that failure to furnish data or cooperate in good faith is a material breach of Contract and may be the basis for a termination for cause under the procedures set forth in these General Conditions. In the event of such material breach the Owner's Representative, in addition to, and not in lieu of the right to termination for default, may acquire the services of a scheduling specialist to perform any such duties and charge



the cost thereof to the Contractor. In the event that the Owner's Representative is required to acquire any replacement scheduling services, the Contractor shall conform to any revised schedule resulting therefrom.

§ 3.1.2.3 In addition to the criteria set forth in these General Conditions, the full and complete performance of Contractor's obligations under this Contract is a condition precedent to the right of the Contractor to payment of any sums due. In the event of any delays by the Contractor or other breach hereof which gives rise to penalties and/or damages to the Owner, then in any such event the Owner's Representative may offset such penalties and damages against the sums due or to become due the Contractor hereunder.

§ 3.1.2.4 Any Work necessary to be performed after regular working hours, on Sundays, or legal holidays, and for which the Contractor is responsible, shall be performed without additional expense to the Owner.

§ 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, the presence and observation of the Work by the Architect, the Owner, or Owner's Representative, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.1.3.1 In the event it becomes necessary to interpret this Article 3.1, the interpretation shall strive to achieve timely, effective and efficient performance of the Work under the Contract within the allowable time identified in the Contract Documents, and at no extra cost or inconvenience to any party, if at all possible.

## § 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.

§ 3.2.1.1 The Contractor represents and warrants it has taken the steps reasonably necessary to prepare a bid which includes the costs for Work, the requirement for which would reasonably be known to a competent contractor, in overcoming normal subsurface conditions at the site where the Work is to be performed and in order to accomplish the Work described in the Contract Documents. Additionally, the Contractor certifies that it has investigated the site and satisfied itself as to the general and local conditions which affect the Work or its cost, including, but not limited to:

- .1 conditions bearing upon transportation, disposal, handling, and storage of materials;
- .2 the availability of labor, water, electric power, and roads or access;
- .3 uncertainties of weather, river stages, tides, or similar physical conditions at the site;
- .4 the conformations and conditions of the ground; and
- .5 the character of facilities and equipment as represented by the Contract Documents.

§ 3.2.1.2 The Contractor also acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from a non-exploratory, visual inspection of the site, and information included in the Contract Documents.

§ 3.2.1.3 Any failure of the Contractor to take the actions described in the Contract Documents will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to the Owner.

§ 3.2.1.4 The Owner assumes no responsibility for any erroneous conclusions or interpretations made by the Contractor based on the information made available by the Owner. The Owner expects the Contractor to have the ability to interpret provided technical information, including geotechnical information, which would be reasonably analyzed or interpreted by any contractor knowledgeable and skilled in the work required to be performed. If the Contractor does not have the ability to interpret or analyze such information, it is the responsibility of the Contractor to obtain the professional services required to perform such analysis. The Owner assumes no responsibility for any understanding reached or representation made concerning conditions which can affect the Work by any of its officers, representatives, or agents before the execution of this Contract, unless that understanding or representation is expressly stated in 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 and Owner's Representative any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect or Owner may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor 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 Owner's Representative and Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Owner may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect or Owner's Representative 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 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 unless the Contractor recognized such error, inconsistency, omission or difference and failed to report it to the Architect. If the Contractor performs any construction activity involving an error, inconsistency, omission or difference in the Contract Documents that Contractor knowingly recognized or should have reasonably recognized without such notice to the Architect and Owner, the costs for correction will be allocated among the responsible parties.

### § 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 (1) give timely notice to the Owner's Representative and Architect; (2) 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.

§ 3.3.3.1 The Contractor shall, except where a provision of the Contract Documents explicitly states to the contrary, have the full, complete, and absolute responsibility and obligation for ensuring that the Work performed strictly conforms to the requirements set forth in the Contract Documents. The Contractor shall maintain an adequate inspection and quality control system and shall perform such inspections as will ensure that the Work performed under this Contract conforms to the requirements of the Contract Documents.

§ 3.3.3.2 At the initial pre-construction meeting, the Contractor shall provide the Owner's Representative a full description of the Contractor's safety, quality control and inspection system and method of implementation.

§ 3.3.3.3 Prior to the start of significant on-site work by any trade, Owner's Representative, the Contractor's superintendent and the Subcontractor's foremen, shall conduct a pre-installation conference. The purpose of the meeting is to review and discuss Contract requirements applicable to the work, samples required, level of quality necessary, and find answers to any questions that may arise. Such meeting is in addition to regularly-scheduled progress meetings and will be arranged on-site by Owner's Representative.

§ 3.3.3.4 The Contractor shall maintain complete inspection records and test data to ensure that quality of the Work is in strict compliance with the terms of the Contract Documents. These records shall be available to the Architect and Owner's Representative at all reasonable times and places. The doctrine of "substantial conformity" to the quality requirements of the Contract Documents shall have no application, unless the Owner's Representative accepts the Work in accordance with the Contract.

§ 3.3.3.5 The Owner reserves the right to conduct its own quality assurance verification, and to observe, inspect, and/or conduct tests relative to Contractor and Subcontractor performance. If, when conducting its own quality assurance program, the Owner determines that the Work or a portion thereof does not comply with requirements of the Contract Documents, the Owner shall attempt to notify the Contractor of such deficiencies as soon as practicable. However, the Owner's exercise of rights under this provision does not:

- .1 relieve the Contractor of the responsibility for providing adequate inspection and quality control measures or the proper documentation of the occurrence of the events required to be tested or monitored in the performance of the Work required by the Contract Documents; and shall provide no basis for waiver or estoppel claims to be asserted against the Owner;
- .2 relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
- .3 constitute or imply acceptance on the part of the Owner; or
- .4 affect the continuing rights of the Owner after acceptance of the completed Work, except as specifically stated to the contrary in the Contract Documents.

§ 3.3.3.6 The presence or absence of the Owner's Representative does not relieve the Contractor from any Contract requirement. If the Contractor desires waiver of any technical or Contract requirement or any other deviation from the strict requirements of the Contract Documents, a specific request for such waiver or deviation must be made to the Owner's Representative and Architect for consideration.

§ 3.3.3.7 The Contractor shall, without charge, replace or correct Work found not to conform to the Contract Document requirements, unless the Owner agrees to accept the non-conforming Work with an appropriate adjustment in the Contract price thereof. Such acceptance of non-conforming Work shall, whether the determination is to be made at the time of final completion or during the performance of Work, be based upon a determination by the Owner that the deviation from Contract Documents requirements does not adversely affect the integrity of completed 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 within the specified time, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. No materials or supplies which are to become part of the Work shall be purchased by the Contractor or by any Subcontractor subject to any chattel mortgage, conditional sale contract, or other agreement by which a security interest is retained by the seller.

§ 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.

§ 3.4.2.1 It is not the intention of the Owner to limit or restrict competition by the use of any reference to a particular manufacturer, process, technique, catalog number or other identifying information. Such proprietary specifications are intended to establish a level of quality or the minimum essential requirements to which the Contractor must conform, unless more explicit restrictions are stated to apply.

§ 3.4.2.2 When the Contract Documents list performance or functional characteristics in connection with Work to be performed, these characteristics are mandatory for reasons of design. Use of any Substitution shall be subject to the prior written approval of the Architect.

§ 3.4.2.3 Material, equipment, or processes offered for use as a Substitution may be proposed by the Contractor in writing. Such proposals shall guarantee the proposed Substitution to be capable of performing the duties of the originally specified material, equipment, or process. The Architect shall respond to any such proposal as soon as practicable, but in no case later than seven (7) calendar days after receipt of such proposal.

§ 3.4.2.4 It shall be the sole responsibility of the Contractor to provide all documentation, regardless of type or quantity, to clearly establish the qualifications of items proposed as Substitutions under this Contract. If the value of the Substitution is less than the item specified in the Contract Documents, then an equitable reduction of the price of the Contract shall be made.

§ 3.4.2.5 When Substitutions are approved by the Owner's Representative and incorporated into the Project by the Contractor, all costs incurred to 1) correct deficiencies in items, 2) provide for installation or hookup, or 3) to achieve performance specified in the Contract Documents, will be borne by the Contractor.

§ 3.4.2.6 Any substitute material or equipment installed by the Contractor without approval of the Owner's Representative may be subject to immediate removal, at sole discretion of Owner's Representative, and all costs required to conform to the Contract Documents shall be borne by the Contractor.

§ 3.4.2.7 The Contractor shall assume all liability and responsibility for any changes in the Work or additional Work required to accommodate use of proposed and approved Substitutions. The Owner's approval of such Substitutions does not relieve the Contractor from the obligation to pay all additional costs resulting from their inclusion in the Work, even if additional costs or Work become apparent after execution of the change or installation of the Substitution. The Contractor's liability shall include payment of any additional costs incurred by the Owner, made necessary by, or directly connected to, such changes.

§ 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, including Substitutions not properly approved and authorized, 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 or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor's warranty under this Section is not exclusive, and any other express warranties stated elsewhere, may also be exercised by the Owner at its option.

§ 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.

§ 3.5.3 The Contractor warrants to the Owner that all materials and supplies used in the Work are free from all liens, claims, or encumbrances, and good title to materials and supplies is retained by the Contractor and shall be conveyed prior to approval of final payment.

§ 3.5.4 Intentionally deleted.

§ 3.5.5 Intentionally deleted.

§ 3.5.6 Intentionally deleted.

§ 3.5.7 The Contractor shall remedy, at the Contractor's expense, any defect in the Work. In addition, the Contractor shall remedy, at the Contractor's expense, any damage to the Owner's property, whether controlled or owned, when the damage is the result of:

- .1 the Contractor's failure to conform to Contract Document requirements; or
- .2 any defect in equipment, material, workmanship, or design furnished by the Contractor or Subcontractors regardless of tier.

§ 3.5.8 Intentionally deleted.

§ 3.5.9 The Owner's Representative shall give Notice to the Contractor within a reasonable time after discovery of any failure, defect, or damage.

§ 3.5.10 If, after the receipt of a Notice of a claim under this warranty, the Contractor fails to remedy any failure, defect, or damage within a time judged reasonable by the Owner's Representative, the Owner's Representative shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage, at the Contractor's expense.

§ 3.5.11 All warranties under this Contract or in any related to this Contract, express or implied, shall be obtained for and shall be subject to direct enforcement by the Owner. The Contractor shall provide in each subcontract, or other purchase agreement, for the assignment to the Owner of all such warranties and for the right of enforcement by the Owner. In addition, if necessary the Contractor shall:

- .1 obtain for the Owner's benefit all warranties that would be given in normal commercial practice;
- .2 require all warranties to be executed, in writing, for the benefit of the Owner, if so directed by the Owner's Representative;
- .3 enforce all warranties for the benefit of the Owner; and
- .4 obtain for the Owner's benefit all warranties given by any Subcontractor, at any tier, if such warranty is in excess of the one (1) year warranty period set forth herein.

§ 3.5.12 Unless a defect is caused by the negligence of the Contractor or Subcontractors at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Owner.

§ 3.5.13 The Contractor shall require any Subcontractor manufacturers or suppliers to execute their warranties, in writing, directly to the Owner.

### § 3.6 Taxes

The Contractor shall pay all sales, consumer, use, and other similar taxes required by law assessed to or arising out of the construction of the Project. Per 2017 Wis. Stat. § 77.54 (9m), building materials sold to a construction contractor that will become a component of a facility owned by the Board of Regents of the University of Wisconsin System are exempt from sales and use tax.

### § 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, and shall provide evidence of such permits, licenses, and approvals at the initial pre-construction meeting or before commencement of the Work.

§ 3.7.1.1 Charges for water, sewer, and other utility connections made by municipalities will be paid by the Owner. Payment for use of such services and utilities before Substantial Completion shall be in accordance with provisions of the Contract.

§ 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 and/or relating to

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environmental quality and safety, the performance of the Work, the protection of adjacent property, and the maintenance of passageways, guard fences, or other protective facilities. The Owner's Representative shall be notified by the Contractor of any notices of noncompliance or violation associated with Work required by the Contract Documents.

**§ 3.7.2.1** Where Contract Documents require abatement of asbestos containing materials, prior written notice to the State of Wisconsin, Department of Natural Resources is required. The Contractor shall provide evidence of such notice prior to commencement of the Work. The Contractor shall follow all State of Wisconsin and Federal rules associated with asbestos abatement.

**§ 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, except for Subcontractors selected in the single prime bidding process.

**§ 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 continuous attendance at the Project site during performance of the Work, or as approved by Owner's Representative. The

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superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. This person shall be delegated authority to act on behalf of the Contractor, and shall be, to the extent possible, a single point of contact and communication for the Owner's Representative, Architect, and all Subcontractors to facilitate efficient, timely, and cost effective completion of the Work. Communications between the Architect and Contractor shall be timely relayed to the Owner's Representative.

**§ 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. The Work shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Any delays in Contractor's performance of the Work relative to the schedule shall be governed by Section 8.3 hereof.

**§ 3.10.1.1** The Project Schedule shall incorporate all activities, events, and milestones required for successful Project completion within the allowable time for completion specified in the Contract Documents. The Contractor shall prepare a breakdown of all Work activities or events, whether the activities are to be performed by the Contractor's own forces, those of Subcontractors or the Owner, indicating the proposed duration and sequencing of such activities for successful completion of the Project within the allowable time specified in the Contract Documents. No single Work activity in the Project Schedule shall be for more than \$500,000 in Contract value or for a duration greater than four (4) successive weeks, as approved by the Owner's Representative. The Contractor shall also identify whether any Work activity or event is dependent on the Work of its own forces or with those of the Owner. The failure to list any activity or to perform any other duty required by or incident to that required by the Contract Documents shall not be the basis of a claim for adjustment of any provision of this Contract, or of any other type of claim whatsoever.

**§ 3.10.1.2** The Contractor shall, within fourteen (14) calendar days from the Contract award, develop and publish a Project Schedule for the first sixty (60) calendar days of the Project. The completed Project Schedule, for all Work activities through Project completion, shall be developed and published within this sixty (60) day period. Pursuant to Wis. Stat. § 16.855 (14m)(d), the Contractor must base this Project Schedule on the schedule that the mechanical, electrical or plumbing Subcontractors and Contractors bid on (in the Specifications or bid instructions), unless otherwise agreed to by the Subcontractor. The Contractor shall update the Project Schedule monthly.

**§ 3.10.1.3** If the Contractor's Work depends upon construction or operations by the Owner, the Contractor shall, prior to proceeding with that portion of the Work, promptly give Notice to the Owner's Representative of any apparent deficiencies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor to so report shall constitute an acknowledgment that the Owner's completed or partially completed construction is fit and proper to receive the Work, except as to defects not then reasonably discoverable.

**§ 3.10.1.4** The Contractor shall identify forthwith any critical event which will require the Owner to act or to refrain from acting, or critical time periods within which the Owner must complete activities or Work for which the Owner is responsible under the Contract. Timely Notice of any such identified event or time period shall be given to the Owner. The giving of such Notice is a condition precedent to the creation of any duty of the Owner to take any action or to refrain from taking any action. The failure of the Contractor to give such Notice forthwith shall thereafter bar and

preclude any claim by the Contractor for adjustment of any Contract provision or claim predicated on the breach of any obligation by the Owner.

§ 3.10.1.5 The bonds furnished to secure these commitments shall be applicable to each and every one of these time and scheduling commitments.

§ 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.

§ 3.10.2.1 If the Contractor submits for approval items which do not strictly comply with the design requirements of Contract Documents, the Contractor shall provide all engineering or design information necessary for complete evaluation of the Submittal by the Architect and Owner's Representative. If it is determined by the Contractor or the Owner's Representative that the services of a professional consultant, engineer or architect are required to provide such information, the Contractor shall acquire such services at its own expense.

§ 3.10.2.2 If the Contractor believes that requirements of the Contract Documents are in conflict with the manufacturer's recommended method of installation or application of specified materials, products, or systems, the Contractor shall indicate such possible conflicts at the time of submittal.

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

§ 3.10.3.1 The Owner shall be given the opportunity to schedule its own Work as conveniently as is consistent with the overall needs of the Project Schedule.

§ 3.10.3.2 Where any Work activity required for completion of the Project is completed in less time than required, anticipated, or otherwise allowed by the Project Schedule, the unused time, hereinafter called Float, shall belong to the Project, to be used by the Contractor as the Project needs determine, including but not limited to providing additional time for completion of any other Work activities required for completion of the Project. Float shall not be considered owned, subject to the exclusive use, or management by any of the interested participants. No claim against the Owner or the Contractor shall be made by any party for the loss of Float time.

§ 3.10.3.3 The Contractor shall be independently responsible for resolving any time related matters with Subcontractors, suppliers, or others who may furnish supplies or services on the Project. No liability shall attach to the Owner, for the failure of any party to carry out the coordination and scheduling responsibilities which they have assumed under the Contract.

### § 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.

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§ 3.12.3 Samples are physical examples, such as mock-ups, 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. The following provisions shall apply to all Submittals:

- .1 the Contractor notes the conspicuous nature of this article and agrees that these provisions are material provisions and are to be enforced, in the event of controversy, in such a manner as to place upon the Contractor the full, complete, and total responsibility for the Submittal's conformance with the requirements of this Contract, and suitability or usability of preliminary submissions by the Contractor, without regard to any the Owner action or failure to act.
- .2 all Submittals and supporting information shall be delivered to a party designated by the Owner, who shall act on any such Submittal within 14 calendar days or notify the Contractor in writing, of the time required for such action if greater than the aforementioned 14 day period. Such designation shall take place at the initial Project pre-construction meeting. Review of the Submittals for conformance with requirements of the Contract Documents shall be completed by the party responsible to the Owner for Project design. A copy of all such Submittal and transmittal forms shall also be sent to the Owner's Representative.
- .3 the Contractor shall make Submittals in a timely fashion to assure completion of the entire Project within the allowable time specified in the Contract Documents. The timing of such Submittals shall be subject to the provisions of the contract.
- .4 each Submittal by the Contractor shall contain the cover page included in the Specifications. Such cover page shall be signed by a representative of the Contractor responsible for review of the Submittal to assure compliance with requirements of the Contract Documents.
- .5 the Contractor timing and phasing of Submittals shall be appropriate to the critical path Project Schedule, and to facilitate the timely review by the Architect.

§ 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. Submittals shall be provided in response to requests for Submittals by the Owner's Representative, or whenever required by the Contract Documents.

§ 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

and Owner's Representative 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. The Contractor shall make commercially reasonable efforts to avoid interruptions to the Owner's operations.

### **§ 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, its agents and employees 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.

§ 3.18.1.1 The obligations of the Contractor under this indemnification shall not extend to the liability of the Owner, the Architect and its agents or employees thereof arising out of (1) preparation or approval of maps, Drawings, opinions, reports, surveys, change orders, designs or Specifications, or (2) the giving of or the failure to give directions or instructions thereof provided such giving or failure to give is the cause of the injury or damage.

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

### § 3.19 Contractor Performance Evaluation

§ 3.19.1 The Contractor acknowledges that following completion of the Work, the Owner's Representative will evaluate the Contractor's performance under this Contract. Such evaluation may take place after Substantial Completion or after Final Completion of the Work, as determined by Owner's Representative. The purpose of such evaluation includes, but is not limited to, determining whether or not the Contractor responsibly performed its Contractual obligations and whether or not the best interests of the Owner were promoted thereby.

§ 3.19.2 Owner's Representative shall provide a copy of any such performance evaluation to the Contractor, as soon as practicable after completion of such evaluation.

§ 3.19.3 The Contractor may appeal results of the Contractor's performance evaluation completed by the Owner's Representative by submitting a request for performance review to the Owner. Any such request must include the reasons for such request, and documentation necessary to substantiate the Contractor's claim that initial performance evaluation was inappropriate or otherwise in error.

§ 3.19.4 The Owner reserves the right to waive the results of such performance evaluation(s) if, in the opinion of the Owner, corrective action has been taken to remediate substandard performance, events beyond the control of the Contractor resulted in substandard performance, or the best interests of the Owner will be served.

§ 3.19.5 The Contractor acknowledges and agrees that such evaluation(s) may be used by the Owner pursuant to Wis. Stat. § 16.855(9m) when determining whether the Contractor is a "qualified responsible bidder" for future Project(s); provided, however, any such evaluation made more than five (5) years prior to the submission of any such subsequent bid shall not be considered in any event.

§ 3.19.6 The Contractor acknowledges and agrees that all such evaluations so prepared by Owner's Representative shall constitute "open public records" available for inspection and copying as provided for by law.

## **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.

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

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents until the date of 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 advise the Owner to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall recommend that the Owner require additional 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 recommendation 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 work with the Owner's Representative to conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; assist the Owner's Representative in issuing 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 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 recommendations of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and recommendations, the Architect will endeavor to secure faithful performance by both Owner and Contractor.

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

§ 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.

§ 5.2.1.1 The Contractor must offer a subcontract to the successful mechanical, electrical, plumbing, and sprinkler (MEP) Subcontractors identified by the Owner and included in the Contractor's bid. This subcontract between a Contractor and a MEP Subcontractor must include a scope of work clause identical to the scope of work clause included in the Bid Documents and the contract between the Contractor and the Owner. A Contractor and a MEP Subcontractor may not enter any agreement in connection with bids submitted that would alter or affect the scope or price of the contracts entered into. This prohibition does not apply to the Owner's Change Orders that result in changes to the plans or specifications, or to back charges allowed by the Contract.

§ 5.2.1.1.1 The Contractor shall base its Project Schedule on the schedule in the Specifications and bid instructions unless otherwise agreed to by the MEP Subcontractor.

§ 5.2.1.2 The Contractor may enter into subcontracts for work other than MEP Subcontractor work, if subcontractors are approved by Owner's Representative through the Request for Subcontractor Approval Form. However, the election to subcontract Work shall not relieve the Contractor from responsibility or liability which it has assumed under this Contract. The Contractor shall remain liable to the same extent that its liability would attach, as if the Work had been performed by the Contractor's own employees. If the Specifications require or otherwise designate only one Subcontractor or source of supply for Work required under the Contract Documents, the Contractor's failure to acquire suitable contract arrangements with such Subcontractor or source of supply shall not excuse the Contractor from full responsibility and liability for any failure or default of such source of supply.

§ 5.2.1.3 Bidders shall submit a completed Request for Subcontractor Approval Form with their bid or within seven days of the Contractor bid opening. Submission of a completed Request for Subcontractor Approval Form is an element of responsiveness. Failure to submit this completed form within the above time limits will be considered unresponsiveness and may result in contract award to the next apparent low bidder. When no Subcontractors are anticipated, the Contractor shall give notice of this fact on the Request for Subcontractor Approval Form within the time limits noted above.

§ 5.2.1.4. All Subcontractors are subject to Owner's approval. The Owner may request, or the Contractor may provide, any of the following information to substantiate the proposed Subcontractors' qualifications or ability to perform the Work. The Owner shall consider such information when reviewing the qualifications of proposed Subcontractors to determine whether such qualifications serve the best interests of the Project.

- .1 The amount of experience completing similar Work to that required by the Contract Documents;
- .2 The quality of work the proposed Subcontractor has provided on past projects;
- .3 The extent of available staffing and financial resources of the proposed Subcontractor;
- .4 The Contractor's intended method of monitoring the proposed Subcontractor's Work;
- .5 The level of supervision of the Subcontractor's Work which the Contractor will provide; and
- .6 Any other information regarding the proposed Subcontractor's ability to complete the Work.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect 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, and met all other applicable criteria, 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. The Contractor shall not replace any Owner-identified or approved Subcontractor or material supplier without written approval of the Owner. Any Contractor request for replacement of a Subcontractor previously approved by the Owner shall include the reason(s) for such replacement and all documentation necessary to substantiate such change.

§ 5.2.5 The Contractor shall maintain a list of all Subcontractors and suppliers performing labor or furnishing materials for the Project.

### § 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.

*(Paragraphs deleted)*

§ 5.3.1 The Contractor shall be fully responsible for all acts and omissions of all Subcontractors and shall be responsible for scheduling and coordinating the Work of all Subcontractors and material suppliers.

§ 5.3.2 Nothing herein shall be construed to create any express or implied contractual relationship between Owner and any of the Contractor's Subcontractors, suppliers or vendors.

§ 5.3.3 The Contractor shall cause Article 10.2 (Safety of Persons and Property), with appropriate changes in paragraph and entity designation, to be incorporated in all Subcontracts, regardless of tier.

§ 5.3.4 The Contractor shall insert the following mandatory provisions, with appropriate changes in paragraph and entity designation, in all subcontracts with Subcontractors:

- .1 Article 9 - Payments and Completion
- .2 Article 9.6.2 and 9.6.5.1- Progress Payments
- .3 Article 13.9 - Minimum Wages

§ 5.3.5 Pursuant to Wis. Stat. §16.855 (14m)(a), any contract that the Contractor (referred to below as General Prime Contractor) enters into with a Subcontractor as defined under Wis. Stat. §16.855 (14)(e) shall include the following mandatory provisions:

**PROMPT PAYMENT** (General prime contractor) shall pay (mechanical, electrical, or plumbing subcontractor) in accordance with Wis. Stat §16.855(19)(b), for work that has been satisfactorily completed and properly invoiced by (mechanical, electrical, or plumbing subcontractor). A payment is timely if it is mailed, delivered, or transferred to (mechanical, electrical, or plumbing subcontractor) by the deadline under Wis. Stat §16.855(19)(b).

If (mechanical, electrical, or plumbing subcontractor) is not paid by the deadline in this Contract, (general prime contractor) shall pay interest on the balance due from the eighth day after the (general prime contractor) receives payment from the Board of Regents for the work for which payment is due and owing to (mechanical, electrical,



or plumbing subcontractor), at the rate specified in Wis. Stat §71.82, compounded monthly.

A (mechanical, electrical, or plumbing subcontractor) that receives payment as provided under this Contract and that subcontracts with another entity shall pay those subcontractors, and be liable for interest on late payments to those subcontractors, in the same manner as the (General prime contractor) is required to pay the (mechanical, electrical, or plumbing subcontractor) under this Contract.

**INSURANCE AND BONDS** (mechanical, electrical, or plumbing subcontractor) shall not commence work under this Contract until it has obtained all necessary insurance required of (mechanical, electrical, or plumbing subcontractor) in the contract between the (general prime contractor) and the Board of Regents.

(Mechanical, electrical, or plumbing subcontractor) shall provide a separate 100 percent performance bond and a separate 100 percent payment bond to the benefit of the (general prime contractor) as the sole named obligee. Original bonds shall be given to the (general prime contractor) and a copy shall be given to the Board of Regents no later than 10 days after execution of this Contract.

**INDEMNIFICATION** To the fullest extent permitted by law, (mechanical, electrical, or plumbing subcontractor) shall defend, indemnify, and hold harmless (general prime contractor) and its officers, directors, agents, and any others whom (general prime contractor) is required to indemnify under its contract with the Board of Regents, and the employees of any of them, from and against claims, damages, fines, penalties, losses, and expenses, including but not limited to attorney fees, arising in any way out of or resulting from the performance of the work under this Contract, but only to the extent such claim, damage, fine, penalty, loss, or expense: (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of property, including but not limited to loss of use resulting therefrom and is caused by the negligence, or acts or omissions, of (mechanical, electrical, or plumbing subcontractor), its subcontractors, any of their employees, and anyone directly or indirectly employed by them or anyone for whose acts they may be liable, or (2) as related to such claims, damages, fines, penalties, losses, and expense of or against (general prime contractor), results from or arises out of the negligence of the (general prime contractor) or other fault in providing general supervision or oversight of the work of (mechanical, electrical, or plumbing subcontractor) or (3) as related to claims, damages, fines, penalties, losses, and expense against the Board of Regents arises out of the Board's status as owner of the project or project site.

In addition (mechanical, electrical, or plumbing subcontractor) shall defend, indemnify, and hold harmless (general prime contractor) and its officers, directors, agents, and any others (general prime contractor) is required to indemnify under its contract with the Board, and the employees of any of them, from any liability, including liability resulting from a violation of any applicable safe place act, that (general prime contractor) or the Owner incurs to any employee of (mechanical, electrical, or plumbing subcontractor) or any third party where the liability arises from a derivative claim from said employee, when the liability arises out of the failure of the (General prime contractor) or the Owner to properly supervise, inspect, or approve the work or work area of (mechanical, electrical, or plumbing subcontractor), but only to the extent that the liability arises out of the acts or omissions of (mechanical, electrical, or plumbing subcontractor), its employees, or anyone for whom (mechanical, electrical, or plumbing subcontractor) may be liable, or from (mechanical, electrical, or plumbing subcontractor's) breach of its contractual responsibilities or arises out of (General prime contractor's) negligence or other fault in providing general supervision or oversight of (mechanical, electrical, or plumbing subcontractor's) work or arises out of The Board of Regents' status as owner of the project or project site. In claims against (general prime contractor) or the Owner by an employee of (mechanical, electrical, or plumbing subcontractor) or its subcontractors or anyone for whose acts (mechanical, electrical, or plumbing subcontractor) may be liable, the indemnification obligation of this paragraph is not limited by a limitation on amount or type of damage, compensation, or other benefits payable by or for the (mechanical, electrical, or plumbing subcontractor) subcontractors under workers compensation act.

Except as identified above, the obligations of (mechanical, electrical, or plumbing subcontractor) under this indemnification do not extend to the liability of (general prime contractor) and its agents or employees arising out of (1) preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications; (2) the giving of or failure to give directions or instructions by the (general prime contractor) or



the or their agents or employees provided the giving or failure to give is the cause of the injury or damage; or (3) the acts or omissions of other subcontractors.

**RETAINAGE** Retainage shall occur and be in amounts and on a schedule equal to that in the contract between (general prime contractor) and the Owner. Pursuant to Wis. Stat. §16.855(19)(b), Retainage between Contractor and mechanical, electrical and plumbing subcontractors is governed as follows:

As the work progresses under any subcontract as defined under Wis. Stat. § (14)(e) for construction of a project, the Contractor shall, upon request of a subcontractor, pay to the subcontractor an amount equal to the proportionate value of the subcontractor's work properly completed, less retainage. The retainage shall be an amount equal to not more than 5 percent of the subcontractor's work completed until 50 percent of the subcontractor's work has been completed. At 50 percent completion, no additional amounts may be retained, and partial payments shall be made in full to the subcontractor unless the Board certifies that the subcontractor's work is not proceeding satisfactorily. At 50 percent completion or any time thereafter when the progress of the subcontractor's work is not satisfactory, additional amounts may be retained but the total retainage may not be more than 10 percent of the value of the work completed. Upon substantial completion of the subcontractor's work, any amount retained shall be paid to the subcontractor, less the value of any required corrective work or uncompleted work. All payments the general prime contractor makes under this paragraph shall be within 7 calendar days after the date on which the general prime contractor receives payment from the Board.

Pursuant to Wis. Stat. §16.855(14m)(b), subcontracts under sub (14)(e) must include a scope of work clause that is identical to the scope of work clause on which the subcontractor bid. The following Scope of Work language shall be included in the contracts between the Contractor and Subcontractors:

**SCOPE OF WORK** The mechanical, electrical and plumbing subcontractor scope of work is identical to the general prime contractor scope of work included in these bidding and contract documents. By submitting and signing a bid, all bidders have examined all the Bidding Documents listed in the Table of Contents of the project Specifications. The successful bidders will be required to do all work which is shown on the drawings, mentioned in the Specifications, or reasonably implied as necessary to complete the division of work bid for this project.

## **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 and Owner's Representative 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 and Owner's Representative 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 Owner's Representative 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.

**§ 7.1.2.2** No adjustment of any kind shall be made to this Contract if asserted by the Contractor for the first time, after the date of final payment.

**§ 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.

**§ 7.1.4** Except in cases of emergency, no changes shall be made to the Work by the Contractor without having prior approval of Owner through a Construction Change Directive or Change Order. In addition, the Contractor shall not be entitled to any increase in the Contract Sum or Contract Time without first receiving prior written authorization from the Owner for the same. If the parties disagree whether the work to be performed constitutes a change in Work or disagree as to any adjustments in the Contract Sum or Contract Time, Contractor shall nonetheless diligently proceed with the Work if directed by the Owner while the parties resolve their dispute. In any case, the parties reserve their rights as to the disputed amount.

§ 7.1.5 Electronic signatures are acceptable for all contract and related documents.

## § 7.2 Change Orders

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

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

§ 7.2.2 The inclusion of Subcontractor terms and conditions in the supporting documentation of a Change Order shall have no bearing on the contract between the Owner and Contractor, and shall not change any of the terms and conditions between the Owner and Contractor. Such supporting documentation shall not be construed as creating any expressed or implied contractual obligation of those terms and conditions between Owner and any of the Contractor's Subcontractors, suppliers or vendors.

§ 7.2.3 A Change Order may be proposed by the Architect, Contractor, or the Owner. When a Change Order is proposed, the following procedures shall apply:

- .1 if requested by Owner's Representative, the Contractor shall prepare and submit a detailed proposal, including all cost and time adjustments to which the Contractor believes it will be entitled if the change proposed is incorporated into the Contract. Owner's Representative shall be under no legal obligation to issue a Change Order for such proposal;
- .2 the parties shall attempt in good faith to reach agreement on the adjustments needed to the Contract to properly incorporate the proposed change(s) into the Work;
- .3 in some instances, it may be necessary for Owner to authorize Work or direct changes in Work for which no final and binding Change Order has been reached and for which unit prices are not applicable. In such cases the following shall apply:
  - .1 upon written request by the Owner, through a Construction Change Directive, the Contractor shall perform the proposed Work;
  - .2 the cost of such changes shall not exceed the amount in the Construction Change Directive, and be determined in accordance with Section 7.2.5;
  - .3 in the event agreement cannot be accomplished as contemplated herein, the Owner may authorize the Work to be performed by Owner or to hire others to complete the Work. Such action on the part of the Owner shall not be the basis of a claim by the Contractor for failure to allow it to perform the changed Work.

§ 7.2.4 In the event Work is required due to an emergency as described in Section 7.1.4., the Contractor must request an equitable adjustment as soon as practicable, and in no case later than ten (10) working days of the commencement of such emergency.

§ 7.2.5 Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.2 shall be limited to the following:

- .1 actual labor rate includes the base rate, taxes, insurance and fringe benefits required by agreement or custom and no Contractor markup except as allowed in Section 7.2.5.6 below. Unit labor is the labor time anticipated to be expended to install the corresponding unit of actual materials. Labor cost is the labor hours approved by Owner's Representative multiplied by the Owner's Representative pre-approved composite hourly labor rates;
- .2 actual material cost is the amount paid or to be paid by the Contractor for materials, supplies and equipment entering permanently into the Work, including cost of transportation and applicable taxes.

This cost shall be substantiated by the vendor or supplier's verified invoices/quotes. The cost shall not exceed the usual and customary cost for such items available in the geographical area of the project;

- .3 large tools and major equipment are those with an initial cost greater than \$1,000, whether from the Contractor or other sources. The rental rate shall not exceed the usual and customary amount for such items available in the geographical area of the project. Tool and equipment use time allowed is only for the extra Change Order work. Rental cost is the above tool and equipment time approved by Owner's Representative multiplied by the Owner's Representative pre-approved rental rates also described above;
- .4 the cost of performance and payment bonds are the actual rate paid by the Contractor for such bonds;
- .5 subcontractor costs are for those subcontracted specialties required to complete the Change Order work, with maximum markups as outlined hereinafter;
- .6 the maximum allowable markup for overhead and profit, by all parties of the Contractor and Subcontractors, on Change Order proposals shall not exceed 15 percent total. The Contractor markup of change order work done by Subcontractors shall not exceed 7 ½ percent; and the total combined mark-up by Contractor and Subcontractor, on Subcontractor performed work shall not exceed 15 percent. When the value of a Change Order proposal exceeds \$30,000, a declining scale will be used to negotiate the allowable combined overhead and profit margin. Where Change Order proposals involve a credit only, a reasonable allowance for overhead and profit are properly included as part of the downward adjustment for a deductive change exceeding \$15,000. The amount of such allowance is subject to negotiation.
- .7 all other Change Order expenses are part of the overhead and profit allowance which are not reimbursable as separate items and include the following:
  - .1 all costs associated with the processing of the Change Order are included in the overhead and profit allowance;
  - .2 all such efforts, unless specifically requested as additional Work to be documented as a Change Order proposal or portion thereof, is included in the overhead and profit allowance;
  - .3 the layout required for the installation of material and equipment, and installation design, is the responsibility of the Contractor and is included in the overhead and profit allowance;
  - .3 small tools and supplies. The cost of small hand tools with an initial cost of \$1,000 or less, along with consumable supplies and expendable items such as drill bits, saw blades, gasoline, lubricating or cutting oil, and similar items, is included in the overhead and profit allowance;
  - .4 general expenses (for example, and not limited to: parking fees) which include those items that are a specific job cost not associated with direct labor and material, is included in the overhead and profit allowance;
  - .5 the preparation of record or as-built drawings required is included in the overhead and profit allowance;
  - .6 other costs: a) All association dues, assessments, and similar items are included in the overhead and profit allowance. b) All education, training, and similar items are included in the overhead and profit allowance. c) All drafting and/or engineering, unless specifically requested as additional Work to be documented as a Change Order proposal or portion thereof, is included in the overhead and profit allowance. d) All other cost items such as, but not necessarily limited to, review, coordination, estimating, and expediting, relative to Change Order proposals, are associated with field and office supervision and are included in the overhead and profit allowance.

### § 7.3 Construction Change Directives

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect or Owner's Representative 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 time and material, Not To Exceed. This Not To Exceed amount will be the amount the Contractor can complete the needed change in the Work, and shall include all costs for this work including overhead and profit;
- .2 unit prices stated in the Contract Documents or subsequently agreed upon; or
- .3 cost method agreed upon by all signing parties.
- .4 Intentionally deleted.

§ 7.3.4

*(Paragraphs deleted)*

Intentionally deleted.

§ 7.3.5 Intentionally deleted.

§ 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 and Owner's Representative 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 shall be subsequently issued for all Construction Change Directives when there is agreement on time and cost changes to the Work.

§ 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 and Owner's Representative 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. It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the time for completion of the Work required by the Contract Documents is an essential condition of this Contract. The Contractor agrees that the Work required by the Contract Documents will be prosecuted regularly and diligently at a rate of progress that will ensure its final completion within the time specified in the Contract Documents. It is expressly understood and agreed, by the Contractor and the Owner, that the specified time period for completion of the Work described in the Contract Documents is a reasonable time for the completion of the Work, taking into consideration the average weather conditions and usual industrial conditions prevailing in the locality in which the Work is to be completed.

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

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

§ 8.2.4 Costs for acceleration of Work activities to allow completion of the Project in less time than that allowed by the Contract Documents shall be borne by the party requesting such acceleration or early completion. No claim for delay shall be valid against the Owner for compensation for delayed completion which extends completion beyond the early finish date, but which does not continue beyond the stated time for completion as set forth in the Contract.

### § 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; or (4) by other causes that the Contractor asserts, and the Owner's Representative determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Owner's Representative may determine.

§ 8.3.1.1 If any activity is delayed, or anticipated to be delayed, thereby delaying the Substantial Completion of the entire Project, the Contractor shall have the right to take action as may be necessary to recapture any delay. Such action shall include, but not be limited to:

- .1 increase in staffing;
- .2 increase in shifts, hours of Work, or number of days of Work;
- .3 use of available Float; or
- .4 changing the sequence of Work activities

Costs caused by delays or improperly timed activities shall be borne by the party responsible therefore, and Change Orders, as deemed appropriate, shall be issued in accordance with Article 7 of these General Conditions.

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

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**§ 8.3.2.1** When events occur which, in the opinion of the Contractor, prevent completion of the Project within the time period allowed by the Contract Documents, the Contractor shall request an extension of the specified time for completion. Such request shall include the reasons for delay, the amount of time extension being requested, and any cost(s) associated with the delay. All such requests shall be made in writing and delivered to Owner's Representative within ten (10) working days from the beginning of such delay, or within ten (10) working days from the time when the circumstance with potential for delay becomes reasonably known to the Contractor, whichever is earlier. The Owner's Representative shall act on such requests as soon as practicable and notify the Contractor of Owner's decision.

**§ 8.3.2.2** If the Contractor fails to complete the Work within the time specified in the Contract and such failure is due to reasons which were not beyond the reasonable control of the Contractor or if the Contractor fails to complete the Work within the time specified in the Contract and fails to make the written request as provided for in 8.3.2, then in any such event the Contractor shall pay to the Owner actual damages.

**§ 8.3.2.3** If Owner terminates the Contract, or suspends or stops Work in accordance with 2.4 due to the fault of the Contractor, the damages described in Paragraph 8.3.2.2 shall be assessed for each day (or any part thereof) such Work is stopped on the Project. If the Owner does not elect to terminate the Contract or to suspend or stop the Work, the damages shall be assessed for each day of delay in Substantial Completion.

**§ 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. The Owner may, at its discretion, waive damages due the Owner, or any portion thereof.

## **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. Payments to the Contractor under the Contract Documents will be made as provided for in Wis. Stat. § 16.855(19)(a), as the Work progresses on this Project. Payment requests will be processed monthly, except for special circumstances approved by Owner's Representative. The Contractor must perform all of the conditions required for payment and must have met the obligations which are necessary to qualify for any partial payments. No Contractor whose Work is deficient or whose Work fails to conform to the quality standards set forth in the Contract Documents shall be entitled to interim, progress or partial payments.

**§ 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**

As soon as practicable after the Agreement is executed, but not later than submission of the first payment application, the Contractor shall submit to the Architect a Schedule of Values for work to be performed, as prescribed by the Contract Documents and in the detail requested by the Architect. The cost breakdown items shall reflect actual work progress stages as closely as feasible which, if approved by Architect, will become the basis for 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** With each Application for Payment, the Contractor shall provide to the Architect and Owner's Representative:

- .1** At the request of the Architect or Owner's Representative, submit satisfactory evidence to establish that the sum set forth in any Application for Payment represents the "proportionate value" of Work

completed;

- .2 The Contractor shall certify each request for payment as being a true, accurate, and complete statement of account as of the date on which the certificate was made, and that the stated sums are then earned and payable to the Contractor.
- .3 All requests for payment shall be submitted to the Architect. To expedite payment of sums due under the Contract, the Contractor, Owner's Representative and Architect shall, where possible, jointly review any such request for payment at the site, inspecting the Work if necessary to determine the validity of the request or modifications to the request which are necessary to accurately represent the value of Work completed in accordance with the Contract Documents
- .4 The Contractor shall furnish any and all accounting records requested by the Architect or Owner's Representative to validate all or any part of any request for payment. The Contractor shall maintain these accounting records for a period of three (3) years from the date the Architect authorizes final payment.
- .5 The Contractor agrees to indemnify and hold the Owner harmless from all claims growing out of lawful demands of Subcontractors, laborers, workers, mechanics, material persons, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the performance the Work required by Contract Documents.
- .6 The Contractor shall, at Owner's Representative or Architect's request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived.
- .7 If separate prices are set forth in the Contract Documents for identifiable items of Work, payment for such prices shall be made at the time of completion of those items of Work. Payment under this Paragraph shall be an interim payment until the time of final payment and acceptance of the Work by Architect.
- .8 Pursuant to Wis. Stat. § 16.855(19)(a), as the Work progresses under this Contract for Construction the Architect or Owner's Representative, from time to time, shall grant to the Contractor an estimate of the amount and proportionate value of the work properly completed, which shall entitle the Contractor to receive the amount, less the retainage, from the proper fund. The retainage shall be an amount equal to not more than 5 percent of the estimate until 50 percent of the work has been completed. At 50 percent completion, no additional amounts shall be retained, and partial payments shall be made in full to the Contractor unless the Owner certifies that the job is not proceeding satisfactorily. At 50 percent completion or any time thereafter when the progress of the work is not satisfactory, additional amounts may be retained but in no event shall the total retainage be more than 10 percent of the value of the Work completed. Upon Substantial Completion of the Work, any amount retained shall be paid to the Contractor, less the value of any required corrective Work or uncompleted Work. For the purposes of this section, estimates may include any fabricated or manufactured materials and components specified, previously paid for by Contractor and delivered to the Work or properly stored and suitable for incorporation in the Work embraced in the contract.

**§ 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 properly 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 the requirement that it holds clear title to all property of every description which serves as the basis for the Application for Payment. Contractor warrants that title to any such property is being transferred to the Owner free and clear of all liens. If requested by the Architect or Owner's Representative, the Contractor shall produce satisfactory evidence of transfer of title from suppliers and Subcontractors to the Contractor,

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without reservation, or with adequate waiver of lien. These payments may include any fabricated or manufactured materials and components specified, previously paid for by Contractor and delivered to the site, properly stored, and suitable for incorporation into the Work embraced in the Contract. The Contractor shall identify the method of storage for such materials. Proper evidence of insurance shall be presented to protect the interest of the Owner. If payment is intended to be requested for any off-site storage items, such items shall be listed as separate lines in the request and certification for payment, cost breakdown. Architect or Owner's Representative, upon their request, shall be allowed to verify such materials and equipment no matter the location stored and located.

**§ 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. The Contractor shall have the sole responsibility for obtaining proper insurance on, as well as the responsibility for the care and protection of materials and Work upon which payments have been made. The Contractor shall be responsible for the restoration of any damaged Work. Nothing herein shall operate as a waiver of the rights of the Owner to require fulfillment of all of the terms of the Contract.

#### **§ 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 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.

#### **§ 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 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. In paying any unpaid bills of the Contractor relating to the Work, the Owner shall be deemed the agent of the Contractor, and any payment so made by the Owner shall be considered as a payment made under the Contract by the Owner to the Contractor for its account and the Owner shall not be liable to the Contractor for any such 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 Not more than seven (7) calendar days following the receipt of each payment from the Owner, the Contractor shall make payment to each and every person, Subcontractors, or entity who furnished goods or services for the progress of the Work on the Project, the value of which goods or services were included in the Contractor's Request for Payment and Certification for Payment, or who by law or Contract payment is due upon the receipt of the payment most recently received from the Owner.

§ 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.

§ 9.6.5.1 In the event Owner receives notice from any person, Subcontractor, or other third party, that the Contractor has failed to pay such person(s) for Work performed in accordance with the Contract Documents, the Owner shall notify the Contractor and the Contractor shall, in no more than 10 calendar days, provide all documentation Owner's Representative believes necessary to determine whether such payment is due, or reasons for non-payment of disputed amounts. In the event Owner's Representative determines the claim to be valid and payment is due, or in the absence of aforementioned documentation, Owner's Representative may authorize direct payment of any unpaid bills, withholding from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such claims until satisfactory documentation is furnished that all liabilities have been fully discharged or reasons for non-payment of disputed amounts are provided by the Contractor. In no event shall these provisions be construed to impose any obligations upon the Owner to either the Contractor or the Contractor's Surety.

§ 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.

§ 9.6.7.1 Pursuant to Wis. Stat. § 16.855(19)(b) and § 16.855(14m)(a) retainage on a Subcontract shall occur and be in amounts and on a schedule equal to the retainage schedule in the contract between the Contractor and the Owner.

§ 9.6.7.2 Nothing herein shall preclude the Contractor from deducting from any request for payment such amounts as will properly represent the value of Work which fails to meet the quality standards of the Contract Documents or which the Subcontractor fails to complete.

§ 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, 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. In the event the Contractor elects to stop Work under this Section 9.7, upon recommencing the Work, the Contractor may seek a Change Order to assert a claim for adjustment of the Contract Time and the Contract Sum 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 identifies any item, whether or not included on the Contractor's list, which is not sufficiently complete, in need of correction, or in need of replacement to be 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.

§ 9.8.6 On the date of Substantial Completion, the Contractor shall assign to the Owner all warranties and guarantees of labor or material incorporated into the Work which are provided by third party vendors, suppliers, manufacturers, and Subcontractors.

## **§ 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. While the Owner has such possession or use, the Contractor shall be relieved of the responsibility for loss or damage to the Work resulting from the Owner's possession or use. 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.

**§ 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. The Contractor will prepare a list of items of Work remaining to be performed or corrected on those portions of the Project that the Owner intends to take possession of or use.

## **§ 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 provides certification that all debts and claims against this Project have either been paid in full or otherwise satisfied and give final evidence of release of all liens against the Project, the Owner, and all proceeds payable hereunder. The Contractor shall certify upon such payment request that the data contained therein is current, accurate, and complete. Contractor shall permit, if requested by Owner's Representative, the final inspection to be jointly conducted by the Contractor, Architect and Owner's Representative. The Contractor shall give Notice at least 72 hours in advance of the time set for final inspection. Upon completion of the Work and before receiving final payment for the Work, as required by law, the Contractor shall file with Owner's Representative an affidavit stating that the Contractor has complied fully with Wis. Stat. § 103.49(4r) and that the Contractor has received an affidavit from each of the Contractor's agents, and Subcontractors stating that they also have complied fully with Wis. Stat. § 103.49(4r).

**§ 9.10.2.1** As a condition precedent to final payment, all corrective actions to remedy deficiencies in the Work required by Contract Documents and Work identified on the punch list must have been completed. In addition, where required by Contract Documents, all training of the Owner's staff in the proper operation and maintenance of the Work shall have been completed, Operating and Maintenance Manuals and Instructions as well as drawings marked up to reflect "as built" conditions must have been transmitted to Owner's Representative and all warranty certificates signed and presented for Owner's Representative acceptance.

**§ 9.10.2.2** When to the satisfaction of Owner's Representative and Architect the Work has been completed, and is of the quality required by the Contract Documents, Owner's Representative may authorize payment of all sums then due the Contractor. Receipt of the final payment, as provided for herein shall constitute a waiver of any and all claims against the Owner arising out of, under, or incident to the Work performed under the Contract.

**§ 9.10.2.3** If the Contractor fails to submit a request for final payment or make satisfactory arrangements with Owner's Representative within thirty (30) calendar days of the final inspection or accepted punch list, no further

payments will be made and the Contract will be closed. The last request for Certification for Payment will be considered the final payment under the terms and conditions of the Contract.

**§ 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 or Owner's Representative 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 but not limited to:

- .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;
- .4 audits performed by the Owner after final payment;
- .5 any warranty or guarantee required by the Contract Documents;
- .6 any other right surviving the Owner as to which the Contractor was specifically given notice before or during the final inspection and final payment process; or
- .7 rights surviving to the Owner as a matter of law.

**§ 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. The Contractor, its agents, employees, material suppliers and subcontractors will perform all Work on the project in a safe and responsible manner. In particular, Contractor shall, at its own expense, conform to the safety policies and regulations established by the Contractor and shall comply with all specific safety requirements promulgated by any government authority, including without limitation the requirements of the Occupations Safety and Health Act of 1970 and the Construction Safety Act of 1969 and all standards and regulations which have been or shall be promulgated by the parties or agencies which administer the Acts. Contractor shall comply with said requirements, standards and regulations, and require and be directly responsible for compliance therewith on the part of its said agents, employees, materials suppliers and contractors; and shall directly receive, respond to, defend, and be responsible for all citations, assessments, fines or penalties which may be incurred by reason of its failure on the part of its agents, employees, material suppliers or subcontractors to so comply.

### **§ 10.2 Safety of Persons and Property**

**§ 10.2.1** The Contractor shall strictly comply with, and bear full responsibility for, any safety procedure set forth in the Contract Documents. The Contractor shall further indemnify Owner for any cost and expense, including legal, resulting from any such failure to abide by any safety procedure set forth in the Contract Documents. At the sole discretion of Owner, the Contractor may also be subject to termination of the Contract for default. The Contractor shall take all precautions for safety of, and shall provide all protection to prevent damage, injury, or loss to:

- .1 employees on the Work and other persons who may be affected thereby (including, but not limited to the public, and the Owner's personnel and agents);
- .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. Contractor shall have properly qualified and trained personnel on safety means and methods, and properly qualified supervision.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, all 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. For these purposes, the Contractor shall:

- .1 provide appropriate safety barricades, signs, and signal lights;
- .2 comply with any safety requirement published by any governmental authority with jurisdiction over the site, including federal, state, or local jurisdictions;
- .3 ensure that any additional measures which are reasonably necessary for the purposes stated are taken.

§ 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. If the Owner becomes aware of any noncompliance by the Contractor or any Subcontractor with the safety conditions of this Contract or of any condition caused by the Contractor or any Subcontractor, which poses a serious or imminent danger to the health or safety of the public or to Owner personnel, for which the Contractor has been previously notified of, and the Contractor has failed to correct, the Owner has the right stop all Work until satisfactory correction action has been taken. Satisfactory correction will be at the sole discretion of the Owner.

§ 10.2.5.1 In case of an emergency which threatens loss or injury of property, or safety of life, the Contractor will be allowed to act, without previous instructions from the Owner's Representative, in a diligent manner. The Contractor shall notify Owner's Representative immediately thereafter. Any claim for compensation by the Contractor due to such extra Work shall be promptly submitted to the Owner's Representative and Architect for approval as provided for in Article 7 above.

§ 10.2.5.2 In the event of temporary suspension of Work, or during inclement weather, or whenever Owner's Representative shall direct, the Contractor shall reasonably protect all Work and materials against damage or injury from the weather. This provision shall be incorporated into the contracts between the Contractor and Subcontractors. If, in the opinion of Owner's Representative, any Work or materials have been damaged or injured by reason of failure on the part of the Contractor or Subcontractors to reasonably protect the Work, such materials shall be removed and replaced at the expense of the Contractor.

§ 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. The Contractor shall use the least hazardous materials, equipment, and processes to execute the Work. The Contractor shall comply with all OSHA rules and regulations. If the Contractor encounters a condition that it suspects may contain a hazardous material or substance that is 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, take all reasonable steps that, in its judgement, are necessary to prevent bodily injury or death, up to and including stopping the Work.

**§ 10.3.2** Contractor shall give notice to Owner of the condition that may contain the hazardous material or substance. Contractor shall have the right to engage a licensed laboratory/subcontractor to test the suspected hazardous material or substance. Owner will negotiate for reimbursement of reasonable testing costs if the test results do not verify the presence of a hazardous material or substance by a Change Order. Owner, by Change Order, will reimburse Contractor for reasonable testing costs if the tests results verify the presence of a hazardous material or substance.

**§ 10.3.3** When hazardous materials or substances, not addressed in the Contract Documents, are required to be removed or disturbed to complete the Work, Contractor and Owner will negotiate how to complete that new work. If Contractor agrees to perform this work, a Change Order will be negotiated potentially adjusting the Contract Sum and Contract Time. Such new work will be at the sole direction of the Owner.

**§ 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.

**§ 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 BONDS**

### **§ 11.1 Contractor's Bonds**

**§ 11.1.1** 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. The bond may be enforced by any person or entity who is entitled to enforce the bonds as a matter of law and who is damaged as a result of breach of these commitments by the Contractor on the Project to which these provisions apply. The Owner shall not be responsible for the default of the Contractor and the remedies of any damaged party shall be limited to an action by the damaged party against the defaulting Contractor and/or its bonding company, in addition to any other coverage for the bond.

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

Init.

*(Paragraphs deleted)*

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

### **§ 12.1 Uncovering of Work**

**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's or Owner's Representative's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, or Owner's Representative, be uncovered for 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 or Owner's Representative has not specifically requested to examine prior to its being covered, the Architect or Owner's Representative 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 with no adjustment to Contract Time.

### **§ 12.2 Correction of Work**

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

The Contractor shall promptly correct Work rejected by the Architect or Owner's Representative 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 laws of the State of Wisconsin.

### **§ 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. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. The Owner may withhold its consent in its sole discretion. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 13.2.1.1** In case the Contractor assigns all or any part of any moneys due or to become due under this Contract, the instrument of assignment shall contain an article substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to prior claims of all persons, firms, and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract and subject to the terms of this Contract and claims of offset by the Owner.

**§ 13.2.2** Antitrust Agreement. The Contractor and the Owner recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the Owner. Therefore, the Contractor hereby assigns to the Owner any and all claims for such overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from antitrust violations commencing after the price is established under this Contract and any Change Order thereto.

### **§ 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 and Owner's Representative timely notice of when and where tests and inspections are to be made so that the Architect and Owner's Representative 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 and Owner's Representative of when and where tests and inspections are to be made so that the Architect and Owner's

Representative 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 and Owner's Representative.

§ 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 as listed in the Agreement or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

**§ 13.6 Reserved**

**§ 13.7 Reserved**

**§ 13.8 Nondiscrimination/Affirmative Action -**

§ 13.8.1 In connection with the performance of Work under this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in Wis. Stat. §51.01(5), sexual orientation, national origin, or any other basis prohibited by law. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Except with respect to sexual orientation, the Contractor further agrees to take affirmative action to ensure equal employment opportunities. This contract provision shall be incorporated into the contracts between the Contractor and Subcontractors.

§ 13.8.2 Contracts with a value of fifty thousand dollars (\$50,000) or more require the Contractor to submit a written affirmative action plan acceptable under Wisconsin Statutes. An exemption occurs from this requirement if the Contractor has a Work force of less than thirty (50) employees. The Contractor is responsible for obtaining affirmative action compliance from Subcontractors.

§ 13.8.3 The Contractor should establish and take appropriate initiatives to reach goals and timetables for minority and female utilization which shall be based on appropriate work force, demographic, or other relevant data which shall cover construction projects or construction contracts performed in specific geographical areas. The goals shall be applicable to the Contractor's, and Subcontractor's entire work force which is working in the area covered by the goals. The goals are established and are as follows:

County	Women Goal	Minority Goal
Adams/Juneau/Monroe/Vernon	12%	2%
Ashland/Bayfield/Douglas/Price	9%	6%
Barron/Sawyer/Washburn	13%	4%
Brown	11%	9%
Buffalo/Jackson/Pepin/Trempealeau	12%	5%
Burnett/Polk	11%	2%
Calumet/Winnebago	11%	3%
Chippewa/Rusk	12%	2%
Clark/Taylor	16%	2%

Columbia	12%	2%
Crawford/Grant/Richland	14%	2%
Dane	9%	9%
Dodge	12%	3%
Door/Kewaunee/Manitowoc	13%	3%
Dunn/Eau Claire	11%	3%
Florence/Forest/Marinette/Oconto	13%	2%
Fond du Lac	11%	4%
Green/Iowa/LaFayette	13%	1%
Green Lake/Marquette/Waushara	10%	4%
Iron/Oneida/Vilas	9%	3%
Jefferson	12%	4%
Kenosha	7%	10%
La Crosse	10%	4%
Langlade/Lincoln/Menominee/Shawano	11%	7%
Marathon	12%	4%
Milwaukee	10%	29%
Outagamie	10%	5%
Ozaukee	8%	3%
Pierce/St Croix	12%	2%
Portage	13%	3%
Rock	11%	7%
Sauk	10%	2%
Sheboygan	14%	5%
Walworth	10%	8%
Washington	9%	3%
Waukesha	7%	4%
Waupaca	11%	2%
Wood	12%	2%
Source: Combined Occupation Distribution: 2000 Census		

§ 13.8.4 Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom a Contractor has a collective bargaining agreement, to refer to either minorities or women shall excuse the Contractor's required initiatives under these specifications.

§ 13.8.5 The Contractor agrees to post in conspicuous places, available for employees and applicants for employment, a notice to be provided by the Owner that sets forth the provisions of this Article 13.8.

§ 13.8.6 Failure to comply with the conditions of this Article 13.8 may result in the Contractor becoming declared an "ineligible" Contractor, termination of the Contract, or withholding of payment.

#### § 13.9 Minimum Wages

§ 13.9.1 The Contractor shall post, at an appropriate conspicuous point on the site of the Project, a schedule showing all determined minimum wage rates for the various classes of laborers and mechanics to be engaged in Work on the Project under this Contract and all deductions, if any, required by law to be made from unpaid wages actually earned by the laborers and mechanics so engaged.

## 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:

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- .1 issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 an act of government, such as a declaration of national emergency, that requires all Work to be stopped; or
- .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.
- .4 Intentionally deleted.

§ 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, as its sole remedy, payment for Work properly executed, as well as reasonable and mutually agreed upon 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's Representative 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 refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 disregards applicable laws, 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.

The Owner may exercise any and all rights or remedies provided for herein, by law or in equity, either concurrently or singly in its sole discretion.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, three 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 secured for this project by the Contractor; and
- .2 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 for the Work the Contractor performed until the Work is finished by another contractor in consideration of 14.2.4.

§ 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, although the excess shall not exceed the unpaid Work performed by 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 and at its sole discretion, 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; reasonable costs incurred by reason of the termination, including reasonable costs attributable to termination of subcontracts. For avoidance of doubt, "reasonable costs incurred by reason of the termination" shall not include lost profits or payments due to Subcontractors for any period of time subsequent to termination of the Contract.

§ 14.4.3.1 The Contractor shall be paid for all Work performed to the effective date of termination, and any "Reimbursable Expenses" outstanding as of the date of termination. The term "Reimbursable Expenses" shall include the cost of personal property or materials which meet requirements of the Contract Documents and have been purchased by the Contractor for incorporation into the Work but not yet incorporated therein; lease payments due to an unaffiliated third party lessor for equipment provided to the Project, where the lease term extends beyond the termination date of this Contract and the Contractor is unable to terminate said lease; and other costs approved by Owner's Representative. Reimbursable Expenses do not include lost profits or payments due to Subcontractors for any period of time subsequent to termination of the Contract. Upon payment of the Reimbursable Expenses, the Contractor shall deliver to the Owner any materials or personal property for which said payment has been made.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

A Claim is a demand or assertion by the Contractor 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 Contractor..

#### § 15.1.2 Time Limits on Claims

The 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 Contractor waives 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 the Contractor shall be initiated by notice to the Owner, the Owner's Representative, and the Initial Decision Maker. Claims under this Section 15.1.3.1 shall be initiated within twenty-one (21) days after

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occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

*(Paragraph deleted)*

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

**§ 15.1.4.1** Pending final resolution of a Claim and any subsequent judicial action or appeal, 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. The Owner and the Contractor shall act in good faith to efficiently and fairly resolve Claims and disputes arising under the Contract in order to avoid, wherever possible, formal legal proceedings.

#### **§ 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. The Contractor expressly waives any rights that it otherwise might have to include overhead costs for extended or unabsorbed overhead in a Claim for an increase in the Contract Sum.

**§ 15.1.5.1** In the event of such interruption or suspension, the Owner and the Contractor shall negotiate in good faith in an effort to agree upon the additional construction costs and other amounts, if any, that shall be paid the Contractor because of the interruption or suspension of Work. Anything in the Contract Documents to the contrary notwithstanding, however, it is expressly understood and agreed that:

- .1 the total amount recoverable by and payable to the Contractor shall be limited to an amount equal to the sum of the additional construction costs and other amounts actually incurred by the Contractor because of the Owner's actions and omissions; plus a maximum overhead and profit allowance equal to fifteen (15) percent of the sum of additional construction costs and other amounts.
- .2 overhead costs for extended or unabsorbed overhead shall not be used as the basis for calculating or determining the amount of any additional construction costs or other amounts recoverable by or payable to the Contractor; and
- .3 by entering into this Contract with the Owner, the Contractor hereby waives any rights that it otherwise might have to pursue recovery of overhead costs for extended or unabsorbed overhead from the Owner.

#### **§ 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.

- .1 Where, under the Contract, Initial Decision Maker extends the amount of time specified for completion of the Project, the new time limit fixed by such extension shall be the essence of this Contract.
- .2 Time extensions and associated adjustments in the Contract Documents which are implemented by, or based on Change Orders, shall not include any allowance for extended and unabsorbed overhead costs.
- .3 Permitting the Work or any part of it to continue after the time fixed for its completion, or after the date to which the time for completion may have been extended, shall in no way operate as a waiver on the part of the Owner, or any of the Owner's rights under the Contract or a waiver of any default by the Contractor.

**§ 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 in the locale in which the Work is being performed were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. A determination on a Claims in accordance with Section 15.1.6.2 shall only be made by the Initial

Decision Maker upon written request by the Contractor. Not all extension(s) in the allowable time for completion, when granted by Initial Decision Maker, will result in additional compensation to the Contractor.

### § 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

As a condition precedent to Contractor's ability to pursue any monetary claim under Wis. Stat. §§ 16.008 and 775.01 or any form of judicial action against Owner, all Claims shall be referred to the Initial Decision Maker for initial decision in accordance with the following procedures:

- .1 First, the Contractor shall present its Claim to the Initial Decision Maker who shall have thirty (30) days after presentation of the Claim to take one or more of the following actions: (1) request additional supporting data from the Contractor, (2) reject the Claim in whole or in part, or (3) approve the Claim. Failure by the Initial Decision Maker to take such action within the time specified herein shall constitute a rejection of the Contractor's Claim.
- .2 If the Initial Decision Maker requests the Contractor to provide additional supporting data, the Contractor shall respond within the timeframe specified by the Initial Decision Maker, by (1) providing the requested supporting data, (2) advising the Initial Decision Maker that the supporting data cannot be provided within the timeframe specified, but that it will provide such supporting data by a specific date, or (3) advising the Initial Decision Maker that no supporting data will be furnished. After receipt of the response or supporting data, if any, the Initial Decision Maker shall have thirty (30) days to take one or more of the following actions: (1) request further additional supporting data from the Contractor, (2) reject the Claim in whole or in part, or (3) approve the Claim.
- .3 The Initial Decision Maker's decision shall: (1) be in writing; (2) state the reasons therefor; and (3) specify any change in the Contract Sum or Contract Time or both.

*(Paragraphs deleted)*

### § 15.3 Litigation

§ 15.3.1 Any judicial action relating to the construction, interpretation, or enforcement of the Contract Documents including without limitation, the Contractor's claims, demands, and causes of action for additional construction costs, delay damages, and other amounts owed hereunder, shall be brought and venue in the Dane County Circuit Court in Madison, Wisconsin. The Contractor hereby consents to personal jurisdiction in that venue, and waives any defenses that the Contractor otherwise might have relating thereto.

§ 15.3.2 The Contractor hereby waives its right to a jury trial in connection with any judicial action or proceeding that may arise by and between the Owner and the Contractor concerning the construction, interpretation, or enforcement of the Contract Documents including, without limitation, any claims, demands, or causes of action that the Contractor hereafter may assert against the Owner for additional construction costs, delay damages, and other amounts.

# **Additions and Deletions Report for** **AIA® Document A201® – 2017**

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## **PAGE 1**

~~(Name and location or address)~~

**General Conditions, dated 3/20/2025**

**As stated in the A101 and B101 agreements for this project.**

...

~~(Name, legal status and address)~~

**Board of Regents of the University of Wisconsin System**

**c/o UW System Administration - CPB**

**780 Regent Street, Suite 239, Madison, WI 53715**

...

~~(Name, legal status and address)~~

**Architect as defined in A101 and B101 agreements for this Project.**

...

**11     ~~INSURANCE AND BONDS~~**

...



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The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, ~~Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda~~ AIA Document A201™–2017, General Conditions of the Contract for Construction, as modified and dated 3/20/2025 ("General Conditions"), any other Conditions of the Contract (Supplementary and other Conditions), Invitation to Bid the Project ("Invitation to Bid"), the Contractor's bid or proposal, Drawings, Specifications, Addenda, any changes in the Work approved by the Owner and Contractor 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 (as defined in section 7.4) 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, 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. Moreover, notwithstanding anything herein to the contrary, any and all terms or conditions contained in the Contractor's bid, proposal or response to the Invitation to Bid that were not explicitly solicited by the Owner in the Invitation to Bid is not included as part of the Contract Documents.

...

**§ 1.1.2.1** The Owner and the Contractor hereby commit themselves to good faith negotiation, coordination, and cooperation to assure the timely completion of the Project.

...

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, ~~location and dimensions~~ location, dimensions, and character of the Work, generally including but not limited to plans, elevations, sections, details, schedules, and diagrams.

...

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

...

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.~~ At the Owner's sole discretion, the Initial Decision Maker may be replaced at any time, for any reason. If the Initial Decision Maker is replaced, Owner shall provide notice to Contractor.

**§ 1.1.9 Contractor**

See 3.1.1 for definition.

**§ 1.1.10 Intentionally blank**

**§ 1.1.11 Delay**

A Delay is an event that causes an increase in the duration of the Project, or that changes the sequence of the Work or individual Work activities, thereby preventing completion of the Project within the time period specified in the Contract Documents.

#### **§ 1.1.12 Equal**

Equal means material, equipment or methods proposed and warranted by the Contractor as being equivalent to essential attributes of the material, equipment or method specified in the Contract Documents, and approved by the Architect and Owner's Representative.

#### **§ 1.1.13 Notice To Proceed**

Notice to Proceed is a written notice provided by the Owner to the Contractor authorizing the Contractor to proceed with Mobilization for the Work on a date specified therein and establishing the date for Substantial Completion of the Work.

#### **§ 1.1.14 Owner**

The Owner is the Board of Regents of the University of Wisconsin System. The Board of Regents of the University of Wisconsin System exercises the powers and duties prescribed by Wis. Stat. § 16.855. The terms "Board," "Board of Regents," or "The Board of Regents" as used in this document also refer to the Owner.

#### **§ 1.1.15 Reserved**

#### **§ 1.1.16 Owner's Representative**

Owner's Representative is the person or persons delegated authority to act on behalf of the Owner. The Owner's Representative will be designated in writing. Owner reserves the right to change its designated Owner's Representative at any time for any reason. If the Owner's Representative is changed, notice shall be provided.

#### **§ 1.1.17 Project Schedule**

The Project Schedule is a graphic and written analysis of activity duration and sequencing, which is required for successful completion of the Project within the time period identified in the Contract Documents. The Project Schedule shall be in sufficient detail to permit meaningful analysis of work tasks, durations and critical path to Substantial Completion in the sole opinion of the Owner's Representative.

#### **§ 1.1.18 Shop Drawing**

See 3.12.1 for definition.

#### **§ 1.1.19 Subcontractor**

The Subcontractor means a person or firm who enters into a contract with the Contractor or a Subcontractor to perform a portion of the Work. Unless otherwise specifically provided, the term Subcontractor includes Subcontractors of all tiers, and is equivalent to Sub-subcontractor for all provisions of this Contract.

#### **§ 1.1.20 Submittal**

Submittals includes Shop Drawings, Product Data, Samples, etc. submitted by the Contractor to the Architect regarding some portion of the Work.

#### **§ 1.1.21 Substitution**

Substitution means the use of material or equipment not specified in the Contract Documents, but that the Contractor proposes and warrants as suitable for the use intended and conforms to all other physical, functional, and performance requirements of the Contract Documents.

#### **§ 1.1.22 Surety**

Surety is a person or entity licensed to do business in the State of Wisconsin, who provides separate performance bonds and payment bonds to a Contractor to indemnify the Owner against all damages suffered by failure of the Contractor to perform the Work and to pay all lawful claims of Subcontractors, Material Suppliers, and laborers.

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**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and with the standard of quality established by the Contract Documents and within the allowable time period specified. The Contract Documents are complementary, with technical provisions set forth in the Specifications and complemented by the Drawings 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. The failure of the Contractor to account for all aspects of the Work in its bid shall not relieve the Contractor from performing the Work. To the extent any terms or conditions in any of the Contract Documents conflict with one another, the more stringent or better quality requirement, in the Owner's sole discretion, shall be controlling without any increase in the Contract Time or Contract Sum.

**§ 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~~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-trade~~, except for the provisions of the Single Prime Bid dictated by statute.

...

#### **§ 1.2.4 Conflicting Conditions**

**§ 1.2.4.1** The Architect shall take all reasonable steps, and care common for the profession in the area, to assure that the Contract Documents are as accurate as possible, and provide information which, in the opinion of the Architect, is necessary in preparing bids and constructing the Project. However, it is mutually understood that discrepancies or conflicts in the Contract Documents may be identified, in which case:

- .1 addenda take precedence over the Specifications;
- .2 the Specifications take precedence over the Drawings;
- .3 stated dimensions take precedence over scaled dimensions;
- .4 large-scale detail drawings take precedence over small-scale drawings; and
- .5 schedules take precedence over other data on the plans.

**§ 1.2.4.2** Architect has the right for first interpretation of any ambiguity in the Contract Documents. Ambiguities in the Contract Documents will be resolved by the Owner if the Contractor and Architect cannot come to an agreement.

**§ 1.2.4.3** Where the terms "A/E," "Architect/Engineer," "Architect," or "Engineer" are used in technical Sections of the Specifications, the Contractor shall understand that actions indicated to be accomplished by such named parties are actions which are solely the responsibility of the professional technical advisor and consultant to the Owner and such actions thus require final approval by the Owner.

**§ 1.2.4.4** Periodically, the Architect may provide the Contractor additional instructions and drawings necessary to perform the Work. The Architect shall make a good faith effort to coordinate such instructions and drawings with the Contract Documents, preparing them so they can be reasonably interpreted as a part thereof. If such additional instructions change the scope of Work, provisions of Article 7, Changes in the Work, shall be followed.

Terms capitalized in these General Conditions and Contract Documents 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.

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**§ 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 Drawings, Specifications, and other 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.~~ reserved ownership rights. Any Drawings, Specifications, and other Instruments of Service for this Project shall become the property of Owner on completion and/or acceptance of the work, or upon any basis of termination of the Contract.

§ 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~~ and, if necessary, the Architect's consultants.

...

§ 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.~~ when there is reasonable evidence that the notice was read by the recipient.

...

§ 1.6.3 The Contractor's presentation to Owner's Representative, or mailing, of such notice to Owner's Representative is a condition precedent to any liability of the Owner for any actual or alleged breach of the Owner's contractual obligations hereunder. The Contractor's failure to give such written notice in the manner and time prescribed by the Contract Documents shall result in the waiver of any and all claims, demands and causes of action that the Contractor may have against the Owner arising from or in connection with the actual or alleged breach.

The parties shall agree upon ~~written protocols governing the transmission and use of, and reliance on,~~ of Instruments of Service or any other information or documentation in digital form. The parties may 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. In lieu of separate agreed upon digital form protocols, or the AIA Document E203, industry accepted standards shall govern the digital communication of data, as approved by the Owner.

...

Any use of, or reliance on, all or a portion of a building information model without agreement to ~~written protocols governing the use of, and reliance on,~~ the information contained in the model and without having those protocols set 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. If Building Information Model and AutoCAD protocols are not established with the preceding, protocols will default to State of Wisconsin Department of Administration protocols.

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§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing ~~a representative an Owner's 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. ~~authorization, provided, however, that changes to the Contract Documents that modify the General Conditions, Contract cost, and/or Contract time shall only be executed by a person duly authorized with signatory authority by the Board of Regents of the University of Wisconsin System. Person(s) with signatory authority will be furnished upon request.~~

§ 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**The Owner reserves the right to conduct a detailed audit of Contractor and Architect's documents, including, but not limited to: Change Orders and supporting documentation, Construction Change Directives and supporting documents, and any other documentation on the Project related to costs, timeline, and scope.

**§ 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.

...

**§ 2.3.2** The Owner shall retain an architect lawfully licensed to practice ~~architecture~~, architecture or engineering, or an entity lawfully practicing ~~architecture~~, architecture or engineering, 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.

...

**§ 2.3.4** 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.~~

...

**§ 2.3.7** The Owner shall furnish surveys described in Section 2.3.4 and other information prepared by third parties for the Project to the extent the Owner deems necessary for the performance of the Contractor's services, and shall not withhold any reasonable information. The Owner makes no representations or warranties as to the accuracy and/or the

completeness of the information it obtains from third parties and provides to the Contractor pursuant to this Section 2.3. In addition, the Owner may provide the Contractor access to the Owner's records, which may contain information about the site and adjacent land and improvements that was not collected specifically for the Project. The Owner makes no representations as to the relevance, accuracy or completeness of information made available to the Contractor from the Owner's records. Contractor shall notify Owner of any discrepancies or information which is lacking in the information provided by the Owner of which Contractor is aware or reasonably should be aware.

§ 2.3.8 The Contractor shall attend all pre-construction meetings, which will be scheduled by the Owner's Representative and Architect.

§ 2.3.9 The Owner's Representative or Architect will schedule progress meetings with the Contractor. At each such progress meeting, the parties will discuss the above-mentioned items, cooperate with others to assure successful completion of the Work, and help to quickly resolve problems which arise.

~~If~~In the event that any of the Work in progress, or Work already completed by the Contractor, or Subcontractors, is determined by the Owner's Representative to be of substandard quality, defective, or otherwise in violation of requirements of the Contract Documents, or 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 or refuses to carry out Work in accordance with the Contract Documents, the Owner may issue ~~a written order~~ an order by written Notice to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4.1 The Contractor shall have ten (10) calendar days after the serving of such Notice within which to take corrective action or to make arrangements judged satisfactory by the Owner's Representative for the corrections to be made. If corrective actions or other arrangements are not judged satisfactory by the Owner's Representative, the Owner may terminate the Contract in accordance with the provisions of the General Conditions of the Contract.

§ 2.4.1.1 If, after suspension of the Work, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the suspension or termination had been issued for the convenience of the Owner under the Contract.

§ 2.4.2 The Owner's Representative may order the Contractor, in writing, to suspend or delay all or any part of the Work of the Contractor for the period of time that the Owner's Representative determines appropriate for the convenience of the Owner.

§ 2.4.2.1 If the Contractor determines that the cost of the Work is altered by such suspension, or the time for completion of such Work is altered or delayed, the Contractor shall provide Notice to the Owner's Representative of any such costs or delay;

§ 2.4.2.2 Such Notice shall be made within ten (10) calendar days of the order to stop or suspend Work;

§ 2.4.2.3 Provision of such Notice to the Owner's Representative shall be a condition precedent to any Owner liability for increased costs, delay, or time extension.

§ 2.4.3 The Owner may exercise any and all rights or remedies provided for herein, by law or in equity, either concurrently or singly in its sole discretion.

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If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of ~~notice~~ 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~~ 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. Correction of such deficiencies shall not prevent the Owner from recovery of other damages or penalties sustained as a result of the Contractor's default or neglect. 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.

## **§ 2.6 Owner's Responsibility For The Site**

**§ 2.6.1** Prior to start of construction, the Owner shall furnish land and rights-of-way necessary for the carrying out and completion of the Work to be performed under this Contract.

**§ 2.6.2** Reserved.

**§ 2.6.3** Reserved.

**§ 2.6.4** The Owner's Representative shall act on any Notice as soon as practicable. If the Owner's Representative determines that the conditions reported by the Contractor differ materially from those indicated in the Contract Documents, or are of an unknown and unusual nature which could not have been discovered during a reasonable site investigation by the Contractor, then to the extent established by the Contractor and approved by the Owner, the Owner shall authorize an increase or decrease in the scope, cost, and/or time required for performing any part of the Work under this Contract.

**§ 2.6.5** No request by the Contractor for an equitable adjustment to the Contract shall be allowed, unless the Contractor gives proper Notice, which is a condition precedent to any liability on the part of the Owner.

**§ 2.6.6** In no event shall any claim by the Contractor for equitable adjustment to the Contract for differing site conditions be allowed if presented after final payment under this Contract is made.

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**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement that has contracted with the Owner to perform the Work as required by the Contract Documents and enters into contracts with Subcontractors including mechanical, electrical, plumbing and fire protection subcontractors identified by the Owner during the Single Prime bidding process. The Contractor is referred to throughout the Contract Documents as if singular in number. The ~~Contractor~~ Contractor, and all Subcontractor and Sub-subcontractors 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~~ representative, but does not include the Owner or the Architect.

**§ 3.1.1.1** The Contractor represents and warrants that the scheduling, coordination, and monitoring activity for all Work will be placed under the direct control and supervision of a person experienced in construction scheduling, means and methods. If such experience and knowledge must be obtained by contracting with a separate scheduling consultant, the entire cost of such consultant shall be borne by the Contractor. Additionally, the Contractor fully agrees to cooperate in all respects with all Subcontractors and suppliers to provide all data required, and shall coordinate the activities of its own workforces and the work forces of the Subcontractors, in such manner and at such time as to not cause a delay in the Project

**§ 3.1.1.2** The Contractor's bid price shall include the performance of all Work which:

- .1** in accordance with industry standards, customary practice, or by reasonable inference are details of Work that are necessary as part of the construction, operation, and coordination and interface of the Work;
- .2** would necessarily be readily apparent to one skilled in the trades; and
- .3** a component an experienced Contractor would recognize as part of its responsibility.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract ~~Documents~~ Documents and in a good and workmanlike manner in accordance with generally accepted standards of construction of projects similar to the Project.

§ 3.1.2.1 The Contractor has the full and complete responsibility for the accomplishment of all Work within the specified time indicated in the Contract Documents, except where the Contract Documents explicitly and specifically place a limited duty for completion on the Owner.

§ 3.1.2.2 The Contractor is hereby put on notice that failure to furnish data or cooperate in good faith is a material breach of Contract and may be the basis for a termination for cause under the procedures set forth in these General Conditions. In the event of such material breach the Owner's Representative, in addition to, and not in lieu of the right to termination for default, may acquire the services of a scheduling specialist to perform any such duties and charge the cost thereof to the Contractor. In the event that the Owner's Representative is required to acquire any replacement scheduling services, the Contractor shall conform to any revised schedule resulting therefrom.

§ 3.1.2.3 In addition to the criteria set forth in these General Conditions, the full and complete performance of Contractor's obligations under this Contract is a condition precedent to the right of the Contractor to payment of any sums due. In the event of any delays by the Contractor or other breach hereof which gives rise to penalties and/or damages to the Owner, then in any such event the Owner's Representative may offset such penalties and damages against the sums due or to become due the Contractor hereunder.

§ 3.1.2.4 Any Work necessary to be performed after regular working hours, on Sundays, or legal holidays, and for which the Contractor is responsible, shall be performed without additional expense to the Owner.

§ 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, the presence and observation of the Work by the Architect, the Owner, or Owner's Representative, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.1.3.1 In the event it becomes necessary to interpret this Article 3.1, the interpretation shall strive to achieve timely, effective and efficient performance of the Work under the Contract within the allowable time identified in the Contract Documents, and at no extra cost or inconvenience to any party, if at all possible.

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§ 3.2.1.1 The Contractor represents and warrants it has taken the steps reasonably necessary to prepare a bid which includes the costs for Work, the requirement for which would reasonably be known to a competent contractor, in overcoming normal subsurface conditions at the site where the Work is to be performed and in order to accomplish the Work described in the Contract Documents. Additionally, the Contractor certifies that it has investigated the site and satisfied itself as to the general and local conditions which affect the Work or its cost, including, but not limited to:

- .1 conditions bearing upon transportation, disposal, handling, and storage of materials;
- .2 the availability of labor, water, electric power, and roads or access;
- .3 uncertainties of weather, river stages, tides, or similar physical conditions at the site;
- .4 the conformations and conditions of the ground; and
- .5 the character of facilities and equipment as represented by the Contract Documents.

§ 3.2.1.2 The Contractor also acknowledges that it has satisfied itself as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from a non-exploratory, visual inspection of the site, and information included in the Contract Documents.

§ 3.2.1.3 Any failure of the Contractor to take the actions described in the Contract Documents will not relieve the Contractor from responsibility for estimating properly the difficulty and cost of successfully performing the Work, or for proceeding to successfully perform the Work without additional expense to the Owner.

§ 3.2.1.4 The Owner assumes no responsibility for any erroneous conclusions or interpretations made by the Contractor based on the information made available by the Owner. The Owner expects the Contractor to have the ability to interpret provided technical information, including geotechnical information, which would be reasonably analyzed or interpreted by any contractor knowledgeable and skilled in the work required to be performed. If the Contractor does not have the ability to interpret or analyze such information, it is the responsibility of the Contractor to obtain the professional services required to perform such analysis. The Owner assumes no responsibility for any understanding reached or representation made concerning conditions which can affect the Work by any of its officers,

representatives, or agents before the execution of this Contract, unless that understanding or representation is expressly stated in 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 and Owner's Representative any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect or Owner may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor 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 Owner's Representative and Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the ~~Architect~~ Owner may require.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect or Owner's Representative 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, Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public ~~authorities~~ authorities unless the Contractor recognized such error, inconsistency, omission or difference and failed to report it to the Architect. If the Contractor performs any construction activity involving an error, inconsistency, omission or difference in the Contract Documents that Contractor knowingly recognized or should have reasonably recognized without such notice to the Architect and Owner, the costs for correction will be allocated among the responsible parties.

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§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall (1) give timely notice to the Owner and Architect, and Owner's Representative and Architect; (2) 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.

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§ 3.3.3.1 The Contractor shall, except where a provision of the Contract Documents explicitly states to the contrary, have the full, complete, and absolute responsibility and obligation for ensuring that the Work performed strictly conforms to the requirements set forth in the Contract Documents. The Contractor shall maintain an adequate inspection and quality control system and shall perform such inspections as will ensure that the Work performed under this Contract conforms to the requirements of the Contract Documents.

§ 3.3.3.2 At the initial pre-construction meeting, the Contractor shall provide the Owner's Representative a full description of the Contractor's safety, quality control and inspection system and method of implementation.

§ 3.3.3.3 Prior to the start of significant on-site work by any trade, Owner's Representative, the Contractor's superintendent and the Subcontractor's foremen, shall conduct a pre-installation conference. The purpose of the meeting is to review and discuss Contract requirements applicable to the work, samples required, level of quality necessary, and find answers to any questions that may arise. Such meeting is in addition to regularly-scheduled progress meetings and will be arranged on-site by Owner's Representative.

§ 3.3.3.4 The Contractor shall maintain complete inspection records and test data to ensure that quality of the Work is in strict compliance with the terms of the Contract Documents. These records shall be available to the Architect and Owner's Representative at all reasonable times and places. The doctrine of "substantial conformity" to the quality requirements of the Contract Documents shall have no application, unless the Owner's Representative accepts the Work in accordance with the Contract.

§ 3.3.3.5 The Owner reserves the right to conduct its own quality assurance verification, and to observe, inspect, and/or conduct tests relative to Contractor and Subcontractor performance. If, when conducting its own quality assurance program, the Owner determines that the Work or a portion thereof does not comply with requirements of the Contract Documents, the Owner shall attempt to notify the Contractor of such deficiencies as soon as practicable. However, the Owner's exercise of rights under this provision does not:

- .1 relieve the Contractor of the responsibility for providing adequate inspection and quality control measures or the proper documentation of the occurrence of the events required to be tested or monitored in the performance of the Work required by the Contract Documents; and shall provide no basis for waiver or estoppel claims to be asserted against the Owner;
- .2 relieve the Contractor of responsibility for damage to or loss of the material before acceptance;
- .3 constitute or imply acceptance on the part of the Owner; or
- .4 affect the continuing rights of the Owner after acceptance of the completed Work, except as specifically stated to the contrary in the Contract Documents.

§ 3.3.3.6 The presence or absence of the Owner's Representative does not relieve the Contractor from any Contract requirement. If the Contractor desires waiver of any technical or Contract requirement or any other deviation from the strict requirements of the Contract Documents, a specific request for such waiver or deviation must be made to the Owner's Representative and Architect for consideration.

§ 3.3.3.7 The Contractor shall, without charge, replace or correct Work found not to conform to the Contract Document requirements, unless the Owner agrees to accept the non-conforming Work with an appropriate adjustment in the Contract price thereof. Such acceptance of non-conforming Work shall, whether the determination is to be made at the time of final completion or during the performance of Work, be based upon a determination by the Owner that the deviation from Contract Documents requirements does not adversely affect the integrity of completed Work.

§ 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~~, Work within the specified time, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. No materials or supplies which are to become part of the Work shall be purchased by the Contractor or by any Subcontractor subject to any chattel mortgage, conditional sale contract, or other agreement by which a security interest is retained by the seller.

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§ 3.4.2.1 It is not the intention of the Owner to limit or restrict competition by the use of any reference to a particular manufacturer, process, technique, catalog number or other identifying information. Such proprietary specifications are intended to establish a level of quality or the minimum essential requirements to which the Contractor must conform, unless more explicit restrictions are stated to apply.

§ 3.4.2.2 When the Contract Documents list performance or functional characteristics in connection with Work to be performed, these characteristics are mandatory for reasons of design. Use of any Substitution shall be subject to the prior written approval of the Architect.

§ 3.4.2.3 Material, equipment, or processes offered for use as a Substitution may be proposed by the Contractor in writing. Such proposals shall guarantee the proposed Substitution to be capable of performing the duties of the originally specified material, equipment, or process. The Architect shall respond to any such proposal as soon as practicable, but in no case later than seven (7) calendar days after receipt of such proposal.

§ 3.4.2.4 It shall be the sole responsibility of the Contractor to provide all documentation, regardless of type or quantity, to clearly establish the qualifications of items proposed as Substitutions under this Contract. If the value of the Substitution is less than the item specified in the Contract Documents, then an equitable reduction of the price of the Contract shall be made.

§ 3.4.2.5 When Substitutions are approved by the Owner's Representative and incorporated into the Project by the Contractor, all costs incurred to 1) correct deficiencies in items, 2) provide for installation or hookup, or 3) to achieve performance specified in the Contract Documents, will be borne by the Contractor.

§ 3.4.2.6 Any substitute material or equipment installed by the Contractor without approval of the Owner's Representative may be subject to immediate removal, at sole discretion of Owner's Representative, and all costs required to conform to the Contract Documents shall be borne by the Contractor.

§ 3.4.2.7 The Contractor shall assume all liability and responsibility for any changes in the Work or additional Work required to accommodate use of proposed and approved Substitutions. The Owner's approval of such Substitutions does not relieve the Contractor from the obligation to pay all additional costs resulting from their inclusion in the Work, even if additional costs or Work become apparent after execution of the change or installation of the Substitution. The Contractor's liability shall include payment of any additional costs incurred by the Owner, made necessary by, or directly connected to, such changes.

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§ 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~~ requirements, including Substitutions not properly approved and authorized, 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~~, Architect or Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor's warranty under this Section is not exclusive, and any other express warranties stated elsewhere, may also be exercised by the Owner at its option.

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§ 3.5.3 The Contractor warrants to the Owner that all materials and supplies used in the Work are free from all liens, claims, or encumbrances, and good title to materials and supplies is retained by the Contractor and shall be conveyed prior to approval of final payment.

§ 3.5.4 Intentionally deleted.

§ 3.5.5 Intentionally deleted.

§ 3.5.6 Intentionally deleted.

§ 3.5.7 The Contractor shall remedy, at the Contractor's expense, any defect in the Work. In addition, the Contractor shall remedy, at the Contractor's expense, any damage to the Owner's property, whether controlled or owned, when the damage is the result of:

- .1 the Contractor's failure to conform to Contract Document requirements; or
- .2 any defect in equipment, material, workmanship, or design furnished by the Contractor or Subcontractors regardless of tier.

§ 3.5.8 Intentionally deleted.

§ 3.5.9 The Owner's Representative shall give Notice to the Contractor within a reasonable time after discovery of any failure, defect, or damage.

§ 3.5.10 If, after the receipt of a Notice of a claim under this warranty, the Contractor fails to remedy any failure, defect, or damage within a time judged reasonable by the Owner's Representative, the Owner's Representative shall have the right to replace, repair, or otherwise remedy the failure, defect, or damage, at the Contractor's expense.

§ 3.5.11 All warranties under this Contract or in any related to this Contract, express or implied, shall be obtained for and shall be subject to direct enforcement by the Owner. The Contractor shall provide in each subcontract, or other purchase agreement, for the assignment to the Owner of all such warranties and for the right of enforcement by the Owner. In addition, if necessary the Contractor shall:

- .1 obtain for the Owner's benefit all warranties that would be given in normal commercial practice;
- .2 require all warranties to be executed, in writing, for the benefit of the Owner, if so directed by the Owner's Representative;
- .3 enforce all warranties for the benefit of the Owner; and
- .4 obtain for the Owner's benefit all warranties given by any Subcontractor, at any tier, if such warranty is in excess of the one (1) year warranty period set forth herein.

§ 3.5.12 Unless a defect is caused by the negligence of the Contractor or Subcontractors at any tier, the Contractor shall not be liable for the repair of any defects of material or design furnished by the Owner.

§ 3.5.13 The Contractor shall require any Subcontractor manufacturers or suppliers to execute their warranties, in writing, directly to the Owner.

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 all sales, consumer, use, and other similar taxes required by law assessed to or arising out of the construction of the Project. Per 2017 Wis. Stat. § 77.54 (9m), building materials sold to a construction contractor that will become a component of a facility owned by the Board of Regents of the University of Wisconsin System are exempt from sales and use tax.

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§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies 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~~ concluded, and shall provide evidence of such permits, licenses, and approvals at the initial pre-construction meeting or before commencement of the Work.

§ 3.7.1.1 Charges for water, sewer, and other utility connections made by municipalities will be paid by the Owner. Payment for use of such services and utilities before Substantial Completion shall be in accordance with provisions of the Contract.

§ 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~~ Work and/or relating to environmental quality and safety, the performance of the Work, the protection of adjacent property, and the maintenance of passageways, guard fences, or other protective facilities. The Owner's Representative shall be notified by the Contractor of any notices of noncompliance or violation associated with Work required by the Contract Documents.



§ 3.7.2.1 Where Contract Documents require abatement of asbestos containing materials, prior written notice to the State of Wisconsin, Department of Natural Resources is required. The Contractor shall provide evidence of such notice prior to commencement of the Work. The Contractor shall follow all State of Wisconsin and Federal rules associated with asbestos abatement.

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§ 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.~~objection, except for Subcontractors selected in the single prime bidding process.~~

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§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in continuous attendance at the Project site during performance of the ~~Work~~ Work, or as approved by Owner's Representative. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. This person shall be delegated authority to act on behalf of the Contractor, and shall be, to the extent possible, a single point of contact and communication for the Owner's Representative, Architect, and all Subcontractors to facilitate efficient, timely, and cost effective completion of the Work. Communications between the Architect and Contractor shall be timely relayed to the Owner's Representative.

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§ 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. The Work shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Work. Any delays in Contractor's performance of the Work relative to the schedule shall be governed by Section 8.3 hereof.

§ 3.10.1.1 The Project Schedule shall incorporate all activities, events, and milestones required for successful Project completion within the allowable time for completion specified in the Contract Documents. The Contractor shall prepare a breakdown of all Work activities or events, whether the activities are to be performed by the Contractor's own forces, those of Subcontractors or the Owner, indicating the proposed duration and sequencing of such activities for successful completion of the Project within the allowable time specified in the Contract Documents. No single Work activity in the Project Schedule shall be for more than \$500,000 in Contract value or for a duration greater than four (4) successive weeks, as approved by the Owner's Representative. The Contractor shall also identify whether any Work activity or event is dependent on the Work of its own forces or with those of the Owner. The failure to list any activity or to perform any other duty required by or incident to that required by the Contract Documents shall not be the basis of a claim for adjustment of any provision of this Contract, or of any other type of claim whatsoever.

§ 3.10.1.2 The Contractor shall, within fourteen (14) calendar days from the Contract award, develop and publish a Project Schedule for the first sixty (60) calendar days of the Project. The completed Project Schedule, for all Work activities through Project completion, shall be developed and published within this sixty (60) day period. Pursuant to Wis. Stat. § 16.855 (14m)(d), the Contractor must base this Project Schedule on the schedule that the mechanical, electrical or plumbing Subcontractors and Contractors bid on (in the Specifications or bid instructions), unless otherwise agreed to by the Subcontractor. The Contractor shall update the Project Schedule monthly.

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

§ 3.10.1.4 The Contractor shall identify forthwith any critical event which will require the Owner to act or to refrain from acting, or critical time periods within which the Owner must complete activities or Work for which the Owner is responsible under the Contract. Timely Notice of any such identified event or time period shall be given to the Owner. The giving of such Notice is a condition precedent to the creation of any duty of the Owner to take any action or to refrain from taking any action. The failure of the Contractor to give such Notice forthwith shall thereafter bar and preclude any claim by the Contractor for adjustment of any Contract provision or claim predicated on the breach of any obligation by the Owner.

§ 3.10.1.5 The bonds furnished to secure these commitments shall be applicable to each and every one of these time and scheduling commitments.

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

§ 3.10.2.1 If the Contractor submits for approval items which do not strictly comply with the design requirements of Contract Documents, the Contractor shall provide all engineering or design information necessary for complete evaluation of the Submittal by the Architect and Owner's Representative. If it is determined by the Contractor or the Owner's Representative that the services of a professional consultant, engineer or architect are required to provide such information, the Contractor shall acquire such services at its own expense.

§ 3.10.2.2 If the Contractor believes that requirements of the Contract Documents are in conflict with the manufacturer's recommended method of installation or application of specified materials, products, or systems, the Contractor shall indicate such possible conflicts at the time of submittal.

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

§ 3.10.3.1 The Owner shall be given the opportunity to schedule its own Work as conveniently as is consistent with the overall needs of the Project Schedule.

§ 3.10.3.2 Where any Work activity required for completion of the Project is completed in less time than required, anticipated, or otherwise allowed by the Project Schedule, the unused time, hereinafter called Float, shall belong to the Project, to be used by the Contractor as the Project needs determine, including but not limited to providing additional time for completion of any other Work activities required for completion of the Project. Float shall not be considered owned, subject to the exclusive use, or management by any of the interested participants. No claim against the Owner or the Contractor shall be made by any party for the loss of Float time.

§ 3.10.3.3 The Contractor shall be independently responsible for resolving any time related matters with Subcontractors, suppliers, or others who may furnish supplies or services on the Project. No liability shall attach to the Owner, for the failure of any party to carry out the coordination and scheduling responsibilities which they have assumed under the Contract.

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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-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.

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§ 3.12.3 Samples are physical ~~examples~~ ~~examples~~, such as ~~mock-ups~~, 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~~ 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~~ Submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational ~~submittals~~ 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. The following provisions shall apply to all Submittals:

- .1 the Contractor notes the conspicuous nature of this article and agrees that these provisions are material provisions and are to be enforced, in the event of controversy, in such a manner as to place upon the Contractor the full, complete, and total responsibility for the Submittal's conformance with the requirements of this Contract, and suitability or usability of preliminary submissions by the Contractor, without regard to any the Owner action or failure to act.
- .2 all Submittals and supporting information shall be delivered to a party designated by the Owner, who shall act on any such Submittal within 14 calendar days or notify the Contractor in writing, of the time required for such action if greater than the aforementioned 14 day period. Such designation shall take place at the initial Project pre-construction meeting. Review of the Submittals for conformance with requirements of the Contract Documents shall be completed by the party responsible to the Owner for Project design. A copy of all such Submittal and transmittal forms shall also be sent to the Owner's Representative.
- .3 the Contractor shall make Submittals in a timely fashion to assure completion of the entire Project within the allowable time specified in the Contract Documents. The timing of such Submittals shall be subject to the provisions of the contract.
- .4 each Submittal by the Contractor shall contain the cover page included in the Specifications. Such cover page shall be signed by a representative of the Contractor responsible for review of the Submittal to assure compliance with requirements of the Contract Documents.
- .5 the Contractor timing and phasing of Submittals shall be appropriate to the critical path Project Schedule, and to facilitate the timely review by the Architect.

§ 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~~ Submittals required by the Contract Documents, in accordance with the ~~submittal~~ Submittal schedule approved by the Architect or, in the absence of an approved ~~submittal~~ 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. Submittals shall be provided in response to requests for Submittals by the Owner's Representative, or whenever required by the Contract Documents.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples, and similar ~~submittals~~ 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~~ 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~~ Submittals, until the respective ~~submittal~~ Submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved ~~submittals~~ 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~~ Submittals, unless the Contractor has specifically notified the Architect and Owner's Representative 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~~, 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~~, Submittals, to revisions other than those requested by the Architect on previous ~~submittals~~, Submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

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§ 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~~, Drawings, calculations, Specifications, certifications, Shop Drawings, and other ~~submittals~~ Submittals prepared by such professional. Shop Drawings, and other ~~submittals~~ 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~~ Submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

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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. The Contractor shall make commercially reasonable efforts to avoid interruptions to the Owner's operations.

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§ 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~~, withhold from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

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

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The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account ~~thereof~~, 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.

...

**§ 3.18.1** 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~~ its agents and employees 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.

**§ 3.18.1.1** The obligations of the Contractor under this indemnification shall not extend to the liability of the Owner, the Architect and its agents or employees thereof arising out of (1) preparation or approval of maps, Drawings, opinions, reports, surveys, change orders, designs or Specifications, or (2) the giving of or the failure to give directions or instructions thereof provided such giving or failure to give is the cause of the injury or damage.

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### **§ 3.19 Contractor Performance Evaluation**

**§ 3.19.1** The Contractor acknowledges that following completion of the Work, the Owner's Representative will evaluate the Contractor's performance under this Contract. Such evaluation may take place after Substantial Completion or after Final Completion of the Work, as determined by Owner's Representative. The purpose of such evaluation includes, but is not limited to, determining whether or not the Contractor responsibly performed its Contractual obligations and whether or not the best interests of the Owner were promoted thereby.

**§ 3.19.2** Owner's Representative shall provide a copy of any such performance evaluation to the Contractor, as soon as practicable after completion of such evaluation.

**§ 3.19.3** The Contractor may appeal results of the Contractor's performance evaluation completed by the Owner's Representative by submitting a request for performance review to the Owner. Any such request must include the reasons for such request, and documentation necessary to substantiate the Contractor's claim that initial performance evaluation was inappropriate or otherwise in error.

**§ 3.19.4** The Owner reserves the right to waive the results of such performance evaluation(s) if, in the opinion of the Owner, corrective action has been taken to remediate substandard performance, events beyond the control of the Contractor resulted in substandard performance, or the best interests of the Owner will be served.

**§ 3.19.5** The Contractor acknowledges and agrees that such evaluation(s) may be used by the Owner pursuant to Wis. Stat. § 16.855(9m) when determining whether the Contractor is a "qualified responsible bidder" for future Project(s); provided, however, any such evaluation made more than five (5) years prior to the submission of any such subsequent bid shall not be considered in any event.

**§ 3.19.6** The Contractor acknowledges and agrees that all such evaluations so prepared by Owner's Representative shall constitute "open public records" available for inspection and copying as provided for by law.

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

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**§ 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.

...

§ 4.2.6 The Architect has authority to advise the Owner 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~~ shall recommend that the Owner require additional 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 recommendation~~ 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~~ 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~~ 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~~ 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.

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§ 4.2.9 The Architect will work with the Owner's Representative to conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; ~~issue~~ assist the Owner's Representative in issuing 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.

...

§ 4.2.12 Interpretations and ~~decisions recommendations~~ of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and ~~decisions recommendations~~, 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.~~ Contractor.

§ 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.~~ Documents and the Contractor will adhere to those decisions.

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§ 5.2.1.1 The Contractor must offer a subcontract to the successful mechanical, electrical, plumbing, and sprinkler (MEP) Subcontractors identified by the Owner and included in the Contractor's bid. This subcontract between a Contractor and a MEP Subcontractor must include a scope of work clause identical to the scope of work clause included in the Bid Documents and the contract between the Contractor and the Owner. A Contractor and a MEP Subcontractor may not enter any agreement in connection with bids submitted that would alter or affect the scope or price of the contracts entered into. This prohibition does not apply to the Owner's Change Orders that result in changes to the plans or specifications, or to back charges allowed by the Contract.

§ 5.2.1.1.1 The Contractor shall base its Project Schedule on the schedule in the Specifications and bid instructions unless otherwise agreed to by the MEP Subcontractor.

§ 5.2.1.2 The Contractor may enter into subcontracts for work other than MEP Subcontractor work, if subcontractors are approved by Owner's Representative through the Request for Subcontractor Approval Form. However, the election to subcontract Work shall not relieve the Contractor from responsibility or liability which it has assumed under this Contract. The Contractor shall remain liable to the same extent that its liability would attach, as if the Work had been performed by the Contractor's own employees. If the Specifications require or otherwise designate only one Subcontractor or source of supply for Work required under the Contract Documents, the Contractor's failure to acquire suitable contract arrangements with such Subcontractor or source of supply shall not excuse the Contractor from full responsibility and liability for any failure or default of such source of supply.

§ 5.2.1.3 Bidders shall submit a completed Request for Subcontractor Approval Form with their bid or within seven days of the Contractor bid opening. Submission of a completed Request for Subcontractor Approval Form is an element of responsiveness. Failure to submit this completed form within the above time limits will be considered unresponsiveness and may result in contract award to the next apparent low bidder. When no Subcontractors are anticipated, the Contractor shall give notice of this fact on the Request for Subcontractor Approval Form within the time limits noted above.

§ 5.2.1.4. All Subcontractors are subject to Owner's approval. The Owner may request, or the Contractor may provide, any of the following information to substantiate the proposed Subcontractors' qualifications or ability to perform the Work. The Owner shall consider such information when reviewing the qualifications of proposed Subcontractors to determine whether such qualifications serve the best interests of the Project.

- .1 The amount of experience completing similar Work to that required by the Contract Documents;
- .2 The quality of work the proposed Subcontractor has provided on past projects;
- .3 The extent of available staffing and financial resources of the proposed Subcontractor;
- .4 The Contractor's intended method of monitoring the proposed Subcontractor's Work;
- .5 The level of supervision of the Subcontractor's Work which the Contractor will provide; and
- .6 Any other information regarding the proposed Subcontractor's ability to complete the Work.

§ 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, and met all other applicable criteria, 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. The Contractor shall not replace any Owner-identified or approved Subcontractor or material supplier without written approval of the Owner. Any Contractor request for replacement of a Subcontractor previously approved by the Owner shall include the reason(s) for such replacement and all documentation necessary to substantiate such change.

§ 5.2.5 The Contractor shall maintain a list of all Subcontractors and suppliers performing labor or furnishing materials for the Project.

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#### **§ 5.4 Contingent Assignment of Subcontracts**

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

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

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

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

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

§ 5.3.1 The Contractor shall be fully responsible for all acts and omissions of all Subcontractors and shall be responsible for scheduling and coordinating the Work of all Subcontractors and material suppliers.

§ 5.3.2 Nothing herein shall be construed to create any express or implied contractual relationship between Owner and any of the Contractor's Subcontractors, suppliers or vendors.

§ 5.3.3 The Contractor shall cause Article 10.2 (Safety of Persons and Property), with appropriate changes in paragraph and entity designation, to be incorporated in all Subcontracts, regardless of tier.

§ 5.3.4 The Contractor shall insert the following mandatory provisions, with appropriate changes in paragraph and entity designation, in all subcontracts with Subcontractors:

- .1 Article 9 - Payments and Completion
- .2 Article 9.6.2 and 9.6.5.1- Progress Payments
- .3 Article 13.9 - Minimum Wages

§ 5.3.5 Pursuant to Wis. Stat. §16.855 (14m)(a), any contract that the Contractor (referred to below as General Prime Contractor) enters into with a Subcontractor as defined under Wis. Stat. §16.855 (14)(e) shall include the following mandatory provisions:

**PROMPT PAYMENT** (General prime contractor) shall pay (mechanical, electrical, or plumbing subcontractor) in accordance with Wis. Stat §16.855(19)(b), for work that has been satisfactorily completed and properly invoiced by (mechanical, electrical, or plumbing subcontractor). A payment is timely if it is mailed, delivered, or transferred to (mechanical, electrical, or plumbing subcontractor) by the deadline under Wis. Stat §16.855(19)(b).

If (mechanical, electrical, or plumbing subcontractor) is not paid by the deadline in this Contract, (general prime contractor) shall pay interest on the balance due from the eighth day after the (general prime contractor) receives payment from the Board of Regents for the work for which payment is due and owing to (mechanical, electrical, or plumbing subcontractor), at the rate specified in Wis. Stat §71.82, compounded monthly.

A (mechanical, electrical, or plumbing subcontractor) that receives payment as provided under this Contract and that subcontracts with another entity shall pay those subcontractors, and be liable for interest on late payments to those subcontractors, in the same manner as the (General prime contractor) is required to pay the (mechanical, electrical, or plumbing subcontractor) under this Contract.

**INSURANCE AND BONDS** (mechanical, electrical, or plumbing subcontractor) shall not commence work under this Contract until it has obtained all necessary insurance required of (mechanical, electrical, or plumbing subcontractor) in the contract between the (general prime contractor) and the Board of Regents.



(Mechanical, electrical, or plumbing subcontractor) shall provide a separate 100 percent performance bond and a separate 100 percent payment bond to the benefit of the (general prime contractor) as the sole named obligee. Original bonds shall be given to the (general prime contractor) and a copy shall be given to the Board of Regents no later than 10 days after execution of this Contract.

**INDEMNIFICATION** To the fullest extent permitted by law, (mechanical, electrical, or plumbing subcontractor) shall defend, indemnify, and hold harmless (general prime contractor) and its officers, directors, agents, and any others whom (general prime contractor) is required to indemnify under its contract with the Board of Regents, and the employees of any of them, from and against claims, damages, fines, penalties, losses, and expenses, including but not limited to attorney fees, arising in any way out of or resulting from the performance of the work under this Contract, but only to the extent such claim, damage, fine, penalty, loss, or expense: (1) is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of property, including but not limited to loss of use resulting therefrom and is caused by the negligence, or acts or omissions, of (mechanical, electrical, or plumbing subcontractor), its subcontractors, any of their employees, and anyone directly or indirectly employed by them or anyone for whose acts they may be liable, or (2) as related to such claims, damages, fines, penalties, losses, and expense of or against (general prime contractor), results from or arises out of the negligence of the (general prime contractor) or other fault in providing general supervision or oversight of the work of (mechanical, electrical, or plumbing subcontractor) or (3) as related to claims, damages, fines, penalties, losses, and expense against the Board of Regents arises out of the Board's status as owner of the project or project site.

In addition (mechanical, electrical, or plumbing subcontractor) shall defend, indemnify, and hold harmless (general prime contractor) and its officers, directors, agents, and any others (general prime contractor) is required to indemnify under its contract with the Board, and the employees of any of them, from any liability, including liability resulting from a violation of any applicable safe place act, that (general prime contractor) or the Owner incurs to any employee of (mechanical, electrical, or plumbing subcontractor) or any third party where the liability arises from a derivative claim from said employee, when the liability arises out of the failure of the (General prime contractor) or the Owner to properly supervise, inspect, or approve the work or work area of (mechanical, electrical, or plumbing subcontractor), but only to the extent that the liability arises out of the acts or omissions of (mechanical, electrical, or plumbing subcontractor), its employees, or anyone for whom (mechanical, electrical, or plumbing subcontractor) may be liable, or from (mechanical, electrical, or plumbing subcontractor's) breach of its contractual responsibilities or arises out of (General prime contractor's) negligence or other fault in providing general supervision or oversight of (mechanical, electrical, or plumbing subcontractor's) work or arises out of The Board of Regents' status as owner of the project or project site. In claims against (general prime contractor) or the Owner by an employee of (mechanical, electrical, or plumbing subcontractor) or its subcontractors or anyone for whose acts (mechanical, electrical, or plumbing subcontractor) may be liable, the indemnification obligation of this paragraph is not limited by a limitation on amount or type of damage, compensation, or other benefits payable by or for the (mechanical, electrical, or plumbing subcontractor) subcontractors under workers compensation act.

Except as identified above, the obligations of (mechanical, electrical, or plumbing subcontractor) under this indemnification do not extend to the liability of (general prime contractor) and its agents or employees arising out of (1) preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs, or specifications; (2) the giving of or failure to give directions or instructions by the (general prime contractor) or the or their agents or employees provided the giving or failure to give is the cause of the injury or damage; or (3) the acts or omissions of other subcontractors.

**RETAINAGE** Retainage shall occur and be in amounts and on a schedule equal to that in the contract between (general prime contractor) and the Owner. Pursuant to Wis. Stat. §16.855(19)(b), Retainage between Contractor and mechanical, electrical and plumbing subcontractors is governed as follows:

As the work progresses under any subcontract as defined under Wis. Stat. § (14)(e) for construction of a project, the Contractor shall, upon request of a subcontractor, pay to the subcontractor an amount equal to the proportionate value of the subcontractor's work properly completed, less retainage. The retainage shall be an

amount equal to not more than 5 percent of the subcontractor's work completed until 50 percent of the subcontractor's work has been completed. At 50 percent completion, no additional amounts may be retained, and partial payments shall be made in full to the subcontractor unless the Board certifies that the subcontractor's work is not proceeding satisfactorily. At 50 percent completion or any time thereafter when the progress of the subcontractor's work is not satisfactory, additional amounts may be retained but the total retainage may not be more than 10 percent of the value of the work completed. Upon substantial completion of the subcontractor's work, any amount retained shall be paid to the subcontractor, less the value of any required corrective work or uncompleted work. All payments the general prime contractor makes under this paragraph shall be within 7 calendar days after the date on which the general prime contractor receives payment from the Board.

Pursuant to Wis. Stat. §16.855(14m)(b), subcontracts under sub (14)(e) must include a scope of work clause that is identical to the scope of work clause on which the subcontractor bid. The following Scope of Work language shall be included in the contracts between the Contractor and Subcontractors:

**SCOPE OF WORK** The mechanical, electrical and plumbing subcontractor scope of work is identical to the general prime contractor scope of work included in these bidding and contract documents. By submitting and signing a bid, all bidders have examined all the Bidding Documents listed in the Table of Contents of the project Specifications. The successful bidders will be required to do all work which is shown on the drawings, mentioned in the Specifications, or reasonably implied as necessary to complete the division of work bid for this project.

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

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

...

**§ 7.1.2.2** No adjustment of any kind shall be made to this Contract if asserted by the Contractor for the first time, after the date of final payment.

**§ 7.1.4** Except in cases of emergency, no changes shall be made to the Work by the Contractor without having prior approval of Owner through a Construction Change Directive or Change Order. In addition, the Contractor shall not be entitled to any increase in the Contract Sum or Contract Time without first receiving prior written authorization from the Owner for the same. If the parties disagree whether the work to be performed constitutes a change in Work or disagree as to any adjustments in the Contract Sum or Contract Time, Contractor shall nonetheless diligently proceed with the Work if directed by the Owner while the parties resolve their dispute. In any case, the parties reserve their rights as to the disputed amount.

**§ 7.1.5** Electronic signatures are acceptable for all contract and related documents.

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

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

**§ 7.2.2** The inclusion of Subcontractor terms and conditions in the supporting documentation of a Change Order shall have no bearing on the contract between the Owner and Contractor, and shall not change any of the terms and conditions between the Owner and Contractor. Such supporting documentation shall not be construed as creating any expressed or implied contractual obligation of those terms and conditions between Owner and any of the Contractor's Subcontractors, suppliers or vendors.

**§ 7.2.3** A Change Order may be proposed by the Architect, Contractor, or the Owner. When a Change Order is proposed, the following procedures shall apply:

- .1 if requested by Owner's Representative, the Contractor shall prepare and submit a detailed proposal, including all cost and time adjustments to which the Contractor believes it will be entitled if the change proposed is incorporated into the Contract. Owner's Representative shall be under no legal obligation to issue a Change Order for such proposal;
- .2 the parties shall attempt in good faith to reach agreement on the adjustments needed to the Contract to properly incorporate the proposed change(s) into the Work;
- .3 in some instances, it may be necessary for Owner to authorize Work or direct changes in Work for which no final and binding Change Order has been reached and for which unit prices are not applicable. In such cases the following shall apply:
  - .1 upon written request by the Owner, through a Construction Change Directive, the Contractor shall perform the proposed Work;
  - .2 the cost of such changes shall not exceed the amount in the Construction Change Directive, and be determined in accordance with Section 7.2.5;
  - .3 in the event agreement cannot be accomplished as contemplated herein, the Owner may authorize the Work to be performed by Owner or to hire others to complete the Work. Such action on the part of the Owner shall not be the basis of a claim by the Contractor for failure to allow it to perform the changed Work.

**§ 7.2.4** In the event Work is required due to an emergency as described in Section 7.1.4., the Contractor must request an equitable adjustment as soon as practicable, and in no case later than ten (10) working days of the commencement of such emergency.

**§ 7.2.5** Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.2 shall be limited to the following:

- .1 actual labor rate includes the base rate, taxes, insurance and fringe benefits required by agreement or custom and no Contractor markup except as allowed in Section 7.2.5.6 below. Unit labor is the labor time anticipated to be expended to install the corresponding unit of actual materials. Labor cost is the labor hours approved by Owner's Representative multiplied by the Owner's Representative pre-approved composite hourly labor rates;
- .2 actual material cost is the amount paid or to be paid by the Contractor for materials, supplies and equipment entering permanently into the Work, including cost of transportation and applicable taxes. This cost shall be substantiated by the vendor or supplier's verified invoices/quotes. The cost shall not exceed the usual and customary cost for such items available in the geographical area of the project;

- .3 large tools and major equipment are those with an initial cost greater than \$1,000, whether from the Contractor or other sources. The rental rate shall not exceed the usual and customary amount for such items available in the geographical area of the project. Tool and equipment use time allowed is only for the extra Change Order work. Rental cost is the above tool and equipment time approved by Owner's Representative multiplied by the Owner's Representative pre-approved rental rates also described above;
- .4 the cost of performance and payment bonds are the actual rate paid by the Contractor for such bonds;
- .5 subcontractor costs are for those subcontracted specialties required to complete the Change Order work, with maximum markups as outlined hereinafter;
- .6 the maximum allowable markup for overhead and profit, by all parties of the Contractor and Subcontractors, on Change Order proposals shall not exceed 15 percent total. The Contractor markup of change order work done by Subcontractors shall not exceed 7 ½ percent; and the total combined mark-up by Contractor and Subcontractor, on Subcontractor performed work shall not exceed 15 percent. When the value of a Change Order proposal exceeds \$30,000, a declining scale will be used to negotiate the allowable combined overhead and profit margin. Where Change Order proposals involve a credit only, a reasonable allowance for overhead and profit are properly included as part of the downward adjustment for a deductive change exceeding \$15,000. The amount of such allowance is subject to negotiation.
- .7 all other Change Order expenses are part of the overhead and profit allowance which are not reimbursable as separate items and include the following:
  - .1 all costs associated with the processing of the Change Order are included in the overhead and profit allowance;
  - .2 all such efforts, unless specifically requested as additional Work to be documented as a Change Order proposal or portion thereof, is included in the overhead and profit allowance;
  - .3 the layout required for the installation of material and equipment, and installation design, is the responsibility of the Contractor and is included in the overhead and profit allowance;
  - .3 small tools and supplies. The cost of small hand tools with an initial cost of \$1,000 or less, along with consumable supplies and expendable items such as drill bits, saw blades, gasoline, lubricating or cutting oil, and similar items, is included in the overhead and profit allowance;
  - .4 general expenses (for example, and not limited to: parking fees) which include those items that are a specific job cost not associated with direct labor and material, is included in the overhead and profit allowance;
  - .5 the preparation of record or as-built drawings required is included in the overhead and profit allowance;
  - .6 other costs: a) All association dues, assessments, and similar items are included in the overhead and profit allowance. b) All education, training, and similar items are included in the overhead and profit allowance. c) All drafting and/or engineering, unless specifically requested as additional Work to be documented as a Change Order proposal or portion thereof, is included in the overhead and profit allowance. d) All other cost items such as, but not necessarily limited to, review, coordination, estimating, and expediting, relative to Change Order proposals, are associated with field and office supervision and are included in the overhead and profit allowance.

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**§ 7.3.1** A Construction Change Directive is a written order prepared by the Architect or Owner's Representative 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.

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- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation; time and material. Not To Exceed. This Not To Exceed amount will be the amount the Contractor can complete the needed change in the Work, and shall include all costs for this work including overhead and profit;

- .2 ~~Unit-unit~~ prices stated in the Contract Documents or subsequently agreed upon; or
- .3 ~~Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or cost method agreed upon by all signing parties.~~
- .4 ~~As provided in Section 7.3.4.~~ Intentionally deleted.

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

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

§ 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. Intentionally deleted.

§ 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 and Owner's Representative of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

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§ 7.3.10 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, shall be subsequently issued for all Construction Change Directives when there is agreement on time and cost changes to the Work.~~

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§ 8.1.3 The date of Substantial Completion is the date certified by the Architect and Owner's Representative in accordance with Section 9.8.

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§ 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. It is hereby understood and mutually agreed, by and between the Contractor and the Owner, that the time for completion of the Work required by the Contract Documents is an essential condition of this Contract. The Contractor agrees that the Work required by the Contract Documents will be prosecuted regularly and diligently at a rate of progress that will ensure its final completion within the time specified in the Contract Documents. It is expressly understood and agreed, by the Contractor and the Owner, that the specified time period for completion of the Work described in the Contract Documents is a reasonable time for the completion of the Work, taking into consideration the average weather conditions and usual industrial conditions prevailing in the locality in which the Work is to be completed.

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

...

§ 8.2.4 Costs for acceleration of Work activities to allow completion of the Project in less time than that allowed by the Contract Documents shall be borne by the party requesting such acceleration or early completion. No claim for delay shall be valid against the Owner for compensation for delayed completion which extends completion beyond the early finish date, but which does not continue beyond the stated time for completion as set forth in the Contract.

§ 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) or (4)~~ by other causes that the Contractor asserts, and the Architect-Owner's Representative determines, justify delay, then the Contract Time shall be extended for such reasonable time as the ~~Architect may determine.~~ Owner's Representative may determine.

§ 8.3.1.1 If any activity is delayed, or anticipated to be delayed, thereby delaying the Substantial Completion of the entire Project, the Contractor shall have the right to take action as may be necessary to recapture any delay. Such action shall include, but not be limited to:

- .1 increase in staffing;
- .2 increase in shifts, hours of Work, or number of days of Work;
- .3 use of available Float; or
- .4 changing the sequence of Work activities

Costs caused by delays or improperly timed activities shall be borne by the party responsible therefore, and Change Orders, as deemed appropriate, shall be issued in accordance with Article 7 of these General Conditions.

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§ 8.3.2.1 When events occur which, in the opinion of the Contractor, prevent completion of the Project within the time period allowed by the Contract Documents, the Contractor shall request an extension of the specified time for completion. Such request shall include the reasons for delay, the amount of time extension being requested, and any cost(s) associated with the delay. All such requests shall be made in writing and delivered to Owner's Representative within ten (10) working days from the beginning of such delay, or within ten (10) working days from the time when the circumstance with potential for delay becomes reasonably known to the Contractor, whichever is earlier. The Owner's Representative shall act on such requests as soon as practicable and notify the Contractor of Owner's decision.

§ 8.3.2.2 If the Contractor fails to complete the Work within the time specified in the Contract and such failure is due to reasons which were not beyond the reasonable control of the Contractor or if the Contractor fails to complete the Work within the time specified in the Contract and fails to make the written request as provided for in 8.3.2, then in any such event the Contractor shall pay to the Owner actual damages.

§ 8.3.2.3 If Owner terminates the Contract, or suspends or stops Work in accordance with 2.4 due to the fault of the Contractor, the damages described in Paragraph 8.3.2.2 shall be assessed for each day (or any part thereof) such Work is stopped on the Project. If the Owner does not elect to terminate the Contract or to suspend or stop the Work, the damages shall be assessed for each day of delay in Substantial Completion.

§ 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. The Owner may, at its discretion, waive damages due the Owner, or any portion thereof.

...

§ 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. Payments to the Contractor under the Contract Documents will be made as provided for in Wis. Stat. § 16.855(19)(a), as the Work progresses on this Project. Payment requests will be processed monthly, except for special circumstances approved by Owner's Representative. The Contractor must perform all of the conditions required for payment and must have met

the obligations which are necessary to qualify for any partial payments. No Contractor whose Work is deficient or whose Work fails to conform to the quality standards set forth in the Contract Documents shall be entitled to interim, progress or partial payments.

...

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. As soon as practicable after the Agreement is executed, but not later than submission of the first payment application, the Contractor shall submit to the Architect a Schedule of Values for work to be performed, as prescribed by the Contract Documents and in the detail requested by the Architect. The cost breakdown items shall reflect actual work progress stages as closely as feasible which, if approved by Architect, will become the basis for Applications for Payment.

...

§ 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. With each Application for Payment, the Contractor shall provide to the Architect and Owner's Representative:

- .1 At the request of the Architect or Owner's Representative, submit satisfactory evidence to establish that the sum set forth in any Application for Payment represents the "proportionate value" of Work completed;
- .2 The Contractor shall certify each request for payment as being a true, accurate, and complete statement of account as of the date on which the certificate was made, and that the stated sums are then earned and payable to the Contractor.
- .3 All requests for payment shall be submitted to the Architect. To expedite payment of sums due under the Contract, the Contractor, Owner's Representative and Architect shall, where possible, jointly review any such request for payment at the site, inspecting the Work if necessary to determine the validity of the request or modifications to the request which are necessary to accurately represent the value of Work completed in accordance with the Contract Documents
- .4 The Contractor shall furnish any and all accounting records requested by the Architect or Owner's Representative to validate all or any part of any request for payment. The Contractor shall maintain these accounting records for a period of three (3) years from the date the Architect authorizes final payment.
- .5 The Contractor agrees to indemnify and hold the Owner harmless from all claims growing out of lawful demands of Subcontractors, laborers, workers, mechanics, material persons, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, including commissary, incurred in the performance the Work required by Contract Documents.
- .6 The Contractor shall, at Owner's Representative or Architect's request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived.
- .7 If separate prices are set forth in the Contract Documents for identifiable items of Work, payment for such prices shall be made at the time of completion of those items of Work. Payment under this Paragraph shall be an interim payment until the time of final payment and acceptance of the Work by Architect.
- .8 Pursuant to Wis. Stat. § 16.855(19)(a), as the Work progresses under this Contract for Construction the

Architect or Owner's Representative, from time to time, shall grant to the Contractor an estimate of the amount and proportionate value of the work properly completed, which shall entitle the Contractor to receive the amount, less the retainage, from the proper fund. The retainage shall be an amount equal to not more than 5 percent of the estimate until 50 percent of the work has been completed. At 50 percent completion, no additional amounts shall be retained, and partial payments shall be made in full to the Contractor unless the Owner certifies that the job is not proceeding satisfactorily. At 50 percent completion or any time thereafter when the progress of the work is not satisfactory, additional amounts may be retained but in no event shall the total retainage be more than 10 percent of the value of the Work completed. Upon Substantial Completion of the Work, any amount retained shall be paid to the Contractor, less the value of any required corrective Work or uncompleted Work. For the purposes of this section, estimates may include any fabricated or manufactured materials and components specified, previously paid for by Contractor and delivered to the Work or properly stored and suitable for incorporation in the Work embraced in the contract.

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**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment ~~suitably~~ properly 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.~~ the requirement that it holds clear title to all property of every description which serves as the basis for the Application for Payment. Contractor warrants that title to any such property is being transferred to the Owner free and clear of all liens. If requested by the Architect or Owner's Representative, the Contractor shall produce satisfactory evidence of transfer of title from suppliers and Subcontractors to the Contractor, without reservation, or with adequate waiver of lien. These payments may include any fabricated or manufactured materials and components specified, previously paid for by Contractor and delivered to the site, properly stored, and suitable for incorporation into the Work embraced in the Contract. The Contractor shall identify the method of storage for such materials. Proper evidence of insurance shall be presented to protect the interest of the Owner. If payment is intended to be requested for any off-site storage items, such items shall be listed as separate lines in the request and certification for payment, cost breakdown. Architect or Owner's Representative, upon their request, shall be allowed to verify such materials and equipment no matter the location stored and located.

**§ 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. The Contractor shall have the sole responsibility for obtaining proper insurance on, as well as the responsibility for the care and protection of materials and Work upon which payments have been made. The Contractor shall be responsible for the restoration of any damaged Work. Nothing herein shall operate as a waiver of the rights of the Owner to require fulfillment of all of the terms of the Contract.

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**§ 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~~ that 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.~~

...

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

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**§ 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. In paying any unpaid bills of the Contractor relating to the Work, the Owner shall be deemed the agent of the Contractor, and any payment so made by the Owner shall be considered as a payment made under the Contract by the Owner to the Contractor for its account and the Owner shall not be liable to the Contractor for any such payment.

...

**§ 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. Not more than seven (7) calendar days following the receipt of each payment from the Owner, the Contractor shall make payment to each and every person, Subcontractors, or entity who furnished goods or services for the progress of the Work on the Project, the value of which goods or services were included in the Contractor's Request for Payment and Certification for Payment, or who by law or Contract payment is due upon the receipt of the payment most recently received from the Owner.~~

...

**§ 9.6.5.1** In the event Owner receives notice from any person, Subcontractor, or other third party, that the Contractor has failed to pay such person(s) for Work performed in accordance with the Contract Documents, the Owner shall notify the Contractor and the Contractor shall, in no more than 10 calendar days, provide all documentation Owner's Representative believes necessary to determine whether such payment is due, or reasons for non-payment of disputed amounts. In the event Owner's Representative determines the claim to be valid and payment is due, or in the absence of aforementioned documentation, Owner's Representative may authorize direct payment of any unpaid bills, withholding from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such claims until satisfactory documentation is furnished that all liabilities have been fully discharged or reasons for non-payment of disputed amounts are provided by the Contractor. In no event shall these provisions be construed to impose any obligations upon the Owner to either the Contractor or the Contractor's Surety.

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**§ 9.6.7.1** Pursuant to Wis. Stat. § 16.855(19)(b) and § 16.855(14m)(a) retainage on a Subcontract shall occur and be in amounts and on a schedule equal to the retainage schedule in the contract between the Contractor and the Owner.

**§ 9.6.7.2** Nothing herein shall preclude the Contractor from deducting from any request for payment such amounts as will properly represent the value of Work which fails to meet the quality standards of the Contract Documents or which the Subcontractor fails to complete.

...

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.~~ In the event the Contractor elects to stop Work under this Section 9.7, upon recommencing the Work, the Contractor may seek a Change Order to assert a claim for adjustment of the Contract Time and the Contract Sum by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

...

**§ 9.8.3** 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~~ identifies any item, whether or not included on the Contractor's list, which is not sufficiently ~~complete~~ complete, in need of correction, or in need of replacement to be 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.

...

**§ 9.8.6** On the date of Substantial Completion, the Contractor shall assign to the Owner all warranties and guarantees of labor or material incorporated into the Work which are provided by third party vendors, suppliers, manufacturers, and Subcontractors.

**§ 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. While the Owner has such possession or use, the Contractor shall be relieved of the responsibility for loss or damage to the Work resulting from the Owner's possession or use. 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.~~ Contractor.

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**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents. The Contractor will prepare a list of items of Work remaining to be performed or corrected on those portions of the Project that the Owner intends to take possession of or use.

...

**§ 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, provides certification that all debts and claims against this Project have either been paid in full or otherwise satisfied and give final evidence of release of all liens against the Project, the Owner, and all proceeds payable hereunder. The Contractor shall certify upon such payment request that the data contained therein is current, accurate, and complete. Contractor shall permit, if requested by Owner's Representative, the final inspection to be jointly conducted by the Contractor, Architect and Owner's Representative. The Contractor shall give Notice at least 72 hours in advance of the time set for final inspection. Upon completion of the Work and before receiving final payment for the Work, as required by law, the Contractor shall file with Owner's Representative an affidavit stating that the Contractor has complied fully with Wis. Stat. § 103.49(4r) and that the Contractor has received an affidavit from each of the Contractor's agents, and Subcontractors stating that they also have complied fully with Wis. Stat. § 103.49(4r).~~

§ 9.10.2.1 As a condition precedent to final payment, all corrective actions to remedy deficiencies in the Work required by Contract Documents and Work identified on the punch list must have been completed. In addition, where required by Contract Documents, all training of the Owner's staff in the proper operation and maintenance of the Work shall have been completed, Operating and Maintenance Manuals and Instructions as well as drawings marked up to reflect "as built" conditions must have been transmitted to Owner's Representative and all warranty certificates signed and presented for Owner's Representative acceptance.

§ 9.10.2.2 When to the satisfaction of Owner's Representative and Architect the Work has been completed, and is of the quality required by the Contract Documents, Owner's Representative may authorize payment of all sums then due the Contractor. Receipt of the final payment, as provided for herein shall constitute a waiver of any and all claims against the Owner arising out of, under, or incident to the Work performed under the Contract.

§ 9.10.2.3 If the Contractor fails to submit a request for final payment or make satisfactory arrangements with Owner's Representative within thirty (30) calendar days of the final inspection or accepted punch list, no further payments will be made and the Contract will be closed. The last request for Certification for Payment will be considered the final payment under the terms and conditions of the Contract.

§ 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 or Owner's Representative 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 but not limited to:

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- .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. Owner after final payment;
- .5 any warranty or guarantee required by the Contract Documents;
- .6 any other right surviving the Owner as to which the Contractor was specifically given notice before or during the final inspection and final payment process; or
- .7 rights surviving to the Owner as a matter of law.

...

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor, its agents, employees, material suppliers and subcontractors will perform all Work on the project in a safe and responsible manner. In particular, Contractor shall, at its own expense, conform to the safety policies and regulations established by the Contractor and shall comply with

all specific safety requirements promulgated by any government authority, including without limitation the requirements of the Occupations Safety and Health Act of 1970 and the Construction Safety Act of 1969 and all standards and regulations which have been or shall be promulgated by the parties or agencies which administer the Acts. Contractor shall comply with said requirements, standards and regulations, and require and be directly responsible for compliance therewith on the part of its said agents, employees, materials suppliers and contractors; and shall directly receive, respond to, defend, and be responsible for all citations, assessments, fines or penalties which may be incurred by reason of its failure on the part of its agents, employees, material suppliers or subcontractors to so comply.

...

**§ 10.2.1** The Contractor shall ~~take reasonable~~ strictly comply with, and bear full responsibility for, any safety procedure set forth in the Contract Documents. The Contractor shall further indemnify Owner for any cost and expense, including legal, resulting from any such failure to abide by any safety procedure set forth in the Contract Documents. At the sole discretion of Owner, the Contractor may also be subject to termination of the Contract for default. The Contractor shall take all precautions for safety of, and shall provide ~~reasonable~~ all protection to prevent damage, injury, or loss ~~to~~:

- .1 employees on the Work and other persons who may be affected ~~thereby~~; thereby (including, but not limited to the public, and the Owner's personnel and agents);

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**§ 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. Contractor shall have properly qualified and trained personnel on safety means and methods, and properly qualified supervision.

**§ 10.2.3** The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, ~~reasonable~~ all 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. For these purposes, the Contractor shall:

- .1 provide appropriate safety barricades, signs, and signal lights;
- .2 comply with any safety requirement published by any governmental authority with jurisdiction over the site, including federal, state, or local jurisdictions;
- .3 ensure that any additional measures which are reasonably necessary for the purposes stated are taken.

...

**§ 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. If the Owner becomes aware of any noncompliance by the Contractor or any Subcontractor with the safety conditions of this Contract or of any condition caused by the Contractor or any Subcontractor, which poses a serious or imminent danger to the health or safety of the public or to Owner personnel, for which the Contractor has been previously notified of, and the Contractor has failed to correct, the Owner has the right stop all Work until satisfactory correction action has been taken. Satisfactory correction will be at the sole discretion of the Owner.

**§ 10.2.5.1** In case of an emergency which threatens loss or injury of property, or safety of life, the Contractor will be allowed to act, without previous instructions from the Owner's Representative, in a diligent manner. The Contractor shall notify Owner's Representative immediately thereafter. Any claim for compensation by the Contractor due to such extra Work shall be promptly submitted to the Owner's Representative and Architect for approval as provided for in Article 7 above.

§ 10.2.5.2 In the event of temporary suspension of Work, or during inclement weather, or whenever Owner's Representative shall direct, the Contractor shall reasonably protect all Work and materials against damage or injury from the weather. This provision shall be incorporated into the contracts between the Contractor and Subcontractors. If, in the opinion of Owner's Representative, any Work or materials have been damaged or injured by reason of failure on the part of the Contractor or Subcontractors to reasonably protect the Work, such materials shall be removed and replaced at the expense of the Contractor.

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§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. The Contractor shall use the least hazardous materials, equipment, and processes to execute the Work. The Contractor shall comply with all OSHA rules and regulations. If the Contractor encounters a condition that it suspects may contain a hazardous material or substance that is 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. take all reasonable steps that, in its judgement, are necessary to prevent bodily injury or death, up to and including stopping the Work.

§ 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. Contractor shall give notice to Owner of the condition that may contain the hazardous material or substance. Contractor shall have the right to engage a licensed laboratory/subcontractor to test the suspected hazardous material or substance. Owner will negotiate for reimbursement of reasonable testing costs if the test results do not verify the presence of a hazardous material or substance by a Change Order. Owner, by Change Order, will reimburse Contractor for reasonable testing costs if the tests results verify the presence of a hazardous material or substance.

§ 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. When hazardous materials or substances, not addressed in the Contract Documents, are required to be removed or disturbed to complete the Work, Contractor and Owner will negotiate how to complete that new work. If Contractor agrees to perform this work, a Change Order will be negotiated potentially adjusting the Contract Sum and Contract Time. Such new work will be at the sole direction of the Owner.

§ 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. site.

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**ARTICLE 11 — INSURANCE AND BONDS**

**ARTICLE 11 BONDS**

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

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**§ 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 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 insurance from an insurance company or insurance bonds from a company or companies lawfully authorized to issue insurance surety bonds 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. The bond may be enforced by any person or entity who is entitled to enforce the bonds as a matter of law and who is damaged as a result of breach of these commitments by the Contractor on the Project to which these provisions apply. The Owner shall not be responsible for the default of the Contractor and the remedies of any damaged party shall be limited to an action by the damaged party against the defaulting Contractor and/or its bonding company, in addition to any other coverage for the bond.

**§ 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. 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.

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**§ 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.

...

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's or Owner's Representative's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, or Owner's Representative, 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 or Owner's Representative has not specifically requested to examine prior to its being covered, the Architect or Owner's Representative 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 with no adjustment to Contract Time.

...

The Contractor shall promptly correct Work rejected by the Architect or Owner's Representative 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.

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The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4. laws of the State of Wisconsin.

...

§ 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~~ Neither party to the Contract shall assign the Contract as a whole without written consent of the other. The Owner may withhold its consent in its sole discretion. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.1.1 In case the Contractor assigns all or any part of any moneys due or to become due under this Contract, the instrument of assignment shall contain an article substantially to the effect that it is agreed that the right of the assignee in and to any moneys due or to become due to the Contractor shall be subject to prior claims of all persons, firms, and corporations for services rendered or materials supplied for the performance of the Work called for in this Contract and subject to the terms of this Contract and claims of offset by the Owner.

§ 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.~~ Antitrust Agreement. The Contractor and the Owner recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the Owner. Therefore, the Contractor hereby assigns to the Owner any and all claims for such overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from antitrust violations commencing after the price is established under this Contract and any Change Order thereto.



§ 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 and Owner's Representative timely notice of when and where tests and inspections are to be made so that the Architect and Owner's Representative 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 and Owner's Representative of when and where tests and inspections are to be made so that the Architect and Owner's Representative may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

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§ 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 and Owner's Representative.

...

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 as listed in the Agreement or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

§ 13.6 Reserved

§ 13.7 Reserved

§ 13.8 Nondiscrimination/Affirmative Action -

§ 13.8.1 In connection with the performance of Work under this Contract, the Contractor agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in Wis. Stat. §51.01(5), sexual orientation, national origin, or any other basis prohibited by law. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. Except with respect to sexual orientation, the Contractor further agrees to take affirmative action to ensure equal employment opportunities. This contract provision shall be incorporated into the contracts between the Contractor and Subcontractors.

§ 13.8.2 Contracts with a value of fifty thousand dollars (\$50,000) or more require the Contractor to submit a written affirmative action plan acceptable under Wisconsin Statutes. An exemption occurs from this requirement if the Contractor has a Work force of less than thirty (30) employees. The Contractor is responsible for obtaining affirmative action compliance from Subcontractors.

§ 13.8.3 The Contractor should establish and take appropriate initiatives to reach goals and timetables for minority and female utilization which shall be based on appropriate work force, demographic, or other relevant data which shall cover construction projects or construction contracts performed in specific geographical areas. The goals shall be applicable to the Contractor's, and Subcontractor's entire work force which is working in the area covered by the goals. The goals are established and are as follows:

<u>County</u>	<u>Women Goal</u>	<u>Minority Goal</u>
Adams/Juneau/Monroe/Vernon	12%	2%

<u>Ashland/Bayfield/Douglas/Price</u>	9%	6%
<u>Barron/Sawyer/Washburn</u>	13%	4%
<u>Brown</u>	11%	9%
<u>Buffalo/Jackson/Pepin/Trempealeau</u>	12%	5%
<u>Burnett/Polk</u>	11%	2%
<u>Calumet/Winnebago</u>	11%	3%
<u>Chippewa/Rusk</u>	12%	2%
<u>Clark/Taylor</u>	16%	2%
<u>Columbia</u>	12%	2%
<u>Crawford/Grant/Richland</u>	14%	2%
<u>Dane</u>	9%	9%
<u>Dodge</u>	12%	3%
<u>Door/Kewaunee/Manitowoc</u>	13%	3%
<u>Dunn/Eau Claire</u>	11%	3%
<u>Florence/Forest/Marinette/Oconto</u>	13%	2%
<u>Fond du Lac</u>	11%	4%
<u>Green/Iowa/LaFayette</u>	13%	1%
<u>Green Lake/Marquette/Waushara</u>	10%	4%
<u>Iron/Oneida/Vilas</u>	9%	3%
<u>Jefferson</u>	12%	4%
<u>Kenosha</u>	7%	10%
<u>La Crosse</u>	10%	4%
<u>Langlade/Lincoln/Menominee/Shawano</u>	11%	7%
<u>Marathon</u>	12%	4%
<u>Milwaukee</u>	10%	29%
<u>Outagamie</u>	10%	5%
<u>Ozaukee</u>	8%	3%
<u>Pierce/St Croix</u>	12%	2%
<u>Portage</u>	13%	3%
<u>Rock</u>	11%	7%
<u>Sauk</u>	10%	2%
<u>Sheboygan</u>	14%	5%
<u>Walworth</u>	10%	8%
<u>Washington</u>	9%	3%
<u>Waukesha</u>	7%	4%
<u>Waupaca</u>	11%	2%
<u>Wood</u>	12%	2%
Source: Combined Occupation Distribution: 2000 Census		

**§ 13.8.4** Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom a Contractor has a collective bargaining agreement, to refer to either minorities or women shall excuse the Contractor's required initiatives under these specifications.

**§ 13.8.5** The Contractor agrees to post in conspicuous places, available for employees and applicants for employment, a notice to be provided by the Owner that sets forth the provisions of this Article 13.8.

**§ 13.8.6** Failure to comply with the conditions of this Article 13.8 may result in the Contractor becoming declared an "ineligible" Contractor, termination of the Contract, or withholding of payment.

### **§ 13.9 Minimum Wages**

**§ 13.9.1** The Contractor shall post, at an appropriate conspicuous point on the site of the Project, a schedule showing all determined minimum wage rates for the various classes of laborers and mechanics to be engaged in Work on the Project under this Contract and all deductions, if any, required by law to be made from unpaid wages actually earned by the laborers and mechanics so engaged.

- .1 ~~Issuance~~ issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 ~~An~~ an act of government, such as a declaration of national emergency, that requires all Work to be stopped; or
- .3 ~~Because~~ 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 Documents.~~
- .4 ~~The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.~~ Intentionally deleted.

...

§ 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~~ Owner, as its sole remedy, payment for Work properly executed, as well as reasonable ~~overhead and profit on Work not executed, and~~ and mutually agreed upon 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~~ Owner's Representative and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

...

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

...

- .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.

The Owner may exercise any and all rights or remedies provided for herein, by law or in equity, either concurrently or singly in its sole discretion.

§ 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~~ three days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 ~~Exclude~~ exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon ~~owned~~ secured for this project by the Contractor; and
- .2 ~~Accept assignment of subcontracts pursuant to Section 5.4;~~ and
- .3 ~~Finish~~ 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.~~ for the Work the Contractor performed until the Work is finished by another contractor in consideration of 14.2.4.

§ 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, although the excess shall not exceed the unpaid Work

performed by 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.

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

...

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; reasonable 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. ~~reasonable costs attributable to termination of subcontracts.~~ For avoidance of doubt, "reasonable costs incurred by reason of the termination" shall not include lost profits or payments due to Subcontractors for any period of time subsequent to termination of the Contract.

§ 14.4.3.1 The Contractor shall be paid for all Work performed to the effective date of termination, and any "Reimbursable Expenses" outstanding as of the date of termination. The term "Reimbursable Expenses" shall include the cost of personal property or materials which meet requirements of the Contract Documents and have been purchased by the Contractor for incorporation into the Work but not yet incorporated therein; lease payments due to an unaffiliated third party lessor for equipment provided to the Project, where the lease term extends beyond the termination date of this Contract and the Contractor is unable to terminate said lease; and other costs approved by Owner's Representative. Reimbursable Expenses do not include lost profits or payments due to Subcontractors for any period of time subsequent to termination of the Contract. Upon payment of the Reimbursable Expenses, the Contractor shall deliver to the Owner any materials or personal property for which said payment has been made.

...

A Claim is a demand or assertion by ~~one of the parties~~ the Contractor 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. Contractor..

...

~~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~~ Contractor waives all Claims and causes of action not commenced in accordance with this Section 15.1.2.

...

§ 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,~~ the Contractor 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~~ the Owner, the Owner's Representative, and the Initial Decision Maker. Claims under this Section 15.1.3.1 shall be initiated within ~~21~~ twenty-one (21) days after occurrence of the event giving rise to such Claim or within ~~21~~ twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

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~~§ 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.~~

~~§ 15.1.4.1 Pending final resolution of a Claim, Claim and any subsequent judicial action or appeal, 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. The Owner and the Contractor shall act in good faith to efficiently and fairly resolve Claims and disputes arising under the Contract in order to avoid, wherever possible, formal legal proceedings.~~

...

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. The Contractor expressly waives any rights that it otherwise might have to include overhead costs for extended or unabsorbed overhead in a Claim for an increase in the Contract Sum.

~~§ 15.1.5.1 In the event of such interruption or suspension, the Owner and the Contractor shall negotiate in good faith in an effort to agree upon the additional construction costs and other amounts, if any, that shall be paid the Contractor because of the interruption or suspension of Work. Anything in the Contract Documents to the contrary notwithstanding, however, it is expressly understood and agreed that:~~

- ~~.1 the total amount recoverable by and payable to the Contractor shall be limited to an amount equal to the sum of the additional construction costs and other amounts actually incurred by the Contractor because of the Owner's actions and omissions; plus a maximum overhead and profit allowance equal to fifteen (15) percent of the sum of additional construction costs and other amounts.~~
- ~~.2 overhead costs for extended or unabsorbed overhead shall not be used as the basis for calculating or determining the amount of any additional construction costs or other amounts recoverable by or payable to the Contractor; and~~
- ~~.3 by entering into this Contract with the Owner, the Contractor hereby waives any rights that it otherwise might have to pursue recovery of overhead costs for extended or unabsorbed overhead from the Owner.~~

...

- ~~.1 Where, under the Contract, Initial Decision Maker extends the amount of time specified for completion of the Project, the new time limit fixed by such extension shall be the essence of this Contract.~~
- ~~.2 Time extensions and associated adjustments in the Contract Documents which are implemented by, or based on Change Orders, shall not include any allowance for extended and unabsorbed overhead costs.~~
- ~~.3 Permitting the Work or any part of it to continue after the time fixed for its completion, or after the date to which the time for completion may have been extended, shall in no way operate as a waiver on the part of the Owner, or any of the Owner's rights under the Contract or a waiver of any default by the Contractor.~~

~~§ 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 in the locale in which the Work is being performed were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction. A determination on a Claims in accordance with Section 15.1.6.2 shall only be made by the Initial~~

Decision Maker upon written request by the Contractor. Not all extension(s) in the allowable time for completion, when granted by Initial Decision Maker, will result in additional compensation to the Contractor.

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As a condition precedent to Contractor's ability to pursue any monetary claim under Wis. Stat. §§ 16.008 and 775.01 or any form of judicial action against Owner, all Claims shall be referred to the Initial Decision Maker for initial decision in accordance with the following procedures:

- .1 First, the Contractor shall present its Claim to the Initial Decision Maker who shall have thirty (30) days after presentation of the Claim to take one or more of the following actions: (1) request additional supporting data from the Contractor, (2) reject the Claim in whole or in part, or (3) approve the Claim. Failure by the Initial Decision Maker to take such action within the time specified herein shall constitute a rejection of the Contractor's Claim.
- .2 If the Initial Decision Maker requests the Contractor to provide additional supporting data, the Contractor shall respond within the timeframe specified by the Initial Decision Maker, by (1) providing the requested supporting data, (2) advising the Initial Decision Maker that the supporting data cannot be provided within the timeframe specified, but that it will provide such supporting data by a specific date, or (3) advising the Initial Decision Maker that no supporting data will be furnished. After receipt of the response or supporting data, if any, the Initial Decision Maker shall have thirty (30) days to take one or more of the following actions: (1) request further additional supporting data from the Contractor, (2) reject the Claim in whole or in part, or (3) approve the Claim.
- .3 The Initial Decision Maker's decision shall: (1) be in writing; (2) state the reasons therefor; and (3) specify any change in the Contract Sum or Contract Time or both.

**§ 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 Litigation**

**§ 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. Any judicial action relating to the construction, interpretation, or enforcement of the Contract Documents including without limitation, the Contractor's claims, demands, and causes of action for additional construction costs, delay damages, and other amounts owed hereunder, shall be brought and venue in the Dane County Circuit Court in Madison, Wisconsin. The Contractor hereby consents to personal jurisdiction in that venue, and waives any defenses that the Contractor otherwise might have relating thereto.

**§ 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.

Contractor hereby waives its right to a jury trial in connection with any judicial action or proceeding that may arise by and between the Owner and the Contractor concerning the construction, interpretation, or enforcement of the Contract Documents including, without limitation, any claims, demands, or causes of action that the Contractor hereafter may assert against the Owner for additional construction costs, delay damages, and other amounts. **§ 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.



# **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, Patrick Rebholz, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 11:17:53 CT on 03/20/2025 under Order No. 2114482720 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, other than those additions and deletions shown in the associated Additions and Deletions Report.

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*(Signed)*

\_\_\_\_\_  
*(Title)*

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*(Dated)*