ADDENDUM NO: #1

DATE: April 2, 2019

PROJECT NAME: Ball Gymnasium’s Pool Roof Replacement

PROJECT NUMBER: 2019-035.01 BC, 19-05-5345 MM

PROJECT LOCATION: 2200 Blk W. Riverside Avenue, Muncie, Indiana 47306

CREATED BY: Rodney Wiedenkeller, NCARB, RA

ADDENDUM

The following is a summary of changes to the Construction Documents that shall be considered as part of your Bid. Receipt of this Addendum shall be acknowledged on the Bid Proposal Form.

This Addendum consists of: 3 Page(s) 5 Attachment(s)

SUMMARY OF ADDENDUM:

Project Manual:

1. Section 00 43 00 Bid Form Supplement, page 3, Appendix A-Receipt of Addenda/Project Completion, 2. Project Completion
   Change: Commence on site work date from May 27, 2019 to May 6, 2019.

2. Section 00 52 14.01 Owner-Contractor Agreement (A101-2017)
   Replace with the attached: Owner-Contractor Agreement (A101-2017)

3. Section 00 72 00 General Conditions (AIA A201-2017)
   Replace with the attached: General Conditions (AIA A201-2017)

4. Section 07 53 00 Ballasted EPDM Roofing, 3.4, A, 1
   Delete: “Install 90 mil ballasted EPDM”

Drawing:

5. Sheet RP1, General Notes, Note I
   Delete “The use of peel & stick membrane is strictly prohibited except where specifically noted.”

6. Sheet D1, Detail CC/D1, New Roof Construction Profile Roof #12 and 13
   Delete “Adhered” from the New 2” Polyisocyanurate Insulation. The new insulation will be loose laid and ballasted.

7. Sheet D2, Detail E/D2, Base Flashing Termination at Stone Coping
   Replace: Detail E/D2 with attached Detail Sketch E/D2 Base Flashing Termination at Stone Coping and Corner Elevation of Counter Flashing.
Questions from Contractors:

8. **Question:** The Specifications call for new ballast gravel on Roof #12 and 13 is this correct?
   **Answer:** Section 07 53 00, 2.5 Aggregate Ballast, does specify new ballast, however, it was determined at the Pre-Bid walk that the existing ballast could be reused at the Contractor’s option.

9. **Question:** Roof detail CC/D1 shows insulation to be adhered is this accurate.
   **Answer:** The insulation under the ballasted roof section #12 and 13 are to be loose laid not adhered. See Item 6 above also.

10. **Question:** Is there a contingency allowance to be included in the bid?
    **Answer:** No

11. **Question:** How clean will the concrete deck have to be on Areas 11 & 12 (Alternate) where existing pitch VB (area 12), or asphalt VB (area 11) are shown to be removed?
    **Answer:** Loose VB will have to be removed. Areas which are well adhered and dry can be left in place. The existing VB or bare concrete deck will have to be primed prior to torching on the new vapor barrier.

12. **Question:** The Ballasted EPDM Specification, Section 2.1, A, 1 Product specifies a 60 mil. EPDM membrane. Execution Section 3.4, A, 1 indicates 90 mil. EPDM what is the correct thickness to be installed.
    **Answer:** The correct membrane is 60 mil. EPDM. See Item 4 above also.

13. **Question:** Will an IR Scan be required at the end of the installation?
    **Answer:** Infra-Red Scanning shall be performed upon completion of the project and per the request for Final Inspection by the contractor. A Certified Level II / Building Science Thermographer will be commissioned by the contractor and the associated costs must be included in the contractor’s base bid. The costs have been established at three and a half cents per sq. ft., or a minimum charge of $850.00 dollars.

14. **Question:** Sheet RP1, General Note I, prohibits the use of peel & stick membrane is this correct.
    **Answer:** The seams and patches etc. are accomplished with a peel & stick tape. Delete the reference to peel & stick. See Item 5 above also.

15. **Question:** Are sheet metal color selections to from a standard available color chart?
    **Answer:** Yes

16. **Question:** There are 2 gravity vents at the top of the center section that requires removal of rust and painting, is there another option?
    **Answer:** It was discussed on the roof that these could be replaced with aluminum mushroom gravity vents if less expensive than the refurbishing of the existing vents at the contractor’s option.

17. **Question:** Cleaning and re-caulking stone joints was discussed on the roof, what locations are required?
    **Answer:** Only the 2 interior dividing walls need to have the joints cleaned and re-caulked, the drawings have it noted correctly.
Additional Information:

18. **Attached**: Minutes of the Pre-Bid Meeting and Sign-In Sheet

END OF ADDENDUM
AGREEMENT made as of the __________ day of __________ in the year __________. (In words, indicate day, month and year.)

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

Ball State University
2000 West University Avenue (AD 208)
Muncie, Indiana 47306
Telephone Number: (765) 285-1186
Fax Number: (765) 285-3672

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

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

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

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. 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.

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

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**EXHIBIT A** INSURANCE AND BONDS

**ARTICLE 1** THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

**ARTICLE 2** THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

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

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

(Check one of the following boxes.)

- [ ] The date of this Agreement.
- [ ] A date set forth in a notice to proceed issued by the Owner.
- [ ] Established as follows:
  
  (Insert a date or a means to determine the date of commencement of the Work.)

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

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

§ 3.3 Substantial Completion

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

(Check one of the following boxes and complete the necessary information.)
Not later than ( ) calendar days from the date of commencement of the Work.

By the following date:

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

<table>
<thead>
<tr>
<th>Portion of Work</th>
<th>Substantial Completion Date</th>
</tr>
</thead>
</table>

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

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

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

<table>
<thead>
<tr>
<th>Item</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alternates listed in the Notice to Proceed Letter.</td>
<td></td>
</tr>
</tbody>
</table>

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement. (Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

<table>
<thead>
<tr>
<th>Item</th>
<th>Price</th>
<th>Conditions for Acceptance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alternates listed in the Notice to Proceed Letter.</td>
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<td></td>
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</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Item</th>
<th>Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>As listed in the Project Manual.</td>
<td></td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Item</th>
<th>Units and Limitations</th>
<th>Price per Unit ($0.00)</th>
</tr>
</thead>
<tbody>
<tr>
<td>As listed in the Bid or Quote Proposal.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

§ 4.5 Liquidated damages, if any: (Insert terms and conditions for liquidated damages, if any.)

§ 4.6 Other: (Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)
ARTICLE 5  PAYMENTS
§ 5.1 Progress Payments
§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

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

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the first (1st) day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the thirtieth (30th) day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than Thirty (30) days after the Architect receives the Application for Payment. The Owner reserves the right to modify the payment amount for errors and omissions contained in the Application for Payment.

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

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

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

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

§ 5.1.6.1 The amount of each progress payment shall first include:
   .1 That portion of the Contract Sum properly allocable to completed Work;
   .2 That portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction, or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing; and
   .3 Fully executed Change Orders approved by the Owner and signed by the Architect and Contractor.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:
   .1 The aggregate of any amounts previously paid by the Owner;
   .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
   .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
   .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
   .5 Retainage withheld pursuant to Section 5.1.7.

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

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

| Five percent (5.00%) |
§ 5.1.7.1 The following items are not subject to retainage:
(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:
(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

Retainage shall not be reduced.

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:
(Insert any other conditions for release of retainage upon Substantial Completion.)

In accordance with Section 9.3.1 and 9.8.5 in AIA Document A201-2017.

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

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

§ 5.1.10 Per Indiana Code 5-16-13-11-2, the Contractor, and Subcontractors of any tier, shall not pay cash to any individual employed by the Contractor for Work performed by the Individual on the Project.

§ 5.2 Final Payment
§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when
.1 the Contractor has fully performed the Contract except for the Contractor’s responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
.2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner’s final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect’s final Certificate for Payment, or as follows:

All Work is fully completed and contractual documentation received and accepted by the Owner.

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

Zero % per annum

ARTICLE 6 DISPUTE RESOLUTION
§ 6.1 Initial Decision Maker
The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017, unless the parties appoint below another individual, not a party to this Agreement, to serve as the Initial Decision Maker.
(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)
§ 6.2 Binding Dispute Resolution
For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Decide the appropriate box.)

[ ] Arbitration pursuant to Section 15.4 of AIA Document A201–2017

[ ] Litigation in a court of competent jurisdiction

[ ] Other (Specify)

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation instituted only in the Circuit Courts of Delaware County Indiana or the United States District Court for the Southern District of Indiana.

ARTICLE 7  TERMINATION OR SUSPENSION
§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

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

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

None.

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

ARTICLE 8  MISCELLANEOUS PROVISIONS
§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner’s representative:

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

The representative with final authority for modifications to the Contract(s) for Construction, and expenditure of Owner funds:

The representative with authority to: (1) request or provide preliminary approval to changes in design or schedule; (2) reject or accept non-conforming Work; (3) approve Applications for Payment; (4) and certify Substantial Completion and Final Completion:
§ 8.3 The Contractor’s representative:

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

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

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.

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

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

§ 8.7 Other provisions:

§ 8.7.1 The Contractor agrees that it shall not use the name, logo, trademarks, or any other marks owned by or associated with Ball State University, or the name of any representative of Ball State University, in any manner whatsoever, including, but not limited to, sales materials, promotional materials, or advertising, without the prior written permission of Ball State University in each instance. The Contractor shall also notify and require all subcontractors to abide by this provision.

§ 8.7.2 Per Indiana Code 5-16-13-11 and 22-5-1.7 as amended, the Contractor and its subcontractors at all tiers shall not knowingly employ unauthorized aliens. The Contractor and its subcontractors at all tiers shall enroll in and verify the employment eligibility of all employees hired after June 30, 2015 using the U.S. Citizenship and Immigration Services (USCIS) E-Verify system. The Contractor shall provide the case verification number for each individual to the Owner prior to their employment on the project. An individual whose E-Verify case result is “final nonconfirmation” shall not be employed on the project.

.1 The Contractor is not required to verify the work eligibility status of employees through the E-Verify program if the E-Verify program no longer exists.

.2 The Contractor shall provide an affidavit affirming that the Contractor does not knowingly employ unauthorized aliens.
§ 8.7.3 Per Indiana Code 5-16-13-11, as amended, the Contractor and its subcontractors at all tiers shall comply with the following:

2. Indiana Code IC 22-3-5-1 and IC 22-3-7-34 (Worker’s Compensation).
3. Indiana Code IC 22-4-1 through IC 22-4-39.5 (Unemployment Compensation).

§ 8.7.4 The Contractor shall preserve payroll records and open them for inspection by the Indiana Department of Work Force Development for a period of three (3) years after the completion of the project work, in accordance with Indiana Code 5-16-13-13, as amended.

§ 8.7.5 Training Programs

1. Contractors of any tier level having ten (10) or more employees shall provide access to a training program applicable to the tasks to be performed in the normal course of the employee’s employment. The training program shall comply with the requirements of Indiana Code 5-16-13-12, as amended.
2. Contractors of Tier 1 or Tier 2 employing fifty (50) or more journeymen shall participate in an apprenticeship or training program complying with Indiana Code 5-16-13-12(d), as amended.
3. The Contractor shall provide, upon the Owner’s request, documentation verifying the number of eligible employees and of training program(s) provided in accordance with this section.

§ 8.7.6 Compliance with Owner Policies

The Contractor and subcontractors of any Tier shall comply with Owner’s policies listed under AIA Document A201-2017, Section 3.4.3. Personnel found in violation of the policies may be barred from Owner’s property, be charged with fines, or subject to legal penalties, in accordance with the policy violated.

§ 8.7.7 Contractor Pre-Qualification

In accordance with Indiana Code 5-16-13-10(c), the Contractor and its subcontractors at any tier level with a contract value of $300,000 or more shall maintain qualification with the Indiana Department of Administration or Indiana Department of Transportation, as applicable to their scope of work, for the duration of the project.

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

1. AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor, as amended by the Owner (herein referred to as "AIA Document A101-2017")
2. AIA Document A101™–2017, Exhibit A, Insurance and Bonds, as amended by the Owner (herein referred to as "AIA Document A101-2017, Exhibit A")
3. AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended by the Owner (herein referred to as "AIA Document A201-2017")
4. AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, as amended by the Owner (herein referred to as "AIA Document E203-2013"), dated as indicated below: (Insert the date of the E203-2013 incorporated into this Agreement.)

.5 Drawings

<table>
<thead>
<tr>
<th>Number</th>
<th>Title</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>List of Drawings in the Project Manual, as modified by Addenda.</td>
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</tbody>
</table>

.6 Specifications

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Date</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>List of Specifications in the Project Manual, as modified by Addenda.</td>
<td></td>
<td></td>
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</tbody>
</table>
.7 Addenda, if any:

<table>
<thead>
<tr>
<th>Number</th>
<th>Date</th>
<th>Pages</th>
</tr>
</thead>
</table>

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

.8 Other Exhibits:

(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

[ ] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:

(Insert the date of the E204-2017 incorporated into this Agreement.)

[ ] The Sustainability Plan:

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<tr>
<th>Title</th>
<th>Date</th>
<th>Pages</th>
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</table>

[ ] Supplementary and other Conditions of the Contract:

<table>
<thead>
<tr>
<th>Document</th>
<th>Title</th>
<th>Date</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>00 73 13</td>
<td>Supplementary Conditions</td>
<td>Complete</td>
<td>Document</td>
</tr>
</tbody>
</table>

.9 Other documents, if any, listed below:

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

The Contractor’s Bid or Quote Form
The Notice to Proceed Letter
AIA Document G201-2013, Project Digital Data Form

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

OWNER (Signature) ____________________________

(Printed name and title) ____________________________

CONTRACTOR (Signature) ____________________________

(Printed name and title) ____________________________
Additions and Deletions Report for AIA® Document A101™ – 2017

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:31:47 ET on 03/22/2019.

Ball State University
2000 West University Avenue (AD 208)
Muncie, Indiana 47306
Telephone Number: (765) 285-1186
Fax Number: (765) 285-3672

Alternates listed in the Notice to Proceed Letter.

As listed in the Project Manual.

As listed in the Bid or Quote Proposal.

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the first (1st) day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the thirtieth (30th) day of the same month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than Thirty (30) days after the Architect receives the Application for Payment. The Owner reserves the right to modify the payment amount for errors and omissions contained in the Application for Payment.

.3 That portion of Construction Change Directives that the Architect determines, in the Architect’s professional judgment, to be reasonably justified Fully executed Change Orders approved by the Owner and signed by the Architect and Contractor.

Five percent (5.00%)

Retainage shall not be reduced.
In accordance with Section 9.3.1 and 9.8.5 in AIA Document A201-2017.

§ 5.1.10 Per Indiana Code 5-16-13-11-2, the Contractor, and Subcontractors of any tier, shall not pay cash to any individual employed by the Contractor for Work performed by the Individual on the Project.

All Work is fully completed and contractual documentation received and accepted by the Owner.

Zero % per annum

[X] Litigation in a court of competent jurisdiction

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction instituted only in the Circuit Courts of Delaware County Indiana or the United States District Court for the Southern District of Indiana.

None.

The representative with final authority for modifications to the Contract(s) for Construction, and expenditure of Owner funds:

The representative with authority to: (1) request or provide preliminary approval to changes in design or schedule; (2) reject or accept non-conforming Work; (3) approve Applications for Payment; (4) and certify Substantial Completion and Final Completion:

Kelly Knable, Director of Construction
Facilities Planning & Management
2000 West University Avenue
Muncie, IN 47306
Telephone Number: (765) 285-0585
Fax Number: (765) 285-8758
Email Address: kaknable@bsu.edu
whatever, including, but not limited to, sales materials, promotional materials, or advertising, without the prior written permission of Ball State University in each instance. The Contractor shall also notify and require all subcontractors to abide by this provision.

§ 8.7.2 Per Indiana Code 5-16-13-11 and 22-5-1.7 as amended, the Contractor and its subcontractors at all tiers shall not knowingly employ unauthorized aliens. The Contractor and its subcontractors at all tiers shall enroll in and verify the employment eligibility of all employees hired after June 30, 2015 using the U.S. Citizenship and Immigration Services (USCIS) E-Verify system. The Contractor shall provide the case verification number for each individual to the Owner prior to their employment on the project. An individual whose E-Verify case result is "final nonconfirmation" shall not be employed on the project.

1. The Contractor is not required to verify the work eligibility status of employees through the E-Verify program if the E-Verify program no longer exists.

2. The Contractor shall provide an affidavit affirming that the Contractor does not knowingly employ unauthorized aliens.

§ 8.7.3 Per Indiana Code 5-16-13-11, as amended, the Contractor and its subcontractors at all tiers shall comply with the following:


2. Indiana Code IC 22-3-5-1 and IC 22-3-7-34 (Worker’s Compensation).

3. Indiana Code IC 22-4-1 through IC 22-4-39.5 (Unemployment Compensation).


§ 8.7.4 The Contractor shall preserve payroll records and open them for inspection by the Indiana Department of Work Force Development for a period of three (3) years after the completion of the project work, in accordance with Indiana Code 5-16-13-13, as amended.

§ 8.7.5 Training Programs

1. Contractors of any tier level having ten (10) or more employees shall provide access to a training program applicable to the tasks to be performed in the normal course of the employee’s employment. The training program shall comply with the requirements of Indiana Code 5-16-13-12, as amended.

2. Contractors of Tier 1 or Tier 2 employing fifty (50) or more journeymen shall participate in an apprenticeship or training program complying with Indiana Code 5-16-13-12(d), as amended.

3. The Contractor shall provide, upon the Owner’s request, documentation verifying the number of eligible employees and of training program(s) provided in accordance with this section.

§ 8.7.6 Compliance with Owner Policies

The Contractor and subcontractors of any Tier shall comply with Owner’s policies listed under AIA Document A201-2017, Section 3.4.3. Personnel found in violation of the policies may be barred from Owner’s property, be charged with fines, or subject to legal penalties, in accordance with the policy violated.

§ 8.7.7 Contractor Pre-Qualification

In accordance with Indiana Code 5-16-13-10(c), the Contractor and its subcontractors at any tier level with a contract value of $300,000 or more shall maintain qualification with the Indiana Department of Administration or Indiana Department of Transportation, as applicable to their scope of work, for the duration of the project.

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.1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor, as amended by the Owner (herein referred to as "AIA Document A101-2017")

.2 AIA Document A101™–2017, Exhibit A, Insurance and Bonds, as amended by the Owner (herein referred to as "AIA Document A101-2017, Exhibit A")

.3 AIA Document A201™–2017, General Conditions of the Contract for Construction, as amended by the Owner (herein referred to as "AIA Document A201-2017")

.4 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, as amended by the Owner (herein referred to as "AIA Document E203-2013").

...
List of Drawings in the Project Manual, as modified by Addenda.

List of Specifications in the Project Manual, as modified by Addenda.

00 73 13 (if included in the Project Manual)
Supplementary Conditions
Complete Document

The Contractor’s Bid or Quote Form
The Notice to Proceed Letter
AIA Document G201-2013, Project Digital Data Form
Certification of Document’s Authenticity
AIA® Document D401™ – 2003

I, , 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 16:31:47 ET on 03/22/2019 under Order No. 9357966744 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A101™ – 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)
General Conditions of the Contract for Construction

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

THE OWNER:
(Name, legal status and address)
Ball State University
2000 West University Avenue (AD 208)
Muncie, Indiana 47306

THE ARCHITECT:
(Name, legal status and address)

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13 MISCELLANEOUS PROVISIONS
14 TERMINATION OR SUSPENSION OF THE CONTRACT
15 CLAIMS AND DISPUTES

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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(Topics and numbers in bold are Section headings.)

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ARTICLE 1   GENERAL PROVISIONS

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

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

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

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

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

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

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

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

§ 1.1.9 The listed terms used in the Contract Documents shall have the meanings as follows:
§ 1.1.9.1 Products: Means new material, machinery, components, equipment, fixtures, and systems forming the Work, but does not include machinery and equipment used for preparation, fabrication, conveying and erection of the Work. Products may also include existing materials or components required for reuse.

§ 1.1.9.2 Furnish or Supply: To supply and deliver, unload, inspect for damage.
§ 1.1.9.3 Install: To unpack, assemble, erect, apply, place, finish, cure, protect, clean, and ready for use.

§ 1.1.9.4 Provide: To furnish or supply, plus install.

§ 1.1.10 Escrow Agreement
The Escrow Agreement is a contractual document that shall be executed when the Contract amount exceeds the value defined in Section 9.6.8. This document stipulates that interest may be earned on retainage funds.

§ 1.2 Correlation and Intent of the Contract Documents
§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

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

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

§ 1.2.4 In general, mechanical and electrical drawings are diagrammatic and schematic, and cannot indicate every offset, fitting, and accessory required to avoid all conflict with other trades. Contractor shall check drawings of all trades to verify spaces available and make reasonable modifications, as directed, without extra cost to Owner; maintain headroom and other requirements in all areas; and where such requirements appear inadequate, notify Architect before proceeding.

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

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

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

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect’s consultants.
§ 1.6 Notice
§ 1.6.1 Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

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

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

§ 1.8 Building Information Models Use and Reliance
Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party’s sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 2 OWNER
§ 2.1 General
§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner’s approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner’s authorized representative.

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

(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 an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.
§ 2.3.5 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner’s control and relevant to the Contractor’s performance of the Work with reasonable promptness after receiving the Contractor’s written request for such information or services. The Owner makes no representations as to the relevance, accuracy, or completeness of information in the Owner’s records made available to the Contractor.

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

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

§ 2.5 Owner’s Right to Carry Out the Work
If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within seventy-two (72) hours after receipt of notice from the Owner to commence and continue correction of such default or neglect to the satisfaction of the Owner with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner’s administrative and legal expense, including the time of the Owner’s personnel in dealing with such default, and compensation for the Architect’s additional services made necessary by such default, neglect, or failure. If the unpaid Contract Sum is not sufficient to cover such amounts, the Contractor shall promptly pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

ARTICLE 3 CONTRACTOR
§ 3.1 General
§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor’s authorized representative.

1 Contract Tier Structure: Contractor shall comply with the tiered structure requirements of Indiana Code 5-16-13-4. Contractor shall include pass-through provisions in sub-contracts at all tiers requiring compliance with the applicable provisions of Indiana Code 5-16-13.

2 Contract Tiers:
1 Tier 1: Person or entity having a contract with the Public Entity to perform some part of the Work, generally known as a "Prime Contractor", herein referred to as "Contractor".
2 Tier 2: Person or entity having a contract with the Tier 1 Contractor to perform some part of the Work, herein referred to as a "Subcontractor".
3 Tier 3: Person or entity having a contract with the Tier 2 contractor to perform some part of the Work, herein referred to as a "Sub-subcontractor".
4 Lower Tier: Person or entity having a contract with the Tier 3 or lower contractor to perform some part of the Work, generally known as a "Lower Tier Subcontractor".

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

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

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

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

1. The Contractor shall exercise due diligence in reviewing the Construction Documents thoroughly before requesting information from the Architect.

2. The Owner shall be reimbursed by the Contractor for amounts paid to the Architect for evaluating and responding to the Contractor’s requests for information that are not prepared in accordance with the Contract Documents or where the requested information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation. Reimbursement shall be made by Change Order.

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

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

§ 3.3 Supervision and Construction Procedures

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

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor’s employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.
§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

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

.1 The Contractor shall self-perform a minimum of 15 percent (15%) of the total Contract sum of labor and materials at the time the contract is awarded. Self-performance shall consist of one or more of the following: Work performed by the Contractor’s employees, materials supplied directly by the Contractor, or services provided by the Contractor’s employees,

§ 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.

.1 After the Contract has been executed, the Owner, Contractor and Architect will consider requests for the substitution of products in place of those specified only under the conditions set forth in the General Requirements (Division 01 of the Specifications). By making requests for substitutions, the Contractor:

.1 represents that it or its Subcontractor(s) has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified, including sustainable design criteria applicable to the product;

.2 represents that it will provide an equivalent warranty for the substitution as it would have provided for the product specified;

.3 certifies that the cost data presented is complete and includes all related costs for the substituted product and for Work that must be changed as a result of the substitution, except for the Architect’s redesign costs, and waives all claims for additional costs related to the substitution that subsequently become apparent; and

.4 shall coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

.2 The Owner shall be entitled to reimbursement from the Contractor for amounts paid to the Architect for reviewing the Contractor’s proposed substitutions and making agreed-upon changes in the Drawings and Specifications resulting from such substitutions.

§ 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. The Contractor shall enforce compliance with the following Owner policies by its employees and other persons carrying out the Work on campus; the full text of which is available on the Owner’s website or will be provided by the Owner upon request:

.1 Owner’s Tobacco-Free Campus Policy: Tobacco use is prohibited in all Owner’s buildings and outdoor campus areas, except in fully enclosed personal vehicles and in the designated outdoor smoking area.

.2 Owner’s Anti-Harassment Policy: The term "harassment," is defined as verbal, physical, graphic or written conduct that has the purpose or effect of creating a hostile or intimidating environment; i.e., conduct which is sufficiently severe, pervasive, or persistent that it interferes significantly with an individual’s employment, education, or living conditions.

.3 Owner’s Sexual Harassment Policy: The term "sexual harassment" is defined as any unwelcome sexual advance, request for sexual favor or other unwelcome verbal or physical conduct of a sexual nature.

.4 Owner’s Weapons Policy: Visitors, guests, and all other individuals are prohibited from possessing or carrying weapons of any kind while on Owner’s property, regardless of whether they are licensed to carry the weapon or not. Such prohibition extends to such individuals having such weapons in briefcases, purses, tool boxes, personal vehicles, or other personal property or effects.

§ 3.4.4 If the Contract Documents indicate that the Owner is to furnish certain items of materials, equipment or appliances that the Contractor is to install, the Contractor shall check each shipment, sign a receipt for the same, and be
§ 3.4.5 When specified in the Contract Documents that materials, equipment or appliances are to be installed in accordance with the manufacturer’s specifications, instructions, or directions, the Contractor shall submit copies of such specifications, instructions, or directions as required by Paragraph 3.12. These specifications, instructions or directions will then be a part of the Contract Documents and shall be followed carefully in the execution of the Work.

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

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

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

§ 3.6.2 The Contractor shall pay all unemployment, social security, and other such taxes imposed by local, state, or federal government.

§ 3.6.3 The Owner is not subject to Indiana Retail Sales Tax or to Federal Excise Tax for material, products, and equipment incorporated into the project, and therefore these taxes should not be included in the Contractor’s costs.

§ 3.6.4 The Contractor shall certify purchases of tax-exempt material under its own Tax Identification Number, for sales to an Indiana Governmental Unit.

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

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

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.
§ 3.7.4 Concealed or Unknown Conditions
If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor’s cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect’s determination or recommendation, that party may submit a Claim as provided in Article 15.

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

§ 3.7.6 The Work, shall comply with all Rules and Regulations of the Fire Prevention and Building Safety Commission, local ordinances, and such other statutory provisions pertaining to this class of work, such rules and regulations and local ordinances shall be considered as part of these Specifications. The Contractor entering into Contract with the Owner shall be knowledgeable of known ordinances and regulations, and shall notify the Architect of any deviation in the Contract Documents from such rules and regulations.

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

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

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

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

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.
§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner’s consent, which shall not unreasonably be withheld or delayed.

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

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

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

§ 3.10.4 The Contractor shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Contractor shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Contractor shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner. To the extent the report indicates a delay or deviation from the Project schedule, the Contractor shall also set forth in its report factors which caused the delay or deviation and the Contractor’s plan to bring the Work back into compliance with the approved Project schedule.

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

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

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

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

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

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

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

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

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

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

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

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

§ 3.12.10.2 If the Contract Documents require the Contractor’s design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.
§ 3.13 Use of Site
§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

§ 3.13.2 Contractor shall control erosion and sediment produced from Work activities in compliance with City, State and Federal requirements.

§ 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 on account thereof, including costs and fees incurred by the Owner, 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 The Contractors and Subcontractors (hereinafter "Indemnitors") hereby agree to indemnify, save and hold harmless, and defend at their own expense the Owner and Architect, their respective partners, agents, employees and any other person or entity for whom any of them may be legally responsible (herein collectively called "Indemnites") against all claims, losses, damages, suits, costs and expenses, including attorney’s fees, or actions of any nature whatsoever which arise out of, or are alleged to arise out of, the Work to be performed by the Indemnitors; including without limiting the generality of the foregoing; all liability for claims for death or damage to property, including the loss of use thereof and consequential damages therefrom, or damages from economic loss, or damage to any Indemnitees or Indemnitors or its employees, servants and agents, whether such claims are based upon, or claimed to be based upon, statutory, contractual, tort or other liability of any Indemnitee, or even though caused, or alleged to be caused by the joint, several, or comparative, but not sole, negligence, breach of contract, breach of warranty, strict liability, or other breach of duty by any Indemnitee. If any part of this provision is adjudged to be contrary to law, the remaining parts of the provision shall in all other respects be and remain legally effective and binding. Moreover, this provision shall not be construed to eliminate or in any way reduce any other indemnification or right which the Owner or the Architect has by law.
§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers’ compensation acts, disability benefit acts, or other employee benefit acts.

ARTICLE 4 ARCHITECT

§ 4.1 General

§ 4.1.1 The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and may include Engineer, Landscape Architect or other professionals licensed in the State of Indiana to perform those services.

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

§ 4.2 Administration of the Contract

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner’s representative during construction until one-hundred eighty (180) days after the approval of the final Certificate for Payment and, with the Owner’s concurrence, from time to time during the one year period for correction of Work described in Section 12.2. 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. The Owner reserves the right to modify the payment amount for errors and omissions contained in the Application for Payment.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise
such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

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

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

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

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

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

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

§ 4.2.13 The Architect shall have the sole authority to determine compliance in matters of aesthetic effect and decisions will be final if consistent with the intent expressed in the Contract Documents. The Owner shall be the final authority on the acceptance of or modification of aesthetic effects.

§ 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 Tier 2 contractor as defined in Section 3.1.1.2.2. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.
§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term “Sub-subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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

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

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

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

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

§ 5.3 Subcontractual Relations

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

§ 5.4 Contingent Assignment of Subcontracts

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

1. assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and

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

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

§ 5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor’s compensation shall be equitably adjusted for increases in cost resulting from the suspension.
§ 5.4.3 Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor’s obligations under the subcontract.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 Owner’s Right to Perform Construction and to Award Separate Contracts

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

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

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

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

§ 6.2 Mutual Responsibility

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

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

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

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

§ 6.2.5 The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.
§ 6.3 Owner's Right to Clean Up
If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

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

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

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

§ 7.1.4 The Contractor shall record all changes in the Work in the contract record documents, indicating the effective date of the change and the change instrument designation.

§ 7.1.5 Costs for Changes in the Work shall consist of:
.1 Costs of labor to perform the construction of the changed Work, including social security, old age and unemployment insurance applicable payroll taxes, fringe benefits required by agreement or custom, and workers’ compensation insurance, and other employee costs approved by the Owner;
.2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed; less all savings, discounts, rebates, and credits that accrue to the Contractor or Subcontractor;
.3 Rental costs of machinery and equipment, exclusive of hand tools not owned by the Contractor or subcontractor, that is necessary for the completion of the changed Work. Rental charges shall be direct costs, without additional markups.
.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the Work change, for which the Contractor is responsible;
.5 Costs of supervision and field office personnel directly attributable to the change.
.6 Subordinate Party Costs: Payments made to Subcontractors for proper execution of the changed Work, subject to the limitations for Cost of the Work, above, and the limits for overhead and profit set forth in subparagraphs 7.1.7.3 and 7.1.7.4.

§ 7.1.6 Costs for Changes in the Work shall exclude:
.1 Salaries or wages of persons other than those directly performing the changed Work, including Subcontractor’s personnel stationed at the principal office;
.2 Expenses of the Subcontractor’s principal office and offices other than the site office, except as provided above;
.3 Overhead and general expenses of any nature, except as set forth above;
.4 Capital expenses of Subcontractor, including interest on the Subcontractor’s capital employed for the Changed Work;
.5 Rental costs for machinery or equipment, except as allowed above, or tools of any kind, unless specifically identified and approved in advance in writing by the Contractor;
.6 Costs due to the negligence or failure to perform of the Subcontractor or its Subordinate Parties;
.7 Costs designated above as being included in Overhead and Profit
.8 Any cost not specifically described above, or otherwise approved in advance and in writing by the Contractor and Owner.

§ 7.1.7 The allowance for overhead and profit combined, included in the total cost to the Owner, shall be based on the following schedule:

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.1 For the Contractor, for Work performed by the Contractor's own forces, as established in the Owner – Contractor Agreement.
.2 For the Contractor, for Work performed by their Subcontractor(s), as established in the Owner – Contractor Agreement.
.3 For each Subcontractor or Sub-subcontractor involved, for Work performed by their own forces, fifteen percent (15%) of the cost.
.4 For each Subcontractor, for Work performed by their Sub-subcontractor(s), five percent (5%) of the amount due the Sub-subcontractor(s).
.5 Cost to which overhead and profit is applied shall be determined in accordance with Section 7.1.5.

§ 7.1.8 Overhead and Profit shall consist of the following: For the Contractor, costs allowed in accordance with the Owner Contractor agreement. For subcontractors at all tiers, cost (at the Project Site, principal office and otherwise) of supervision, telephone, iPad, software and/or licenses, travel, copying, administrative services, accounting fees, advertising, insurance, interest, legal fees, rent, field office, power, light, tools, jobsite vehicles, and all other general expenses, including capital expenses and overhead expenses not listed, including bond premiums and insurance. In no event shall these items be charged as cost of the changed Work.

§ 7.1.9 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials, and subcontracts. Labor and materials shall be itemized separately, indicating the added and deleted quantities of work, and unit prices for labor and materials with extensions and totals. Where major cost items are subcontracts, they shall also be accompanied by a complete itemization of costs.

§ 7.2 Change Orders
§ 7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor, and Architect stating their agreement upon all of the following:
.1 The change in the Work;
.2 The amount of the adjustment, if any, in the Contract Sum; and
.3 The extent of the adjustment, if any, in the Contract Time.

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

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

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:
.1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
.2 Unit prices stated in the Contract Documents or subsequently agreed upon;
.3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
.4 As provided in Section 7.3.4.

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

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

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

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

§ 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.

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

§ 7.3.11 Only after execution of a Change Order may an amount be included in an Application for Payment.

§ 7.4 Minor Changes in the Work

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

ARTICLE 8 TIME

§ 8.1 Definitions

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

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

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

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

§ 8.2 Progress and Completion

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

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.
§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 Delays and Extensions of Time
§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by fire, unavoidable casualties, or other causes beyond the Contractor’s control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect and Owner determines, justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Nothing in this section shall permit the Contractor to seek additional time or additional compensation for adverse or unusual weather conditions. The Contractor shall expect such conditions when making its bid.

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

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

ARTICLE 9 PAYMENTS AND COMPLETION
§ 9.1 Contract Sum
§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

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

§ 9.2 Schedule of Values
§ 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect and Owner 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 and Owner, 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 Owner and supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect and Owner, shall be used as a basis for reviewing the Contractor’s subsequent Applications for Payment.

§ 9.2.1.1 The Schedule of Values shall be prepared in such a manner that each major item of work and each subcontracted item of work is shown as a single line item on AIA Document G703, Continuation Sheet for G702.

§ 9.2.2 Upon Owner’s request, the Contractor shall submit a schedule of the estimated amount of each monthly Application for Payment based on the Contractor’s Construction Schedule and Schedule of Values.

§ 9.3 Applications for Payment
§ 9.3.1 At least thirty (30) days before the date established for each progress payment, the Contractor shall submit to the Architect and Owner an itemized Application for Payment (AIA Document G702 and G703) 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 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 as provided for in the Contract Documents.

§ 9.3.1.1 Monthly payments shall be based on ninety-five percent (95%) of the true value of the work in place and materials, except cementitious products, suitably stored on the premises.

§ 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.
§ 9.3.1.3 As applicable, Contractor shall include a Partial Waiver of Lien form which covers all of its Work from the prior Application and Certificate for Payment Documents.

§ 9.3.1.4 As applicable, Contractor shall include a Partial Waiver of Lien form from its Subcontractors and major suppliers when requesting reduction in retainage, which covers all of its Work from prior Application and Certificate for Payment Documents.

§ 9.3.1.5 Requests for payment that reduce the amount of retainage below 5% of the Contract Sum are required to have final or partial Waivers of Lien from all subcontractors and major suppliers which, when totaled, do not exceed the amount remaining to be paid.

§ 9.3.1.6 Upon Owners request, Contractor shall attach Compliance Affidavit certifying compliance with the Drug Testing Program required by Section 13.7) to each Application and Certificate for Payment as follows:

“This is to certify that in the performance of this Contract, neither the undersigned Contractor nor, upon information and belief, any of its Subcontractors has violated the "Drug Testing Program" provision of the General Conditions of the Contract."

§ 9.3.1.7 Upon Owners request, Contractor shall attach Compliance Affidavit and supporting documents certifying compliance with the Self-performance of the Work required by Section 3.4.1.1, to each Application and Certificate for Payment, to read as follows:

“This is to certify that in the performance of this Contract, that the Contractor has not violated the "Self-Performance" provision of the General Conditions of the Contract."

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

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

§ 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within the time period agreed to with the Contractor and the Owner, not to exceed ten (10) 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.

§ 9.4.1.1 The Contractor shall prepare and submit a preliminary copy of the Application for Payment for review by the Architect and Owner prior to submitting the Application for Payment. The Architect and Owner shall review the preliminary submission and approve the Application or respond with corrections or specific qualifications no later than ten (10) days after receipt of submission.

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

**§ 9.5 Decisions to Withhold Certification**

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

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

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

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

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

**§ 9.6 Progress Payments**

**§ 9.6.1** After the Architect has issued a Certificate for Payment, the Owner shall make payment within thirty (30) days of receipt from the Architect.

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

**§ 9.6.3** The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.
§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

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

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

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

§ 9.6.8 Upon commencement of the Work, an escrow agreement and escrow account shall be established by the Owner on all contracts in excess of $200,000.00.

.1 The escrow agreement shall provide that the Owner act as Escrow Agent, will pay interest on funds deposited in such account in accordance with the provisions of the escrow agreement, and disburse funds from the account as set forth below.

.2 As each progress payment is made, the retainage with respect to that payment shall be deposited by the Owner in the escrow account.

.3 The interest earned on funds in the account shall accrue for the benefit of the Contractor until the completion of the project.

.4 When the Work has been fully completed in a satisfactory manner, and the Contractor has fulfilled all of the requirements of the Contract providing for reduction of retained funds, and the Architect has issued a final Application and Certificate for Payment, the Owner shall release to the Contractor the retained funds owed but none of the interest earned. After making the final payment, the Owner will calculate interest earned on the retainage held and make the interest payment to the Contractor, less the escrow management fee as stated in the Escrow Agreement.

§ 9.6.9 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 ten (10) days after receipt of the Contractor’s Application for Payment, or if the Owner does not pay the Contractor within ten (10) days after the date established in the Contract Documents, the amount certified by the Architect, then the Contractor may, upon seven (7) additional days’ notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor’s reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.
§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

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

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

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted to withhold two-hundred percent (200%) of the value (in accordance with Indiana Code 5-16-5.5-6) for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.8.6 An Application for Final Payment may be submitted no less than thirty (30) days after Substantial Completion and the Contract being fully performed, including items listed in Section 9.10.2, unless otherwise stipulated.

§ 9.9 Partial Occupancy or Use

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

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

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

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor’s notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract being 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
§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit (Contractor’s Affidavit of Payment of Debts and Claims (AIA Document G706)) 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 (ACORD 25 Certificate of Liability Insurance) 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 (Consent of Surety to Final Payment (AIA Document 707)), if any, to final payment, (5) documentation of any special warranties, such as manufacturers’ warranties or specific Subcontractor warranties, (6) approved Project Record Documents; (7) submission of Contractor provided documentation required for Sustainability Certification, if sought for the project; (8) approved Operation & Maintenance Manuals; (9) Finish Manual, if project includes interior finishes, and (10) other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens (Contractor’s Affidavit of Release of Lien (AIA Document G706A)), 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 or other payment method satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys’ fees.

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

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled; failure of the Work to comply with the requirements of the Contract Documents; terms of special warranties required by the Contract Documents; or audits performed by the Owner, if permitted by the Contract Documents, after final payment.

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

§ 9.11 Liquidated Damages

§ 9.11.1 To the extent that liquidated damages are provided for in Section 4.5 of the Agreement, the Contractor and Contractor’s surety agree that if Contractor fails to achieve Substantial Completion within the Contract Time the Owner’s actual damages would be difficult to ascertain and further agree that such liquidated damages are a reasonable approximation of the Owner’s actual damages, and not as a penalty to the Contractor.

§ 9.11.2 Liquidated damages may be assessed and recovered by the Owner as against Contractor and its Surety, in the event of delayed completion. The Contractor shall be liable to the Owner for payment of liquidated damages for each day that Substantial Completion is delayed beyond the Contract Time, as adjusted for time extensions provided by the Contract Documents and executed by Change Order. Such payment shall be made in the form of a Change Order, prior to final payment.
ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs
The Contractor shall be responsible for initiating, coordinating, maintaining, and supervising all health safety precautions and programs in connection with the performance of the Work. Contractor and its Subcontractors of all tiers shall each remain the controlling employer as to its employees and shall comply with all applicable safety laws, including but not limited to (CFR 1926) the Occupational Safety and Health Administration (OSHA), Safety and Health Regulations for the Construction Industry and all General Industry standards applicable thereto. By executing the Contract, Contractor represents that it is knowledgeable with respect to such laws and will take all necessary measures to comply therewith. It is acknowledged that Owner does not possess expertise as to construction-related safety matters and programs and, therefore, Owner does not assume any duty to the Contractor, its Subcontractors of all tiers, suppliers, separate contractors or others involved with the Project as to the applicable safety standards or procedures with respect to their work or services.

§ 10.2 Safety of Persons and Property

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

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.
1. Occupational Safety and Health Acts. The Contractor shall administer and comply with all the rules, standards and regulations of the Construction Safety Act (40 U.S.C. 333) and the Williams-Steiger Occupational Safety and Health Act (OSHA) of 1970 (29 U.C.C. 650 et. seq.) as administered and enforced by the Occupational Safety and Health Administration, Department of Labor.
2. Regulation: The Contractor shall not require or permit any laborer or mechanic, including apprentices and trainees, employed in the performance of this contract to work in surroundings or conditions which are unsanitary, hazardous, or dangerous to human health as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation (29 CFR Part 1926, 36FR 7340, April 17, 1971) pursuant to Section 107 of the Contract Work Hours and Safety Standards Act.

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

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

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

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

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

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

.1 Asbestos-containing material (ACM) shall be as defined by the Occupational Safety & Health Administration (OSHA) Regulation (Standards – 29 CFR) Section 1926.1101 (b).

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

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

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

§ 10.3.5 The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner’s fault or negligence.
§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred.

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

ARTICLE 11 INSURANCE AND BONDS
§ 11.1 Contractor’s Insurance and Bonds
§ 11.1.1 The Contractor, and Subcontractors of all tiers, 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 Insurance Services Office (ISO) 2007 CGL Form or equivalent, the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect’s consultants shall be named as additional insureds under the Contractor’s commercial general liability policy or as otherwise described in the Contract Documents.

.1 The Owner shall not be liable to any person for the failure of the Contractor or of any Subcontractor of all tiers to carry any specified insurance or to furnish proof of the carriage thereof to the Owner.

.2 The Contractor and/or Subcontractor’s obligation to provide the required insurance will not be waived due to the Contractor and Subcontractors failure to provide the certificate of insurance, Owner’s acceptance of a certificate of insurance showing coverage differing from the required coverage, or Owner’s allowance of Contractor and/or subcontractor to commence Work.

.3 The Contractor and/or Subcontractors will take out and maintain during the life of this Contract a Builder’s Risk Policy or installation floater or other such policy approved by the Owner in an amount equal to the lesser of the deductible, currently at $100,000, under the Owner’s property insurance or the cost of construction. The deductible under this Policy will be an amount no greater than $5,000.

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

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

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

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

(Paragraph deleted)

§ 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 the 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.

(Paragraph deleted)

§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance
The Owner, at the Owner’s option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner’s property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner’s property, due to fire or other hazards however caused.

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

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

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK
§ 12.1 Uncovering of Work
§ 12.1.1 If a portion of the Work is covered contrary to the Architect’s request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect’s examination and be replaced at the Contractor’s expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such
Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor’s expense.

§ 12.2 Correction of Work

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

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

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

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

§ 12.2.2.4 Upon request by the Owner and a minimum of two (2) months prior to the expiration of the one year period for correction of Work, the Architect will conduct and the Contractor and subcontractors shall attend a meeting with the Owner to review the facility operations and performance. The Contractor shall correct deficiencies identified in writing during and pursuant to the meeting before the expiration of the one year period for correction of Work.

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

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

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

§ 12.3 Acceptance of Nonconforming Work
If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.
ARTICLE 13   MISCELLANEOUS PROVISIONS
§ 13.1 Governing Law and Venue
This Agreement shall be governed by, construed, and interpreted in accordance with the laws of the State of Indiana. Any action or judicial proceeding for the enforcement the Agreement shall be instituted only in the Circuit Courts of Delaware County Indiana or the United States District Court for the Southern District of Indiana.

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

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

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

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

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

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner’s expense.

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

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

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

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.
§ 13.5 Interest
Interest shall not be paid on funds due and owing from the approval of the Application for Payment.

§ 13.6 Non-Discrimination Provisions
The Contractor and its Subcontractors and Suppliers shall perform, observe and comply with all applicable state, municipal, and federal laws, rules, regulations and Executive Orders pertaining to nondiscrimination against employees or applicants for employment for reasons including, but not limited to, race, color, religion, national origin, sex, disability, or ancestry. When required by such laws, rules, regulations and Executive Orders, the Contractor shall include nondiscrimination provisions in all contracts and purchase orders.

§ 13.7 Drug Testing Program
The Contractor for a Project with a Contract Sum greater than $150,000 shall maintain and enforce a written drug testing plan in compliance with the requirements of Indiana Code 4-13-18, as amended. Upon Owners request, Contractor will attach a Compliance Affidavit, stating that the Contractor is complying with the requirements of the drug testing plan, to each Application and Certification for Payment in accordance with 9.3.1.6.

§ 13.8 Owner’s Unmanned Aircraft Systems (Drone) Policy
In accordance with Owner’s Unmanned Aircraft System (UAS or Drone) policy, all contractors, their subcontractors, suppliers and employees, and their guests or visitors, shall comply with the Owner’s policy regarding UAS use on campus. Unmanned aircraft of any kind may not be used on or over Owner’s property, regardless of whether or not they are licensed for operation, without written approval of the Owner’s Office of Risk Management, provision of the required liability insurance coverage, and required FAA registration. UAS operators shall wear the required identification badge at all times a UAS is in use. The complete policy is available on the Owner’s web site or on request.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT
§ 14.1 Termination by the Contractor
§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:
.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
.2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
(Paragraph 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 payment for Work executed, and costs incurred by reason of such termination.

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

§ 14.2 Termination by the Owner for Cause
§ 14.2.1 The Owner may terminate the Contract if the Contractor
.1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
.2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or Suppliers;
.3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
.4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor’s surety, if any, seven days’ notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:
.1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
.2 Accept assignment of subcontracts pursuant to Section 5.4; and
.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

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

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent
.1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
.2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 Termination by the Owner for Convenience
§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner’s convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner’s convenience, the Contractor shall
.1 cease operations as directed by the Owner in the notice;
.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner’s convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.
ARTICLE 15  CLAIMS AND DISPUTES

§ 15.1 Claims

§ 15.1.1 Definition

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

§ 15.1.2 Time Limits on Claims

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

§ 15.1.3 Notice of Claims

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

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

§ 15.1.4 Continuing Contract Performance

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

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

§ 15.1.5 Claims for Additional Cost

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

§ 15.1.6 Claims for Additional Time

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

§ 15.1.7 Waiver of Claims for Consequential Damages

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

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.
This mutual waiver is applicable, without limitation, to all consequential damages due to either party’s termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 Initial Decision
§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to litigation 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 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 litigation.

(Paragraphs deleted)

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

§ 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.

(Paragraphs deleted)
Additions and Deletions Report for AIA\textsuperscript{®} Document A201\textsuperscript{TM} – 2017

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(Topics and numbers in bold are Section headings.)

SUBSTANTIAL CHANGES HAVE BEEN MADE TO THE A201 GENERAL CONDITIONS AND THE OWNER HAS MADE NO ATTEMPT TO RECONCILE THOSE CHANGES WITH THE INDEX WHICH PRECEDES THE GENERAL CONDITIONS.

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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, building information models, specifications, and other similar materials.

...  

§ 1.1.9 The listed terms used in the Contract Documents shall have the meanings as follows:

§ 1.1.9.1 Products: Means new material, machinery, components, equipment, fixtures, and systems forming the Work, but does not include machinery and equipment used for preparation, fabrication, conveying and erection of the Work. Products may also include existing materials or components required for reuse.

§ 1.1.9.2 Furnish or Supply: To supply and deliver, unload, inspect for damage.

§ 1.1.9.3 Install: To unpack, assemble, erect, apply, place, finish, cure, protect, clean, and ready for use.

§ 1.1.9.4 Provide: To furnish or supply, plus install.

§ 1.1.10 Escrow Agreement

The Escrow Agreement is a contractual document that shall be executed when the Contract amount exceeds the value defined in Section 9.6.8. This document stipulates that interest may be earned on retainage funds.

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§ 1.2.1.1 Severability: 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.
§ 1.2.4 In general, mechanical and electrical drawings are diagrammatic and schematic, and cannot indicate every offset, fitting, and accessory required to avoid all conflict with other trades. Contractor shall check drawings of all trades to verify spaces available and make reasonable modifications, as directed, without extra cost to Owner; maintain headroom and other requirements in all areas; and where such requirements appear inadequate, notify Architect before proceeding.

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

... 

§ 2.2 Evidence of the Owner’s Financial Arrangements

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

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

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

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

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§ 2.3.5 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. The Owner makes no representations as to the relevance, accuracy, or completeness of information in the Owner’s records made available to the Contractor.
If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period, seventy-two (72) hours after receipt of notice from the Owner to commence and continue correction of such default or neglect to the satisfaction of the Owner with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner’s administrative and legal expense, including the time of the Owner’s personnel in dealing with such default, and compensation for the Architect’s additional services made necessary by such default, neglect, or failure. If current and future payments are the unpaid Contract Sum is not sufficient to cover such amounts, the Contractor shall promptly pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

...
following: Work performed by the Contractor’s employees, materials supplied directly by the Contractor, or services provided by the Contractor’s employees.

.1 After the Contract has been executed, the Owner, Contractor and Architect will consider requests for the substitution of products in place of those specified only under the conditions set forth in the General Requirements (Division 01 of the Specifications). By making requests for substitutions, the Contractor:

1. represents that it or its Subcontractor(s) has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified, including sustainable design criteria applicable to the product;

2. represents that it will provide an equivalent warranty for the substitution as it would have provided for the product specified;

3. certifies that the cost data presented is complete and includes all related costs for the substituted product and for Work that must be changed as a result of the substitution, except for the Architect’s redesign costs, and waives all claims for additional costs related to the substitution that subsequently become apparent; and

4. shall coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

.2 The Owner shall be entitled to reimbursement from the Contractor for amounts paid to the Architect for reviewing the Contractor’s proposed substitutions and making agreed-upon changes in the Drawings and Specifications resulting from such substitutions.

§ 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. The Contractor shall enforce compliance with the following Owner policies by its employees and other persons carrying out the Work on campus; the full text of which is available on the Owner’s website or will be provided by the Owner upon request:

1. Owner’s Tobacco-Free Campus Policy: Tobacco use is prohibited in all Owner’s buildings and outdoor campus areas, except in fully enclosed personal vehicles and in the designated outdoor smoking area.

2. Owner’s Anti-Harassment Policy: The term "harassment," is defined as verbal, physical, graphic or written conduct that has the purpose or effect of creating a hostile or intimidating environment; i.e., conduct which is sufficiently severe, pervasive, or persistent that it interferes significantly with an individual’s employment, education, or living conditions.

3. Owner’s Sexual Harassment Policy: The term "sexual harassment" is defined as any unwelcome sexual advance, request for sexual favor or other unwelcome verbal or physical conduct of a sexual nature.

4. Owner’s Weapons Policy: Visitors, guests, and all other individuals are prohibited from possessing or carrying weapons of any kind while on Owner’s property, regardless of whether they are licensed to carry the weapon or not. Such prohibition extends to such individuals having such weapons in briefcases, purses, tool boxes, personal vehicles, or other personal property or effects.

§ 3.4.4 If the Contract Documents indicate that the Owner is to furnish certain items of materials, equipment or appliances that the Contractor is to install, the Contractor shall check each shipment, sign a receipt for the same, and be entirely responsible for breakage or loss after receipt by the Contractor. This is not intended to limit or reduce coverage nor the Contractor’s right to make a claim for covered losses under the builder’s risk insurance.

§ 3.4.5 When specified in the Contract Documents that materials, equipment or appliances are to be installed in accordance with the manufacturer’s specifications, instructions, or directions, the Contractor shall submit copies of such specifications, instructions, or directions as required by Paragraph 3.12. These specifications, instructions or directions will then be a part of the Contract Documents and shall be followed carefully in the execution of the Work.
Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.6.2 The Contractor shall pay all unemployment, social security, and other such taxes imposed by local, state, or federal government.

§ 3.6.3 The Owner is not subject to Indiana Retail Sales Tax or to Federal Excise Tax for material, products, and equipment incorporated into the project, and therefore these taxes should not be included in the Contractor's costs.

.1 The Contractor shall certify purchases of tax-exempt material under its own Tax Identification Number, for sales to an Indiana Governmental Unit.

... 

.1 The Contractor shall obtain the local building permit for this project from the City of Muncie and/or any other governmental bodies exercising appropriate jurisdiction over the project. A copy of the building permit shall be submitted to the Owner prior to the start of on-site work.

.1 The Contractor and Subcontractors of all tier levels, with a contract for work valued at $300,000 or more, shall, in accordance with Indiana Code 5-16-13-10(c), maintain qualification with the Indiana Department of Administration or the Indiana Department of Transportation, according to the type of work to be performed, until the completion of the project.

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§ 3.7.6 The Work, shall comply with all Rules and Regulations of the Fire Prevention and Building Safety Commission, local ordinances, and such other statutory provisions pertaining to this class of work, such rules and regulations and local ordinances shall be considered as part of these Specifications. The Contractor entering into Contract with the Owner shall be knowledgeable of known ordinances and regulations, and shall notify the Architect of any deviation in the Contract Documents from such rules and regulations.

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§ 3.10.4 The Contractor shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Contractor shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Contractor shall also keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner. To the extent the report indicates a delay or deviation from the Project schedule, the Contractor shall also set forth in its report factors which caused the delay or deviation and the Contractor's plan to bring the Work back into compliance with the approved Project schedule.

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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.

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

§ 3.13.2 Contractor shall control erosion and sediment produced from Work activities in compliance with City, State and Federal requirements.

...
§ 3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect’s consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys’ fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. The Contractors and Subcontractors (hereinafter "Indemnitors") hereby agree to indemnify, save and hold harmless, and defend at their own expense the Owner and Architect, their respective partners, agents, employees and any other person or entity for whom any of them may be legally responsible (herein collectively called "Indemnitees") against all claims, losses, damages, suits, costs and expenses, including attorney’s fees, or actions of any nature whatsoever which arise out of, or are alleged to arise out of, the Work to be performed by the Indemnitors; including without limiting the generality of the foregoing: all liability for claims for death or damage to property, including the loss of use thereof and consequential damages therefrom, or damages from economic loss, or damage to any Indemnitees or Indemnitors or its employees, servants and agents, whether such claims are based upon, or claimed to be based upon, statutory, contractual, tort or other liability of any Indemnitee, or even though caused, or alleged to be caused by the joint, several, or comparative, but not sole, negligence, breach of contract, breach of warranty, strict liability, or other breach of duty by any Indemnitee. If any part of this provision is adjudged to be contrary to law, the remaining parts of the provision shall in all other respects be and remain legally effective and binding. Moreover, this provision shall not be construed to eliminate or in any way reduce any other indemnification or right which the Owner or the Architect has by law.

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§ 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, may include Engineer, Landscape Architect or other professionals licensed in the State of Indiana to perform those services.

... 

§ 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, one-hundred eighty (180) days after the approval of the final Certificate for Payment and, with the Owner’s concurrence, from time to time during the one year period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

... 

§ 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. The Owner reserves the right to modify the payment amount for errors and omissions contained in the Application for Payment.

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§ 4.2.13 The Architect’s decisions on matters relating to aesthetic effect. Architect shall have the sole authority to determine compliance in matters of aesthetic effect and decisions will be final if consistent with the intent expressed in the Contract Documents. The Owner shall be the final authority on the acceptance of or modification of aesthetic effects.
§ 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. Tier 2 contractor as defined in Section 3.1.1.2.2. 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.

§ 7.1.4 The Contractor shall record all changes in the Work in the contract record documents, indicating the effective date of the change and the change instrument designation.

§ 7.1.5 Costs for Changes in the Work shall consist of:

1. Costs of labor to perform the construction of the changed Work, including social security, old age and unemployment insurance applicable payroll taxes, fringe benefits required by agreement or custom, and workers’ compensation insurance, and other employee costs approved by the Owner;

2. Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed; less all savings, discounts, rebates, and credits that accrue to the Contractor or Subcontractor;

3. Rental costs of machinery and equipment, exclusive of hand tools not owned by the Contractor or subcontractor, that is necessary for the completion of the changed Work. Rental charges shall be direct costs, without additional markups.

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

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

6. Subordinate Party Costs: Payments made to Subcontractors for proper execution of the changed Work, subject to the limitations for Cost of the Work, above, and the limits for overhead and profit set forth in subparagraphs 7.1.7.3 and 7.1.7.4.

§ 7.1.6 Costs for Changes in the Work shall exclude:

1. Salaries or wages of persons other than those directly performing the changed Work, including Subcontractor’s personnel stationed at the principal office;

2. Expenses of the Subcontractor’s principal office and offices other than the site office, except as provided above;

3. Overhead and general expenses of any nature, except as set forth above;

4. Capital expenses of Subcontractor, including interest on the Subcontractor’s capital employed for the Changed Work;

5. Rental costs for machinery or equipment, except as allowed above, or tools of any kind, unless specifically identified and approved in advance in writing by the Contractor;

6. Costs due to the negligence or failure to perform of the Subcontractor or its Subordinate Parties;

7. Costs designated above as being included in Overhead and Profit;

8. Any cost not specifically described above, or otherwise approved in advance and in writing by the Contractor and Owner.

§ 7.1.7 The allowance for overhead and profit combined, included in the total cost to the Owner, shall be based on the following schedule:

1. For the Contractor, for Work performed by the Contractor’s own forces, as established in the Owner – Contractor Agreement.

2. For the Contractor, for Work performed by their Subcontractor(s), as established in the Owner – Contractor Agreement.

3. For each Subcontractor or Sub-subcontractor involved, for Work performed by their own forces, fifteen percent (15%) of the cost.

4. For each Subcontractor, for Work performed by their Sub-subcontractor(s), five percent (5%) of the amount due the Sub-subcontractor(s).

5. Cost to which overhead and profit is applied shall be determined in accordance with Section 7.1.5.
§ 7.1.8 Overhead and Profit shall consist of the following: For the Contractor, costs allowed in accordance with the Owner Contractor agreement. For subcontractors at all tiers, cost (at the Project Site, principal office and otherwise) of supervision, telephone, iPad, software and/or licenses, travel, copying, administrative services, accounting fees, advertising, insurance, interest, legal fees, rent, field office, power, light, tools, jobsite vehicles, and all other general expenses, including capital expenses and overhead expenses not listed, including bond premiums and insurance. In no event shall these items be charged as cost of the changed Work.

§ 7.1.9 In order to facilitate checking of quotations for extras or credits, all proposals, except those so minor that their propriety can be seen by inspection, shall be accompanied by a complete itemization of costs including labor, materials, and subcontracts. Labor and materials shall be itemized separately, indicating the added and deleted quantities of work, and unit prices for labor and materials with extensions and totals. Where major cost items are subcontracts, they shall also be accompanied by a complete itemization of costs.

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§ 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, those permitted under Section 7.1.5.

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§ 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 when the final cost for the changes in Work is known.

...

§ 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.

§ 7.3.11 Only after execution of a Change Order may an amount be included in an Application for Payment.

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§ 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 Additions and Deletions Report for AIA Document A201™ – 2017. Copyright © 1911, 1915, 1918, 1925, 1937, 1951, 1958, 1961, 1963, 1966, 1970, 1976, 1987, 1997, 2007 and 2017 by The American Institute of Architects. All rights reserved. WARNING: This AIA® Document is protected by U.S. Copyright Law and International Treaties. Unauthorized reproduction or distribution of this AIA® Document, or any portion of it, may result in severe civil and criminal penalties, and will be prosecuted to the maximum extent possible under the law. This document was produced by AIA software at 15:36:46 ET on 03/22/2019 under Order No.9357966744 which expires on 07/31/2019, and is not for resale. User Notes: BSU revised 02/12/2019
accordance with Section 15.1.6.2, or other causes beyond the Contractor’s control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect and Owner determines, justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Nothing in this section shall permit the Contractor to seek additional time or additional compensation for adverse or unusual weather conditions. The Contractor shall expect such conditions when making its bid.

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

§ 9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Architect and Owner 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 and Owner, 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 Owner supported by such data to substantiate its accuracy as the Architect may require, and unless objected to by the Architect and Owner, shall be used as a basis for reviewing the Contractor’s subsequent Applications for Payment.

§ 9.2.1.1 The Schedule of Values shall be prepared in such a manner that each major item of work and each subcontracted item of work is shown as a single line item on AIA Document G703, Continuation Sheet for G702.

§ 9.2.2 Upon Owner’s request, the Contractor shall submit a schedule of the estimated amount of each monthly Application for Payment based on the Contractor’s Construction Schedule and Schedule of Values.

...

§ 9.3.1 At least ten thirty (30) days before the date established for each progress payment, the Contractor shall submit to the Architect and Owner an itemized Application for Payment (AIA Document G702 and G703) 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, notarized 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 as provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders. Monthly payments shall be based on ninety-five percent (95%) of the true value of the work in place and materials, except cementitious products, suitably stored on the premises.

§ 9.3.1.3 As applicable, Contractor shall include a Partial Waiver of Lien form which covers all of its Work from the prior Application and Certificate for Payment Documents.

§ 9.3.1.4 As applicable, Contractor shall include a Partial Waiver of Lien form from its Subcontractors and major suppliers when requesting reduction in retainage, which covers all of its Work from prior Application and Certificate for Payment Documents.

§ 9.3.1.5 Requests for payment that reduce the amount of retainage below 5% of the Contract Sum are required to have final or partial Waivers of Lien from all subcontractors and major suppliers which, when totaled, do not exceed the amount remaining to be paid.
§ 9.3.1.6 Upon Owners request, Contractor shall attach Compliance Affidavit certifying compliance with the Drug Testing Program required by Section 13.7) to each Application and Certificate for Payment as follows:

"This is to certify that in the performance of this Contract, neither the undersigned Contractor nor, upon information and belief, any of its Subcontractors has violated the "Drug Testing Program" provision of the General Conditions of the Contract."

§ 9.3.1.7 Upon Owners request, Contractor shall attach Compliance Affidavit and supporting documents certifying compliance with the Self-performance of the Work required by Section 3.4.1.1, to each Application and Certificate for Payment, to read as follows:

"This is to certify that in the performance of this Contract, that the Contractor has not violated the "Self-Performance" provision of the General Conditions of the Contract."

§ 9.4.1 The Architect will, within seven the time period agreed to with the Contractor and the Owner, not to exceed ten (10) 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.

§ 9.4.1.1 The Contractor shall prepare and submit a preliminary copy of the Application for Payment for review by the Architect and Owner prior to submitting the Application for Payment. The Architect and Owner shall review the preliminary submission and approve the Application or respond with corrections or specific qualifications no later than ten (10) days after receipt of submission.

§ 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 within thirty (30) days of receipt from the Architect.

§ 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. Upon commencement of the Work, an escrow agreement and escrow account shall be established by the Owner on all contracts in excess of $200,000.00.

1. The escrow agreement shall provide that the Owner act as Escrow Agent, will pay interest on funds deposited in such account in accordance with the provisions of the escrow agreement, and disburse funds from the account as set forth below.

2. As each progress payment is made, the retainage with respect to that payment shall be deposited by the Owner in the escrow account.

3. The interest earned on funds in the account shall accrue for the benefit of the Contractor until the completion of the project.

4. When the Work has been fully completed in a satisfactory manner, and the Contractor has fulfilled all of the requirements of the Contract providing for reduction of retained funds, and the Architect has issued a final Application and Certificate for Payment, the Owner shall release to the Contractor the retained funds owed but none of the interest earned. After making the final payment, the Owner will calculate interest earned on the retainage held and make the interest payment to the Contractor, less the escrow management fee as stated in the Escrow Agreement.
§ 9.6.9 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.

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven ten (10) days after receipt of the Contractor’s Application for Payment, or if the Owner does not pay the Contractor within seven ten (10) days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding dispute resolution, Architect, then the Contractor may, upon seven (7) additional days’ notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor’s reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

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§ 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 to withhold two-hundred percent (200%) of the value (in accordance with Indiana Code 5-16-5.5-6) for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.8.6 An Application for Final Payment may be submitted no less than thirty (30) days after Substantial Completion and the Contract being fully performed, including items listed in Section 9.10.2, unless otherwise stipulated.

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§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit (Contractor’s Affidavit of Payment of Debts and Claims (AIA Document G706)) 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 (ACORD 25 Certificate of Liability Insurance) 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, of surety (Consent of Surety to Final Payment (AIA Document 707)), 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, (6) approved Project Record Documents; (7) submission of Contractor provided documentation required for sustainability Certification, if sought for the project; (8) approved Operation & Maintenance Manuals; (9) Finish Manual, if project includes interior finishes, and (10) other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, of liens (Contractor’s Affidavit of Release of Liens (AIA Document G706A)), 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 or other payment method satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys’ fees.

...
§ 9.11.2 Liquidated damages may be assessed and recovered by the Owner as against Contractor and its Surety, in the event of delayed completion. The Contractor shall be liable to the Owner for payment of liquidated damages for each day that Substantial Completion is delayed beyond the Contract Time, as adjusted for time extensions provided by the Contract Documents and executed by Change Order. Such payment shall be made in the form of a Change Order, prior to final payment.

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The Contractor shall be responsible for initiating, coordinating, maintaining, and supervising all health safety precautions and programs in connection with the performance of the Contract of the Work. Contractor and its Subcontractors of all tiers shall each remain the controlling employer as to its employees and shall comply with all applicable safety laws, including but not limited to (CFR 1926) the Occupational Safety and Health Administration (OSHA), Safety and Health Regulations for the Construction Industry and all General Industry standards applicable thereto. By executing the Contract, Contractor represents that it is knowledgeable with respect to such laws and will take all necessary measures to comply therewith. It is acknowledged that Owner does not possess expertise as to construction-related safety matters and programs and, therefore, Owner does not assume any duty to the Contractor, its Subcontractors of all tiers, suppliers, separate contractors or others involved with the Project as to the applicable safety standards or procedures with respect to their work or services.

...

1 Occupational Safety and Health Acts. The Contractor shall administer and comply with all the rules, standards and regulations of the Construction Safety Act (40 U.S.C. 333) and the Williams-Steiger Occupational Safety and Health Act (OSHA) of 1970 (29 U.C.C. 650 et. seq.) as administered and enforced by the Occupational Safety and Health Administration, Department of Labor.

2 Regulation: The Contractor shall not require or permit any laborer or mechanic, including apprentices and trainees, employed in the performance of this contract to work in surroundings or conditions which are unsanitary, hazardous, or dangerous to human health as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation (29 CFR Part 1926, 36FR 7340, April 17, 1971) pursuant to Section 107 of the Contract Work Hours and Safety Standards Act.

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1 Asbestos-containing material (ACM) shall be as defined by the Occupational Safety & Health Administration (OSHA) Regulation (Standards – 29 CFR) Section 1926.1101 (b).

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§ 11.1.1 The Contractor and Subcontractors of all tiers, 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 Insurance Services Office (ISO) 2007 CGL Form or equivalent, the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect’s consultants shall be named as additional insureds under the Contractor’s commercial general liability policy or as otherwise described in the Contract Documents.

1 The Owner shall not be liable to any person for the failure of the Contractor or of any Subcontractor of all tiers to carry any specified insurance or to furnish proof of the carriage thereof to the Owner.

2 The Contractor and/or Subcontractor’s obligation to provide the required insurance will not be waived due to the Contractor and Subcontractors failure to provide the certificate of insurance, Owner’s acceptance of a certificate of insurance showing coverage differing from the required coverage, or Owner’s allowance of Contractor and/or subcontractor to commence Work.

3 The Contractor and/or Subcontractors will take out and maintain during the life of this Contract a Builder’s Risk Policy or installation floater or other such policy approved by the Owner in an amount equal to the lesser of the deductible, currently at $100,000, under the Owner’s property insurance or the cost of construction. The deductible under this Policy will be an amount no greater than $5,000.

...
§ 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.

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§ 11.3.1 The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, 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, 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, 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.

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§ 12.2.2.4 Upon request by the Owner and a minimum of two (2) months prior to the expiration of the one year period for correction of Work, the Architect will conduct and the Contractor and subcontractors shall attend a meeting with the Owner to review the facility operations and performance. The Contractor shall correct deficiencies identified in writing during and pursuant to the meeting before the expiration of the one year period for correction of Work.

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§ 13.1 Governing Law and Venue
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. This Agreement shall be governed by, construed, and interpreted in accordance with the laws of the State of Indiana. Any action or judicial proceeding for the enforcement the Agreement shall be instituted only in the Circuit Courts of Delaware County Indiana or the United States District Court for the Southern District of Indiana.

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

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Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. Interest shall not be paid on funds due and owing from the approval of the Application for Payment.

§ 13.6 Non-Discrimination Provisions
The Contractor and its Subcontractors and Suppliers shall perform, observe and comply with all applicable state, municipal, and federal laws, rules, regulations and Executive Orders pertaining to nondiscrimination against employees or applicants for employment for reasons including, but not limited to, race, color, religion, national origin, sex, disability, or ancestry. When required by such laws, rules, regulations and Executive Orders, the Contractor shall include nondiscrimination provisions in all contracts and purchase orders.

§ 13.7 Drug Testing Program
The Contractor for a Project with a Contract Sum greater than $150,000 shall maintain and enforce a written drug testing plan in compliance with the requirements of Indiana Code 4-13-18, as amended. Upon Owners request, Contractor will attach a Compliance Affidavit, stating that the Contractor is complying with the requirements of the drug testing plan, to each Application and Certification for Payment in accordance with 9.3.1.6.

§ 13.8 Owner’s Unmanned Aircraft Systems (Drone) Policy
In accordance with Owner’s Unmanned Aircraft System (UAS or Drone) policy, all contractors, their subcontractors, suppliers and employees, and their guests or visitors, shall comply with the Owner’s policy regarding UAS use on campus. Unmanned aircraft of any kind may not be used on or over Owner’s property, regardless of whether or not they are licensed for operation, without written approval of the Owner’s Office of Risk Management, provision of the required liability insurance coverage, and required FAA registration. UAS operators shall wear the required identification badge at all times a UAS is in use. The complete policy is available on the Owner's web site or on request.

The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

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

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§ 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.

...§ 15.2.5 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.

...§ 15.3 Mediation

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

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

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

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

§ 15.4 Arbitration

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

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

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

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

§ 15.4.4 Consolidation or Joinder

§ 15.4.4.1 Subject to the rules of the American Arbitration Association or other applicable arbitration rules, either party may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

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

§ 15.4.4.3 The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.
Certification of Document’s Authenticity
AIA® Document D401™ – 2003

I, , 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 15:36:46 ET on 03/22/2019 under Order No. 9357966744 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ – 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)
**Corner Elevation of Counter Flashing**

- **Existing Stone Coping**
- **New Sealant & Backer Rod**
- **New 24 Ga. Kynar Finished Receiver Nail to Back of Plywood at 24" OC**
- **New 6.5 Pan Head Screws at 14" OC**

**Base Flashing Termination at Stone Coping**

- **New 24 Ga. Kynar Finished Coped Flashing spring lock type**
- **Sealant**
- **Trim bar w/ fasteners at 6" OC w/ water break benefit base fl.**
- **1/8" plywood w/ fasteners at 10" OC, ea. way**

**Existing Back**
AGENDA

Ball Gymnasium Pool Roof Replacement
Ball State University
BSU Project No. 2019-035.01 BG
March 28, 2019

I. Project Team
A. Owner's Representative(s):
   Kelly Knable, Facilities Planning & Mgmt., 765-285-0585, email: kaknable@bsu.edu
   Ryan Koenker, Facilities Planning & Mgmt., 765-285-2821, email: rkoenker@bsu.edu
   June Sanders, Purchasing, 765-285-1548, email: asanders3@bsu.edu

B. Consultant's Representative(s):
   Brennen Baker, Moisture Management, 317-577-0910, email bbaker@moisturemanagementllc.com
   Russell Mink, Moisture Management, 317-577-0910, email rmink@moisturemanagementllc.com
   Rodney Wiedenkeller, Moisture Management, 317-577-0910, email RWiedenkeller@moisturemanagementllc.com

A. Availability of Contract Documents.
B. Interpretation of Contract Documents.
C. Addenda.
D. Substitutions.

III. Bidding Procedures.
A. Bidding Date: April 12, 2019 @ 10:00 am
   Location: Purchasing Conference Room
   Service & Stores Building
   3401 N. Tillotson Avenue
   Muncie, Indiana 47306

B. Bidding Form and Other Documents.
   1. Indiana Form 96 (Revised 2013).
      a. Fill out Part II., Section I. Experience Questionnaire
      b. Fill out Part II., Section II. Plan and Equipment Questionnaire
      c. Attach Part II., Section III. Contractor's Financial Statement
      d. Fill out Part II., Section IV. Contractors Non – Collusion Affidavit
      e. Fill out Part II., Section V. Oath and Affirmation
   2. Bid Form Supplements, Document 00 43 00
      Appendix A.
         (1) Acknowledgment of Receipt of Addenda.
         (2) Project Completion
      Appendix B. Alternatives,
      Appendix C. Unit Prices,
      Appendix D. Principal Subcontractors
      Appendix E. Supplementary General Construction Information
      Appendix F. Supplementary Mechanical Information
      Appendix G. Supplementary Electrical Information
      Appendix H. Supplementary Telecommunications Information
   3. Representations and Certifications, Document 00 45 00
      Appendix 1. Nondiscrimination Compliance Statement
      Appendix 2. Contractors Certification of Self Performance
      Appendix 3. Contractors Certification of Authorized Employment
      Appendix 4. Contractors Certification of Training Program Compliance
      Appendix 5. Drug Testing Plan
      Appendix 6. Contractors Certification of Pre-Qualification Compliance
      Appendix 7. Bidder's Check List

4. MBE/WBE/Veteran Participation Plan, Document 00 45 39

6. Documents that must be submitted by the Awarded Contractor prior to mobilization.
   Section 00 61 00 – Bond Forms: AIA Document A312 - Performance Bond and Payment Bond
   Section 00 73 73 – Escrow Agreement: Owner will provide document after the award of the project.

IV. Scope of Project.
   A. Summary of Work.
   B. Project Schedule.
   C. Access to Project Area.
   D. Coordination with Other Projects.
   E. Coordination with Owner Occupancy.

V. Questions.

VI. Tour of Project Site.

End of Agenda
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