

**LEASE AGREEMENT**

**BY AND BETWEEN**

**NPAC CORP.,  
A NEW HAMPSHIRE CORPORATION,**

**AS LANDLORD**

**AND**

**THE CITY OF NASHUA,  
A NEW HAMPSHIRE MUNICIPAL CORPORATION,**

**AS TENANT**

## LEASE AGREEMENT

THIS LEASE AGREEMENT (this "Lease") is dated as of December 17, 2020 (the "Effective Date"), by and between **NPAC CORP.**, a New Hampshire corporation ("Landlord") and **THE CITY OF NASHUA**, a New Hampshire municipal corporation ("Tenant").

### ARTICLE 1 DEFINITIONS

1.1 Building: The building located on the land located at 201 Main Street and 78-84 West Pearl Street, Nashua, New Hampshire as more particularly shown and described in Exhibit A (the "Land").

1.2 Premises: The Land, including sufficient rights and easements, in common with others, for vehicular and pedestrian access over direct, useful and convenient roads, utility services, signage rights, and the entire Building, containing approximately 38,610 net rentable square feet, and being the entire Building. The Land and the Premises are sometimes referred to herein as the "Property."

1.3 Tenant's Proportionate Share: Tenant shall pay all (100%) of any Real Estate Taxes commencing on the Effective Date.

1.4 Lease Term: Twenty-Five (25) Years commencing on the Occupancy Commencement Date.

1.5 Anticipated Occupancy Date: June 2, 2022.

1.6 Base Rent: Base Rent as set forth in Exhibit B hereto, payable beginning effective on the date of this Lease Agreement.

1.7 Base Rent Annual Escalation: As set forth in Exhibit B hereto.

1.8 Security Deposit: NONE

1.9 Broker(s): NONE

1.10 Tenant Address for Notices:  
City of Nashua  
229 Main Street  
Nashua, NH 03060  
ATTN: Timothy Cummings, Economic Development Director

If by U.S. mail to:

City of Nashua  
c/o City of Nashua  
P.O. Box 2019  
Nashua, NH 03061-2019  
ATTN: Timothy Cummings, Economic Development Director

With copies to:

Celia Leonard, Esq., Deputy Corporation Counsel  
City of Nashua  
229 Main Street  
Nashua, NH 03060

If by U.S. mail to:

Celia Leonard, Esq., Deputy Corporation Counsel  
c/o City of Nashua  
P.O. Box 2019  
Nashua, NH 03061-2019

And to:

John S. Kaminski, Esq.  
Drummond Woodsum  
84 Marginal Way, Suite 600  
Portland, ME 04101

And to:

MCD Subsidiary CDE 14, LLC  
80 S. Main Street  
Hanover, New Hampshire 03755  
Attention: Deborah Blanc, Director of Asset Management

1.13 Landlord Address for Notices:

NPAC Corp.  
c/o City of Nashua  
229 Main Street  
Nashua, NH 03060  
ATTN: Timothy Cummings, Economic Development Director

If by U.S. mail to:

NPAC Corp.

c/o City of Nashua  
P.O. Box 2019  
Nashua, NH 03061-2019  
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City of Nashua  
229 Main Street  
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Hanover, New Hampshire 03755  
Attention: Deborah Blanc, Director of Asset Management

## ARTICLE 2 LEASED PREMISES

2.1 Tenant leases the Property from Landlord, and Landlord leases the Property to Tenant, upon the terms stated herein.

### ARTICLE 3 TERM

3.1 (a) The terms and conditions of this Lease shall be effective from the Effective Date. The Lease Term shall commence on the Occupancy Commencement Date specified in Section 3.2 hereinbelow. The Lease Term shall also include any properly exercised renewal or extension of the term of this Lease.

3.2 (a) The Occupancy Commencement Date shall be the date on or after the Anticipated Occupancy Date that Landlord delivers possession of the Premises to Tenant following substantial completion of the Base Building Work as described in Exhibit C attached hereto. Landlord shall construct the Base Building Work pursuant to the [Contract Agreement] attached hereto as Exhibit D (the "Construction Contract") in a good and workmanlike manner, using good quality materials and in compliance with all applicable municipal, state, and federal laws, regulations, codes, ordinances, and rules and in compliance with any private covenants and restrictions applicable to the Premises as modified by any change orders agreed by Landlord and Tenant. "Substantial completion" shall mean the earlier to occur of (A) the date on which Tenant takes possession of the Premises for beneficial use (i.e., except for purposes of installing fixtures and/or equipment), or (B) the later to occur of (i) the date on which Icon Architecture Inc., the architect responsible for administration of the construction of the Base Building Work (the "Project Architect") determines, in its reasonable discretion, that Landlord has fully and finally completed construction of the Base Building Work, but for minor, so-called punch list items which can reasonably be expected to be completed within thirty (30) days of the date of delivery of the Premises to Tenant and which do not materially and adversely affect the operation of Tenant's business on the Premises, and (ii) Landlord has received (and delivered to Tenant) all governmental inspections necessary in connection with the Base Building Work and a certificate of occupancy.

(b) If the Occupancy Commencement Date does not occur on the Anticipated Occupancy Date, then, after the Occupancy Commencement Date is ascertained, Landlord shall provide Tenant with a certificate (in the form of Exhibit E attached hereto) confirming such date, and the date of expiration of the initial Lease Term.

(c) If the Occupancy Commencement Date does not occur on the Anticipated Occupancy Date, and Landlord recovers liquidated or other damages under the Construction Contract for delays in the substantial completion of the Base Building Work (a "Delay"), any damages recovered shall be allocated between Landlord and Tenant as follows: (1) first, to Landlord to reimburse Landlord for the reasonable, actual and verifiable expenses incurred by Landlord to pursue such recovery, including without limitation reasonable attorneys' fees, and actual and verifiable expenses incurred by Landlord directly attributable to the Delay, including without limitation real estate taxes, debt service payments, and utility costs that otherwise would not have been paid by Landlord if not for a Delay, (2), next, to the actual and verifiable expenses incurred by Tenant directly attributable to the Delay, including without limitation storage of furnishings, fixtures and equipment ("FFE") intended to be installed in the Building, penalties paid for delaying delivery of FFE, and wages and other expenses of employees hired to work in

the Building but unable to do so because of the Delay, and (3) any remaining such liquidated or other damages so recovered after allocation to (1) and (2) above shall be shared evenly between Landlord and Tenant. Landlord agrees to use commercially reasonable efforts to recover any liquidated or other damages due for a Delay to Landlord under the Construction Contract or otherwise.

3.3 It is presently anticipated that the Premises will be delivered to Tenant on or about the Anticipated Occupancy Date. Such date is subject to Force Majeure Delays. Landlord shall use commercially reasonable efforts to keep Tenant informed of the progress of construction, and any change in the Anticipated Occupancy Date. The Anticipated Occupancy Date shall be extended by any period of delay in construction of the Base Building Work attributable to "Force Majeure Delay" as hereinafter defined. As used in this Lease, the term "Force Majeure Delay" shall mean any delay in construction of the Base Building Work resulting directly or proximately from any of the following reasons to the extent beyond the reasonable control of Landlord: earthquake; explosion; flood; hurricane; fire or other casualty, the elements; acts of God or public enemy; actions or restrictions of governmental authorities; governmental regulation of the sale of materials or supplies or the transportation thereof; war; invasion; insurrection; rebellion; riots; strikes or lockouts; inability to obtain necessary materials, goods, equipment, services, utilities or labor at commercially reasonable rates and upon commercially reasonable terms; or any other cause whether similar or dissimilar to the foregoing which is beyond the reasonable control of Landlord, including without limitation a delay in the completion of the Base Building Work by the contractor under the Construction Contract due to causes beyond the reasonable control of Landlord.

3.4 Lease Year shall mean a period of twelve (12) consecutive months commencing on the Occupancy Commencement Date as defined in Section 3.2(a) above, and each successive twelve (12) month period thereafter.

### 3.5 Renewal Period.

(a) Landlord hereby grants to Tenant the right, exercisable at Tenant's option only if the Tenant is not in default beyond applicable grace or cure periods at the time of exercise, to renew the term of this Lease, for one five (5) year term (the "Renewal Term"). If an option to renew the then current term is exercised, then the Renewal Term shall commence immediately following the end of the then-current term. Tenant's right of renewal granted hereby (i) may be exercised by Tenant solely as to the entirety of the Premises, and not as to any portion thereof, and (ii) may be exercised by Tenant and any permitted assignee or transferee.

(b) The Base Rent for the Renewal Term shall be the fair market rent for the Premises as of the beginning of such Renewal Term. Such fair market rent shall be as agreed by Landlord and Tenant on or before the thirtieth (30<sup>th</sup>) day prior to the commencement of the Renewal Term. In the event the parties are unable to agree upon Fair Market Rent within such period the parties shall:

a. Mutually designate an arbitrator to determine Fair Market Rent.

b. If Landlord and Tenant shall fail to agree upon the choice of such arbitrator, then either party may apply to the American Arbitration Association or any successor thereto having jurisdiction to designate an arbitrator. The arbitrator shall be a real estate broker who is MAI certified by the Appraisal Institute and who shall have had at least ten (10) years continuous experience in the business of managing commercial buildings or acting as an agent or broker for office buildings in the Nashua, New Hampshire area.

c. The arbitrator shall conduct such hearings and investigations as he may deem appropriate and shall, within twenty (20) days after his designation, determine the Fair Market Rent, and that determination by the arbitrator shall be binding upon Landlord and Tenant, provided that arbitrator shall not have the power to add to, modify, or change any of the provisions of this Lease. Each party shall pay its own counsel fees and expenses, if any, in connection with any arbitration under this provision, and the parties shall share equally all other expenses and fees of any such arbitration.

In the event that such fair market rent is not determined before the commencement of the Renewal Term, then Tenant shall continue to pay Base Rent as in effect at the end of the Lease Term until the fair market rent for the Renewal Term is determined. After such determination, then the next following payment of Base Rent due shall be adjusted to take into account the difference between the fair market rent for the Renewal Term and the Base Rent previously paid by Tenant during the Renewal Term.

(c) Notice Required. Tenant shall give Landlord written notice of its intent to exercise its option to renew the term of the Lease. Such notice shall be given no more than three hundred and sixty (360) and no less than sixty (60) days prior to the end of the then-current term. Notwithstanding that Tenant shall have failed to have given written notice to Landlord in accordance with this subsection, Tenant's right to renew the term of this Lease shall nevertheless continue until fifteen (15) days after Landlord shall have given Tenant written notice of its failure to so renew.

3.6 Access to Facilitate Installation of Tenant Improvements. Landlord shall allow Tenant access to the Premises prior to the Occupancy Commencement Date for the purposes of installing and testing any of Tenant's fixtures and equipment to be installed by Tenant, subject to the following conditions: (a) Tenant shall coordinate any early access with Landlord and take direction from Landlord regarding the schedule and activities for the installation of Tenant's fixtures and equipment such that Tenant's work shall not delay or hinder the construction work and other activities of Landlord's contractors and subcontractors in performing and completing the Base Building Work, and (b) Tenant shall defend, indemnify and hold harmless Landlord from and against any loss, claim, demand or damage other than those attributable to the negligence or willful misconduct of Landlord, caused by or arising out of any activities of Tenant, Tenant's Contractors, subcontractors, invitees or others permitted on the Premises by Tenant prior to the Occupancy Commencement Date, including reasonable attorneys' fees and costs.

3.7 During the term of the Lease, Tenant shall at all times keep the Building fully equipped for its intended use as a fully functioning performing arts center, including, without

limitation, obtaining (whether through purchase, lease or otherwise) and installing the FFE listed on Schedule 3.7 attached hereto. Tenant shall be responsible for causing the FFE to be maintained and kept in good order and working condition during the term of the Lease. Tenant shall cause any FFE that is sold or that becomes obsolete to be replaced with FFE of like kind and quality or better.

#### ARTICLE 4 BASE RENT

4.1 Tenant shall pay to Landlord as annual base rent for the Premises, the Base Rent as set forth in Exhibit B hereto. Tenant's obligation to pay the Base Rent shall commence on the Occupancy Commencement Date. The Base Rent shall be payable in equal quarterly installments, on or before March 1, June 1, September 1 and December 1 of each Lease Year following the Occupancy Commencement Date. If the Occupancy Commencement Date is not the first day of a calendar quarter, then the Base Rent from the Occupancy Commencement Date until the first day of the following calendar quarter shall be prorated on a per diem basis at the rate of one-nintieth (1/90th) of the quarterly installment of the Base Rent payable during the first Lease Year, and Tenant shall pay such prorated installment in advance on the Occupancy Commencement Date.

4.2 All sums payable by Tenant shall be paid to Landlord absolutely and unconditionally and without any offset, abatement, deductions or setoff whatsoever and without previous demand therefor, in legal tender of the United States, at the address to which notices to Landlord are to be given or to such other party or such other address as Landlord may designate in writing. Landlord's acceptance of rent after it shall have become due and payable shall not excuse a delay upon subsequent occasions nor constitute a waiver of rights, notwithstanding any endorsement or restriction that Tenant may include with such payment. Tenant's obligation to pay Base Rent and additional rent under this Lease are independent of Landlord's obligations hereunder, and no breach or default by Landlord of any provision hereof shall excuse Tenant from its obligation to pay Base Rent and additional rent. Tenant shall not have any right to terminate this Lease except as expressly provided herein.

#### ARTICLE 5 REAL ESTATE TAXES

5.1 (a) Tenant shall pay, as additional rent to Landlord, all of the Real Estate Taxes (as defined in Section 5.2(b) hereinbelow) commencing upon the Effective Date. Following the Occupancy Commencement Date, Tenant shall pay, as additional rent to Landlord, all of the Real Estate Taxes (as defined in Section 5.2(b) hereinbelow) for each Lease Year



falling entirely or partly within the Lease Term. To the extent that it has received funds from the Tenant with which to do so, Landlord shall pay the taxing authority all Real Estate Taxes on or before the date on which such taxes are due.

(b) “Real Estate Taxes” shall mean (1) all real estate taxes, including general and special assessments, ordinary and extraordinary, foreseen and unforeseen, which are imposed or levied upon Landlord or assessed against the Building and/or the Land by the City of Nashua, (2) any other present or future taxes or governmental charges that are imposed upon Landlord or assessed against the Building or the Land which are in the nature of or in substitution for real estate taxes, including any tax levied on or measured by the rents payable by Tenant, and (3) all expenses (including attorneys’ fees) incurred in seeking a reduction of any real estate taxes through reassessment or abatement. Landlord shall elect to pay any special assessment by installments if such option is offered by the City of Nahsua, and in such event Real Estate Taxes shall include such installments and interest paid on the unpaid balance of the assessment. Real Estate Taxes shall not include income taxes, transfer, estate or inheritance taxes.

Landlord shall provide to Tenant a periodic statement setting forth the amount of the Real Estate Taxes incurred for the portion of the tax year for which a tax bill was received (or portion thereof attributable to the Lease Term). Tenant shall pay to Landlord all of such amount within thirty (30) days after receipt of such statement or shall pay such amount directly to the City of Nashua or other taxing authority.

Tenant, at Tenant’s expense, shall have the right to dispute any Real Estate Taxes or to seek an abatement of Taxes; provided, that Tenant shall at all times continue to pay such Real Estate Taxes during any such dispute or pursuit of abatement. Landlord shall cooperate with Tenant in any such abatement process in a commercially reasonable manner. Any abatement of Real Estate Taxes previously paid by Tenant under this Lease shall be paid to Tenant.

5.2 If the Lease Term commences or expires on a day other than the first day or the last day of a period for which Real Estate Taxes are imposed, then Tenant’s liabilities pursuant to this Article 5 for such year shall be adjusted proportionately.

## ARTICLE 6 USE OF PREMISES

6.1 Tenant shall use the Premises solely for a center for performing arts and non-performing arts, a public assembly facility, a community space for other municipal and educational purposes and uses ancillary, related or similar to any of the foregoing, for example weddings and wedding receptions. The sale of alcoholic beverages for on premises consumption shall be permitted in connection with the described uses. Tenant shall not use the Premises for any other use or purpose. Landlord represents and warrants to Tenant that Tenant’s proposed use of the Premises complies with all the presently applicable zoning and other public or private

land-use restrictions and requirements for the Complex. Tenant shall comply at its expense with all present and future laws, ordinances, regulations, and orders, and all existing private covenants, easements, conditions and restrictions listed on Exhibit A-3, concerning the use, occupancy and condition of the Premises and all machinery, equipment, furnishings and activities to be conducted therein ("Applicable Laws"), except to the extent that Landlord's construction of the Base Building Work resulted in a violation of Applicable Laws. If any such law, ordinance, regulation or order requires a use permit for the Premises, then Tenant shall obtain and keep current such permit at Tenant's expense and promptly deliver a copy thereof to Landlord.

Tenant represents it currently operates only a Qualified Business on the Premises. Notwithstanding anything to the contrary herein, Tenant shall, for the remainder of the Term of the Lease, including any extensions, operate only Qualified Businesses on the Premises. For purposes of this Lease:

a. "Qualified Business" shall have the meaning given in Treasury Regulation Section 1.45D-1(d)(5) and includes any trade or business except (i) the rental of Residential Rental Property; (ii) any trade or business consisting predominantly of the development or holding of intangibles for sale or license; (iii) any trade or business consisting of the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises; (iv) any trade or business the principal activity of which is farming within the meaning of Section 2032A(e)(5)(A); or (v) any other trade, business or activity prohibited to be carried on by any amendment to Section 45D of the Code and the Treasury Regulations thereto, and any other guidance published by the Internal Revenue Service.

b. "Residential Rental Property" means any building or structure if eighty percent (80%) or more of the gross rental income from such building or structure for the taxable year is rental income from "dwelling units". For such purpose, a "dwelling unit" means a house or apartment used to provide living accommodations in a building or structure, but does not include a unit in a hotel, motel, or other establishment more than one half (1/2) of the units in which are used on a transient basis. If any portion of the building or structure is occupied by the taxpayer, the gross rental income for such building or structure includes the rental value of the portion so occupied.

In addition, Tenant shall cause any subtenant or operator at the Premises to operate only Qualified Businesses on the Premises.

6.2 Tenant shall pay before delinquency any business, rent or other tax or fee that is now or hereafter assessed or imposed upon Tenant's use of the Premises, the conduct of Tenant's business in the Premises or Tenant's equipment, fixtures, furnishings, inventory or personal property by the City of Nashua or the State of New Hampshire. If any such tax or fee is enacted or altered so that such tax or fee is imposed upon Landlord so that Landlord is responsible for collection or payment thereof, then Tenant shall pay the amount of such tax or fee within thirty (30) days after Landlord's demand therefor.

6.3 Tenant shall not (either with or without negligence) generate, use, store, or cause or permit the escape, disposal or release of any Hazardous Materials in or about the Building or the Land, except that Tenant may bring such materials or substances into the Premises to use and store in the ordinary course of Tenant's business and in full compliance with Applicable Laws. "Hazardous Materials" shall mean (a) "hazardous wastes," as defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time, (b) "hazardous substances," as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, (c) "toxic substances," as defined by the Toxic Substances Control Act, as amended from time to time, (d) "hazardous materials," as defined by the Hazardous Materials Transportation Act, as amended from time to time, (e) any substance, material or other item designated as hazardous or toxic under any applicable state or local laws and the regulations adopted thereunder and under the aforesaid acts, as amended from time to time, (f) oil or other petroleum products, (g) any highly combustible substance, (h) any biologically or chemically active substance and (i) the emission of any electromagnetic or microwave radiation at levels above those recommended by governmental authorities. Tenant shall indemnify Landlord in the manner elsewhere provided in this Lease from any release of Hazardous Materials in the Premises after the Occupancy Commencement Date or otherwise caused by Tenant or persons acting under Tenant. Landlord shall indemnify Tenant in the manner elsewhere provided in this Lease from any release of Hazardous Materials in the Premises prior to the Occupancy Commencement Date. The within covenants shall survive the expiration or earlier termination of the Lease Term.

## ARTICLE 7 ASSIGNMENT AND SUBLETTING

7.1 Tenant shall not assign this Lease or any of Tenant's rights or obligations hereunder, sublet or permit anyone to occupy the Premises or any part thereof, or mortgage this lease, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant shall cause any subtenant or operator with respect to the Premises to comply with the use restrictions set forth in Article 7 of this Lease, which use restrictions shall be included in any sublease agreement or operating contract entered into by Tenant with respect to the Premises. The initial Tenant shall remain fully liable as a primary obligor for the payment of all rent and other charges hereunder and for the performance of all its other obligations hereunder notwithstanding such assignment or subletting. Any assignment, subletting or occupancy, Landlord's collection or acceptance of rent from any assignee, subtenant or occupant, shall not be construed as a waiver or release of Tenant or such guarantor from liability hereunder (it being understood that Tenant shall at all times remain primarily liable as a principal and not as a guarantor or a surety). All restrictions and obligations imposed pursuant to this Lease on Tenant or the use and occupancy of the Premises shall be deemed to extend to any subtenant, assignee or occupant of Tenant, and Tenant shall cause such persons to comply with all such restrictions and obligations. Landlord consents to Operator & Management Agreement - Nashua Performing Arts Center of near or even date entered into between Tenant and Spectacle Management, Inc.

7.2 Notwithstanding anything in this Lease to the contrary, Tenant shall not have the right, at any time and from time to time during the term of this Lease, to mortgage or otherwise encumber Tenant's leasehold interest in the Premises or any part or parts thereof.

## ARTICLE 8 MAINTENANCE AND REPAIRS

8.1 Tenant shall, at Tenant's sole cost and expense, keep and maintain the Premises and all fixtures and equipment located therein in clean, safe and sanitary condition and in compliance with all Applicable Laws, shall take good care thereof, shall suffer no waste or injury thereto, and at the expiration or earlier termination of the Lease Term, shall surrender the Premises in the same order and condition in which they were on the Occupancy Commencement Date (damage by fire or other casualty and ordinary wear and tear consistent with the permitted use hereunder excepted). All injury, breakage and damage to the Premises and to any other part of the Building or the Land shall be repaired or replaced (as applicable) by and at Tenant's expense, subject to Article 17 hereof and except for any injury or damage resulting from the acts or omissions of Landlord or its employees, agents or contractors.

8.2 Tenant shall, at Tenant's sole cost and expense, be responsible for usual and customary cleaning, repairing and maintaining of the parking areas and landscaping and the prompt removal of ice and snow from the parking areas, and for all routine cleaning and janitorial services for the Building and Premises. Tenant shall be responsible for all routine maintenance, repair and replacement of HVAC and electrical and utility systems serving the Building.

8.3 Landlord shall have the right, but not the obligation, to perform, at Tenant's sole cost and expense, any maintenance, repair(s), or replacement(s) to the Building and Premises required to be performed by Tenant pursuant to this lease but not performed by Tenant following notice and the expiration of any applicable grace or cure periods (provided notice shall not be required in the event of an emergency). Tenant shall reimburse Landlord for all actual costs incurred by Landlord in performing such maintenance, repair(s) or replacement(s) within thirty (30) days of demand by Landlord.

8.4 Upon the written request of Tenant, Landlord promptly shall assign to Tenant all warranty and contractual rights with respects to construction defects or incomplete work under the Construction Contract in order that Tenant may enforce the same. In the event that any such warranties or contractual rights are not assignable, Landlord shall enforce the same on behalf of and for the account of Tenant, at Tenant's sole cost and expense. In any event, Landlord's sole obligation with respect to construction defects shall be to make available to Tenant any warranty or contractual rights that are available to Landlord or to allocate liquidated damages received as provided in this Lease, and Landlord shall have no other liability to Tenant as a result of construction defects, incomplete work or similar causes.

## ARTICLE 9 ALTERATIONS

9.1 Tenant shall not make or permit anyone to make any Alteration (as defined below) in or to the Premises or the Building without Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Landlord's consent to a proposed Alteration shall be deemed granted in the event that Landlord fails to respond within ten (10) business days of Tenant's written request for consent. Any Alteration which Landlord permits Tenant to make shall be made: (a) in a good, workmanlike, first-class and prompt manner; (b) using new materials only; (c) by a licensed, bondable contractor, reasonably satisfactory to Landlord, and in accordance with plans and specifications approved in writing by Landlord, such approval not to be unreasonably withheld, conditioned or delayed; (d) in accordance with legal requirements (including, without limitation, the obtaining of all necessary permits and licenses) and requirements of any insurance company insuring the Building; (e) after obtaining any required consent of the holder(s) of the Mortgage; (f) after obtaining a workmen's compensation insurance policy required by law; (g) after delivering to Landlord certificates of insurance, in form and substance satisfactory to Landlord in its reasonable discretion, evidencing that any contractor retained to perform any Alteration has obtained insurance coverages as reasonably required by Landlord. If any lien (or a petition to establish a lien) is filed in connection with any Alteration, then such lien (or petition) shall be discharged by Tenant at Tenant's expense within thirty (30) days thereafter by the payment thereof or filing of a bond reasonably acceptable to Landlord. Landlord's consent to the making of an Alteration shall be deemed not to constitute Landlord's consent to subject its interest in the Premises or the Building or the Land to liens which may be filed in connection therewith. If any Alteration is made without Landlord's prior written consent, then Landlord shall have the right, in addition to exercising all other available remedies, at Tenant's expense, to remove and correct such Alteration and restore the Premises and the Building to their condition immediately prior thereto or to require Tenant to do the same. Unless Landlord elects otherwise pursuant to this Section 9.1, all Alterations to the Premises or the Building made by either party shall immediately become Landlord's property (provided, however, that during the Lease Term, Tenant shall retain an insurable interest in such Alterations and shall be entitled to take depreciation of such Alterations) and shall remain upon and be surrendered with the Premises at the expiration or earlier termination of the Lease Term; provided, however, Tenant shall remove, prior to the expiration or earlier termination of the Lease Term, all movable furniture, furnishings and trade fixtures installed in the Premises by or on behalf of Tenant. Notwithstanding anything in the foregoing to the contrary in this Section 9.1, Tenant shall also be required to remove all Alterations to the Premises or the Building and all non-trade fixtures and equipment which Landlord designates in writing for removal (which designation shall be provided to Tenant contemporaneously with Landlord's consent (if granted) to a proposed Alteration, or upon Tenant's written request, that such Alteration be permitted to remain in the Premises at the expiration or earlier termination of the Lease Term (or deemed permitted to remain by Landlord if no designation is made in Landlord's consent following Tenant's request therefor). Landlord shall have the right to repair or replace at Tenant's expense all damage to the Premises or the Building caused by any such removal or to require Tenant to do the same. If any such furniture, furnishing or trade fixture is not removed by Tenant prior to the expiration or earlier termination

of the Lease Term, then the same shall, at Landlord's option, become Landlord's property and shall be surrendered with the Premises as a part thereof; provided, however, that Landlord shall have the right to remove from the Premises at Tenant's expense such furniture, furnishing or trade fixture and any Alteration, non-trade fixture or equipment (which Landlord designates in writing for removal as provided above). For purposes of this Lease, "Alteration" shall mean alterations, modifications or additions to the Building or its systems exclusive of the installation by Tenant of its trade fixtures and equipment and related work to the Building to accommodate such installation that have a cost, in the aggregate, of One Million Dollars (\$1,000,000).

## ARTICLE 10 SIGNS

10.1 Tenant may install on the Premises from time to time, at its sole expense, exterior signs providing identification of Tenant, and signage related to the use of the premises as a performing arts center including without limitation a marquee, subject to Applicable Laws. Tenant may also remove any signage Tenant shall have previously installed, provided that such removal is performed in a reasonable workmanlike manner. Tenant shall be solely responsible for obtaining all necessary governmental approvals and permits for the installation of, or other activity regarding, such signs. Landlord shall not grant to any other party the right to install any signs on the Premises, nor shall Landlord be permitted to install any such signs. Tenant shall be responsible for, and shall perform in a reasonable workmanlike manner, the installation, maintenance and repair of all such signage.

## ARTICLE 11 RESERVED

## ARTICLE 12 HOLDING OVER

12.1 If Tenant (or anyone claiming through Tenant) does not immediately surrender the Premises or any portion thereof upon the expiration or earlier termination of the Lease Term, then the rent shall be the Base Rent, additional rent and other sums that would have been payable pursuant to the provisions of this Lease if the Lease Term had continued during such holdover period. Such rent shall be computed by Landlord on a monthly basis and shall be payable on the first day of such holdover period and the first day of each calendar month thereafter during such holdover period until the Premises have been vacated. Notwithstanding any other provision of this Lease, Landlord's acceptance of such rent shall not in any manner adversely affect Landlord's other rights and remedies, including Landlord's right to evict Tenant, or any person or entity claiming under Tenant, and to recover all damages. Any holdover shall be deemed to be a tenancy-at-sufferance and not a tenancy-at-will or tenancy from month-to-month; provided, however that Landlord may, in addition to its other remedies, elect, in its sole discretion, to treat such holdover as the creation of a month-to-month tenancy with Tenant. In no event shall any

holdover be deemed a permitted extension or renewal of the Lease Term, and nothing contained herein shall be construed to constitute Landlord's consent to any holdover or to give Tenant any right with respect thereto. Tenant agrees to hold Landlord harmless from and against all loss and damages, direct and consequential, which Landlord may suffer or incur in connection with claims by other parties against Landlord arising out of the holding over by Tenant, including, without limitation, attorneys' fees which may be incurred by Landlord in defense of such claims. Except as otherwise specifically provided in this Article, all terms of this Lease shall remain in full force and effect during any holdover period.

### ARTICLE 13 INSURANCE

13.1 (a) Tenant shall maintain at its own expense commencing on the Effective Date and then throughout the Lease Term the insurance coverage described on Exhibit F for the benefit of Tenant, Landlord and the other parties described in Exhibit F.

### ARTICLE 14 SERVICES AND UTILITIES

14.1 In addition to the Rent and Additional Rent provided elsewhere herein, after the Occupancy Commencement Date, Tenant shall be responsible for contracting for and making direct payment of all utility and service costs incurred in operating the Premises to the parties providing service to the Premises, including without limitation and by way of example, all utility costs, trash removal and janitorial services, water, electricity, natural gas, and sewer. Tenant shall at all times maintain the Premises in a neat and clean manner, and shall place all trash in a dumpster. Tenant shall be responsible, at Tenant's cost, for HVAC and electrical systems maintenance and all repairs.

14.2 If any curtailment or suspension of utilities to the Premises results from the negligence or willful misconduct of Landlord, their respective employees, agents or contractors other than pursuant to the Construction Contract, and such curtailment or suspension prohibits Tenant from conducting business in the Premises for more than two (2) business days after notice to Landlord of such curtailment or suspension, Base Rent shall abate until such curtailment or suspension is resolved.

14.3 Landlord, at its sole cost and expense, shall take any action that is required to obtain all utility services necessary for the operations of the Premises and shall make the necessary arrangements with utility providers to bring electricity, natural gas, water and sewer utility lines and services to the Premises. Arrangements for all other utilities and services, including without limitation, telephone, cable and/or internet telecommunications services, fire alarm and waste handling services shall be the responsibility of Tenant. For the Lease Term, Tenant shall pay to the appropriate authority all rents and other charges for all utilities consumed on the Premises.

## ARTICLE 15 LIABILITY OF LANDLORD

15.1 Landlord, its employees and agents shall be liable to Tenant for any damage (excluding indirect, special, consequential or punitive damages), injury, loss or claim based on or arising out of Landlord's breach of this Lease. If any condition exists which may be the basis of a claim of constructive eviction, then Tenant shall give Landlord written notice thereof and an opportunity to correct such condition as provided below, and in the interim Tenant shall not claim that it has been constructively evicted or is entitled to a rent abatement. Any property placed by Tenant or its invitees in or about the Premises, the Building or the Land shall be at the sole risk of Tenant. Landlord is not liable for any damage (including indirect and consequential damage), injury, loss or claim (including claims for the interruption of or loss to business) based on failure to provide electrical, sewer or water utilities to the Premises and/or building, except to the extent that such failure is a proximate result of a breach of a specific obligation of Landlord under this Lease to provide such utility services.

15.2 Except to the extent caused by the negligence or willful misconduct of Landlord or its employees, agents or contractors, Tenant shall reimburse Landlord for, and shall indemnify, defend upon request and hold Landlord, its employees and agents harmless from and against, all costs, damages (excluding indirect, special, or consequential damages), claims, liabilities, expenses (including attorneys' fees), losses and court costs suffered by or claimed against Landlord, directly or indirectly, based on or arising out of, in whole or in part, (a) Tenant's use and occupancy of the Premises or Tenant's business conducted therein, (b) any negligence of Tenant, (c) any breach of Tenant's obligations under this Lease, including failure to surrender the Premises upon the expiration or earlier termination of the Lease Term, or (d) any entry by Tenant or any invitee upon the Land prior to the Occupancy Commencement Date. Tenant agrees not to assert immunity under workers' compensation laws as a defense to the enforcement of the foregoing indemnity by Landlord.

15.3 Except to the extent otherwise provided in this Lease or caused by the negligence or willful misconduct of Tenant, its employees, agents and contractors, Landlord shall reimburse Tenant for, and shall indemnify, defend upon request and hold Tenant, its employees and agents harmless from and against, all costs, damages (excluding indirect, special, or consequential damages), claims, liabilities, expenses (including attorneys' fees), losses and court costs suffered by or claimed against Tenant, directly or indirectly, based on or arising out of, in whole or in part, (a) Landlord's access to or presence upon the Premises, (b) any negligence of Landlord, or (c) any breach of Landlord's obligations under this Lease, contrary to the provisions of this Lease Agreement. Landlord agrees not to assert immunity under workers' compensation laws as a defense to the enforcement of the foregoing indemnity by Tenant.

15.4 If Landlord shall default in the performance or observance of any agreement, condition or other provision in this Lease contained on its part to be performed or observed, and shall not cure such default within thirty (30) days after notice in writing or such additional time



as is necessary to cure provided that Landlord promptly commences cure and diligently pursues the same to completion, Tenant may, at its option, without waiving any claims for breach of this Lease, at any time thereafter cure such default for the account of the Landlord, and the Landlord shall reimburse Tenant for any amount actually paid and any expense or contractual liability so incurred, subject to any good faith dispute relating to the reasonableness of the amount of, or the necessity for, any such expenditure; and provided further that Tenant may cure any such default as aforesaid prior to the expiration of such cure period but after notice to the Landlord, if Landlord's failure shall result in an immediate threat to health, safety or the business operations of Tenant from the Premises. Tenant shall not have the right to offset or deduct any amount allegedly owed Tenant pursuant to any claim against Landlord from any rent or other sum payable to Landlord. Tenant's sole remedy for recovering upon such claim shall be to institute an independent action against Landlord.

## ARTICLE 16

RESERVED

## ARTICLE 17 DAMAGE OR DESTRUCTION

17.1 If the Premises or the Building are totally or partially damaged or destroyed thereby rendering the Premises totally or partially untenable, then Landlord shall repair and restore the Building (except as hereinafter provided) to substantially the same condition in which they were in on the Occupancy Commencement Date, reasonable wear and tear excepted; provided, however, that if Tenant determines that in Tenant's commercially reasonable judgment such repair and restoration cannot be completed within one (1) year (such year to commence after the time needed for effecting a satisfactory settlement with any insurance company involved, removal of debris, preparation of plans and issuance of all required governmental permits) after the occurrence of such damage or destruction, then Tenant shall have the right, at its sole option, to terminate this Lease by written notice to Landlord as of the sixtieth (60th) day after such damage or destruction by giving written notice of termination within forty-five (45) days after the occurrence of such damage or destruction. If the Building or any part thereof is damaged or destroyed by fire or any other cause, Tenant shall give prompt written notice thereof to Landlord. If this Lease is terminated pursuant to this Article, then rent shall be apportioned (based on the portion of the Premises which is usable after such damage or destruction) and paid to the date of termination. If this Lease is not terminated as a result of such damage or destruction, then until such repair and restoration of the Premises are substantially complete, Tenant shall be required to pay the Base Rent and additional rent without abatement or adjustment while Landlord undertakes repairs. If this Lease is not terminated as a result of such damage or destruction, then Landlord shall bear the expenses of such repair and restoration of the Building to substantially the same condition in which the Building was in on the Occupancy Commencement Date, reasonable wear and tear excepted; and provided further, however, that in no event shall Landlord be required to repair or restore any work and materials not Base Building Work, any Alteration previously made by Tenant or any of Tenant's trade fixtures, furnishings, equipment or personal property. Notwithstanding anything herein to the contrary, Landlord shall have the right to terminate this Lease if (a) the insurance that Tenant is required to maintain plus

any contribution offered by Tenant in Tenant's sole discretion is insufficient to pay the full cost of such repair and restoration, (b) the holder of any Mortgage fails or refuses to make such insurance proceeds available for such repair and restoration, (c) zoning or other applicable laws or regulations do not permit such repair and restoration.

## ARTICLE 18 CONDEMNATION

18.1 If the Premises or occupancy thereof shall be taken or condemned by any governmental or quasi-governmental authority for any public or quasi-public use or purpose or sold under threat of such a taking or condemnation (collectively, "condemned") to the extent that Tenant's continuation of Tenant's use of the Property becomes commercially impracticable in Tenant's reasonable judgment, then Tenant may terminate this Lease by written notice to Landlord as of the sixtieth (60th) day after such taking or condemnation by giving written notice of termination within forty-five (45) days after such taking or condemnation. If a minor part of the Premises or occupancy thereof is condemned, then this Lease shall continue in full force and effect as to the part of the Premises not condemned, except that as of the date title vests in such authority, Tenant shall not be required to pay the Base Rent and additional rent with respect to the part of the Premises condemned.

18.2 All awards, damages and other compensation paid by such authority on account of such condemnation shall belong to Landlord, and Tenant assigns to Landlord all rights to such awards, damages and compensation. Tenant shall not make any claim against Landlord or the authority for any portion of such award, damages or compensation attributable to damage to the Premises, value of the unexpired portion of the Lease Term as determined by the net income generated to Landlord by this lease, leasehold improvements made by Landlord or severance damages. Nothing contained herein, however, shall prevent Tenant from pursuing a separate claim against the authority for the value of Tenant's leasehold interest as determined by the positive difference between the Base Rent and the fair market rent for the Premises, the value of furnishings and trade fixtures and leasehold improvements installed in the Premises at Tenant's expense and for relocation expenses, provided that such claim is stated separately from any award to Landlord and provided further that such claim shall in no way diminish the award, damages or compensation otherwise payable to Landlord as described above in connection with such condemnation.

## ARTICLE 19 DEFAULT

19.1 An "Event of Default" is any one or more of the following: (a) Tenant's failure to pay Base Rent within ten (10) business days of the date on which it is due, (b) Tenant's failure to make when due any payment of the additional rent or sum due hereunder other than the Base Rent, which failure continues for ten (10) business days after Landlord delivers written notice thereof to Tenant; (c) Tenant's failure to perform or observe any term, covenant or condition of this Lease not otherwise specifically described in this Section 19.1, which failure continues for thirty (30) days after Landlord delivers written notice thereof to Tenant, or if such failure is not

susceptible to cure within said thirty days, such additional time as is necessary to cure provided Tenant promptly commences cure and diligently pursues cure to completion; (d) an Event of Bankruptcy as specified in Article 20; (e) Tenant's dissolution or liquidation; or (f) any subletting, assignment, transfer, mortgage or other encumbrance of the Premises or this Lease not permitted by Article 7.

19.2 If there shall be an Event of Default, including an Event of Default prior to the Occupancy Commencement Date, then the provisions of this Section shall apply. Landlord shall have the right, at its sole option, to terminate this Lease by written notice thereof to Tenant. Landlord may proceed to recover possession of the Premises under applicable laws, by such other proceedings, including re-entry and possession. If Landlord elects to terminate this Lease and/or elects to terminate Tenant's right of possession, then everything in this Lease to be done by Landlord shall cease, without prejudice, however, to Tenant's liability for all rent and other sums due hereunder, regardless of whether Tenant's default shall occur before or after the Occupancy Commencement Date. Landlord may relet the Premises or any part thereof, alone or together with other premises, for such term(s) (which may extend beyond the date on which the Lease Term would have expired but for Tenant's default) and on such terms and conditions (which may include concessions or free rent and alterations of the Premises) as Landlord, in its reasonable discretion, may determine; provided, however, that Landlord shall use commercially reasonable efforts to mitigate its damages hereunder. Whether or not this Lease is terminated, Tenant nevertheless shall remain liable for the Base Rent, additional rent and damages which may be due or sustained, and all reasonable costs, fees and expenses (including without limitation attorneys' fees, brokerage fees and expenses incurred in placing the Premises in a rentable condition) incurred by Landlord in pursuit of its remedies and in renting the Premises to others from time to time. Tenant shall also be liable for additional damages in an amount equal to the Base Rent and additional rent which would have become due during the remainder of the Lease Term, less the amount of rental, if any, which Landlord receives during such period from others to whom the Premises may be rented (other than any additional rent payable as a result of any failure of such other person to perform any of its obligations), in which case such damages shall be computed and payable in monthly installments, in advance, on the first day of each calendar month following Tenant's default and continuing until the date on which the Lease Term would have expired but for Tenant's default (provided however, that separate suits may be brought to collect any such damages for any month(s), and such suits shall not in any manner prejudice Landlord's right to collect any such damages for any subsequent month(s), or Landlord may defer any such suit until after the expiration of the Lease Term, in which event such suit shall be deemed not to have accrued until the expiration of the Lease Term); or (b) an amount equal to the present value (as of the date of Tenant's default) of the sum of (i) the difference between (A) all Base Rent and additional rent which would have become due through the date on which the Lease Term would have expired but for Tenant's default less (B) the fair market rental value of the Premises over the same period, plus (ii) the reasonable expenses actually incurred and, to the extent not yet incurred, reasonably projected by Landlord in connection with the reletting of the Premises, which damages shall be payable to Landlord in a lump sum on demand. For purpose of this Section, present value shall be computed by discounting at a rate equal to the discount rate then in effect at the Federal Reserve Bank nearest to the Building. Tenant waives any right of redemption, re-entry or restoration of the operation of this Lease under any present or future law, including any such right which Tenant would otherwise have if Tenant shall be

dispossessed for any cause. As used in the preceding sentence, the words “redemption”, “re-entry”, “retention”, and “dispossessed” shall not be deemed restricted to their technical or legal meanings. Whether or not this Lease and/or Tenant’s right of possession is terminated, Landlord shall have the right after default to terminate by written notice any renewal or expansion right contained in this Lease.

19.3 Landlord’s rights and remedies set forth in this Lease are, except as expressly set forth in this Lease, cumulative and in addition to Landlord’s other rights and remedies at law or in equity, including those available as a result of any anticipatory breach of this Lease. Landlord’s exercise of any such right or remedy shall not prevent the concurrent or subsequent exercise of any other right or remedy. Landlord’s or Tenant’s delay or failure to exercise or enforce any of Landlord’s or Tenant’s rights or remedies or Landlord’s or Tenant’s obligations shall not constitute a waiver of any such rights, remedies or obligations. Landlord or Tenant shall not be deemed to have waived any default unless such waiver expressly is set forth in an instrument signed by Landlord or Tenant, as the case may be. Any such waiver shall not be construed as a waiver of any covenant or condition except as to the specific circumstances described in such waiver. Neither Tenant’s payment of an amount less than a sum due nor Tenant’s endorsement or statement on any check or letter accompanying such payment shall be deemed an accord and satisfaction. Notwithstanding any request or designation by Tenant, Landlord may apply any payment received from Tenant to any payment then due. Landlord may accept the same without prejudice to Landlord’s right to recover the balance of such sum or to pursue other remedies. Re-entry and acceptance of keys shall not be considered an acceptance of a surrender of this Lease.

19.4 If Tenant or any Guarantor is a general partnership or other entity the partners or members of which are subject to personal liability, then the liability of each such partner or member shall be joint and several. Under no circumstance shall Tenant’s or Guarantor’s directors, officers, shareholders, manager, members, municipal officers or employees have any personal liability or responsibility under this Lease. Under no circumstance shall Tenant be liable to Landlord for damages in addition to those expressly provided in this Article 19, including without limitation indirect, special, consequential or punitive damages. Under no circumstance shall Landlord be liable to Tenant for damages which are indirect, special, consequential or punitive damages.

19.5 If Tenant fails to make any payment to any third party or to do any act herein required to be made or done by Tenant beyond applicable grace or cure periods, then Landlord may, but shall not be required to, make such payment or do such act. Landlord’s taking such action shall not be considered a cure of such failure by Tenant nor prevent Landlord from pursuing any remedy it is otherwise entitled to in connection with such failure. If Landlord elects to make such payment or do such act, then all expenses actually incurred, plus interest thereon at the Default Rate (as hereinafter defined) from the date incurred to the date of payment thereof by Tenant, shall constitute additional rent. The Default Rate shall equal the *Wall Street Journal* “Prime Rate” per annum.

19.6 If Tenant fails to make any payment of the Base Rent, additional rent or any other sum payable to Landlord on or before the tenth (10th) business day following the date such payment is due and payable, then Tenant shall pay a late charge equal to two percent (2%) of the amount of such payment. Such payment shall bear interest at the Default Rate from thirty (30) days from the date such payment was due to the date such payment or charge was paid. If Tenant shall deliver to Landlord a check that is returned unpaid for any reason, such payment shall be deemed never to have been made and, additionally, Tenant shall pay Landlord One Hundred Dollars (\$100.00) for Landlord's expense in connection therewith (plus any out-of-pocket expenses incurred in connection therewith) and said charge shall be payable to Landlord on the first day of the next succeeding month as additional rent.

## ARTICLE 20 BANKRUPTCY

20.1 An Event of Bankruptcy is: (a) Tenant's, or any general partner (a "General Partner") of Tenant's, or any successor to either of them, becoming insolvent, as that term is defined in Title 11 of the United States Code (the "Bankruptcy Code"), or under the insolvency laws of any state (the "Insolvency Laws"); (b) appointment of a receiver or custodian for Tenant or any successor thereto or any property of Tenant or any successor thereto, or a General Partner or successor thereto, or the institution of a foreclosure or attachment action upon any property of Tenant or successor thereto, or a General Partner or successor thereto; (c) filing of a voluntary petition by Tenant or any successor thereto or a General Partner or any successor thereto under the provisions of the Bankruptcy Code or Insolvency Laws; (d) filing of an involuntary petition against Tenant or any successor thereto or a General Partner or any successor thereto as the subject debtor under the Bankruptcy Code or Insolvency Laws, which either (1) is not dismissed within sixty (60) days after filing, or (2) results in the issuance of an order for relief against the debtor; (e) Tenant's, any successor thereto or a General Partner's or any successor thereto making or consenting to an assignment for the benefit of creditors or a composition of creditors; or (f) an admission by Tenant or any successor thereto of its inability to pay debts as they become due.

20.2 Upon occurrence of an Event of Bankruptcy, Landlord shall have all rights and remedies available pursuant to Article 19; provided, however, that while a case (the "Case") in which Tenant, or any successor thereto, is the subject debtor under the Bankruptcy Code is pending, Landlord's right to terminate this Lease shall be subject, to the extent required by the Bankruptcy Code, to any rights of Tenant or its trustee in bankruptcy (collectively, "Trustee") to assume or assign this Lease pursuant to the Bankruptcy Code. Nothing contained in this Article 20 or elsewhere in this Lease shall in any way limit the ability of Landlord to seek relief or any order or remedy from any bankruptcy court

## ARTICLE 21 SUBORDINATION

21.1 This Lease is subject and subordinate to the lien, provisions, operation and effect of the first and subordinate mortgages, deeds of trust, or other security instruments which may now or hereafter encumber the Building or the Land (the "Mortgage" or the "Mortgages"), to all

funds and indebtedness intended to be secured thereby, and to all renewals, extensions, modifications, recastings or refinancings thereof; provided, however, such subordination to any Mortgage or Mortgages granted by Landlord other than the Mortgage to be granted by Landlord to MCD Subsidiary 14, LLC on or near the Effective Date is conditioned upon Landlord obtaining its mortgagee's commercially reasonable subordination, non-disturbance and attornment agreement. The holder of the Mortgages to which this Lease is subordinate shall have the right at any time to declare this Lease to be superior to the lien, provisions, operation and effect of such Mortgages and Tenant shall execute, acknowledge and deliver all commercially reasonable confirming documents required by such holder.

21.2 In confirmation of the foregoing subordination with respect to to any Mortgage or Mortgages granted by Landlord other than the Mortgage to be granted by Landlord to MCD Subsidiary 14, LLC on or near the Effective Date, Tenant shall at Landlord's request promptly execute any reasonable requisite or appropriate document. Tenant waives the provisions of any statute or rule of law now or hereafter in effect which may give or purport to give Tenant any right to terminate or otherwise adversely affect this Lease or Tenant's obligations in the event any such foreclosure proceeding is prosecuted or completed or in the event the Land, the Building or Landlord's interest therein is sold at a foreclosure sale or by deed in lieu of foreclosure. At the request of such purchaser, Tenant shall attorn to such purchaser and shall recognize such purchaser as the landlord under this Lease. Upon such attornment such purchaser shall not be (a) bound by any payment of the Base Rent more than one (1) month in advance, (b) bound by any amendment of this Lease made without the consent of the holder of the Mortgage existing as of the date of such amendment, (c) liable for damages for any breach, act or omission of any prior landlord except for continuing breaches, or (d) subject to any offsets or defenses which Tenant might have against any prior landlord except for defenses arising from continuing breaches. Within ten (10) business days after receipt, Tenant shall execute, acknowledge and deliver any reasonable requisite or appropriate document submitted to Tenant confirming such attornment.

21.3 Notwithstanding any other provision of this Article 21, Landlord shall provide to Tenant, a subordination, non-disturbance and attornment agreement from MCD Subsidiary 14, LLC, in the form attached hereto as Exhibit A-4.

## ARTICLE 22 COVENANTS OF LANDLORD

22.1 Landlord covenants that if Tenant shall perform timely all of its obligations, then, subject to the provisions of this Lease, Tenant shall during the Lease Term peaceably and quietly occupy and enjoy possession of the Premises without hindrance by Landlord or anyone claiming by, through or under Landlord.

## ARTICLE 23 GENERAL PROVISIONS

23.1 Tenant acknowledges that neither Landlord nor any broker, agent or employee of Landlord has made any representation or promise with respect to the Premises or the Building or

the Land except as expressly set forth herein, and no right is being acquired by Tenant except as expressly set forth herein. This Lease contains the entire agreement of the parties and supersedes all prior agreements, negotiations, letters of intent, proposals, representations, warranties and discussions between the parties. This Lease may be changed in any manner only by an instrument signed by Landlord and Tenant.

23.2 Nothing contained in this Lease shall be construed as creating any relationship between Landlord and Tenant other than that of landlord and tenant and in no event shall Tenant be deemed to be an agent of Landlord in connection with this Lease.

23.3 Landlord and Tenant each warrants that in connection with this Lease it has not employed or dealt with any broker, agent or finder. Tenant shall indemnify and hold Landlord harmless from and against any claim for brokerage or other commissions asserted by any other broker, agent or finder employed by Tenant or with whom Tenant has dealt.

23.4 From time to time upon ten (10) business days' prior written notice from the other party, Landlord and Tenant shall execute, acknowledge and deliver to the other party and any designee of the other part a written statement certifying, to the extent applicable: (a) that this Lease is unmodified and in full force and effect (or that this Lease is in full force and effect as modified and stating the modifications); (b) the dates to which rent and any other charges have been paid; (c) that, to certifying party's knowledge without investigation, the requesting party is not in default in the performance of any obligation (or specifying the nature of any default); (d) the address to which notices are to be sent; (e) that this Lease is subject and subordinate to all Mortgages subject to the non-disturbance of Tenant as provided herein; (f) that Tenant has accepted the Premises and to Tenant's knowledge all work thereto has been completed (or specifying the incomplete work); and (g) such other matters as the requesting party may reasonably request. Any such statement may be relied upon by any owner of the Building or the Land, any prospective purchaser of the Building or the Land, the holder or prospective holder of a Mortgage, any lenders or investors in Tenant, or any other person or entity. Tenant acknowledges that time is of the essence to the delivery of such statements and Tenant's failure to deliver timely such statements may cause substantial damages resulting from, for example, delays in obtaining financing secured by the Building.

23.5 LANDLORD AND TENANT WAIVE TRIAL BY JURY IN ANY ACTION, CLAIM OR COUNTERCLAIM BROUGHT IN CONNECTION WITH ANY MATTER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE LANDLORD-TENANT RELATIONSHIP, TENANT'S USE OR OCCUPANCY OF THE PREMISES OR ANY CLAIM OF INJURY OR DAMAGE. Landlord and Tenant waive any objection to the venue of any action filed in any court situated in New Hampshire and waive any right under the doctrine of forum non conveniens or otherwise to transfer any such action filed in any such court to any other court. Landlord and Tenant consent to the jurisdiction of all state and Federal courts in New Hampshire.

23.6 All notices or other required communications shall be in writing and shall be deemed duly given only when delivered in person (with receipt therefor), or when sent by certified or registered mail, return receipt requested, postage prepaid addresses set forth in

Article 1. Either party may change its address for the giving of notices by notice given in accordance with this Section. If Landlord notifies Tenant that a copy of each notice to Landlord shall be sent to such holder at a specified address, then Tenant shall send (in the manner specified in this Section and at the same time such notice is sent to Landlord) a copy of each such notice to such holder, and no such notice shall be considered duly sent unless such copy is so sent to such holder. If Tenant claims that Landlord has breached any obligation, then Tenant shall send such holder notice specifying the breach and permit such holder a reasonable opportunity to cure the breach (not to exceed thirty (30) days beyond the expiration of Landlord's cure period). All notices shall be deemed delivered when actually received.

23.7 Each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law. If any provision or its application to any person or circumstance shall to any extent be invalid or unenforceable, then such provision shall be deemed to be replaced by the valid and enforceable provision most substantively similar thereto, and the remainder of this Lease and the application of such provision to other persons or circumstances shall not be affected.

23.8 Feminine, masculine or neuter pronouns shall be substituted for those of another form, and the plural or singular shall be substituted for the other number, in any place in which the context may require.

23.9 The provisions of this Lease shall be binding upon and inure to the benefit of the parties and their respective representatives, successors and assigns, subject to the provisions herein restricting assignment or subletting.

23.10 Landlord and its designees may enter the Premises at any time with at least 48 hours advance notice (except in case of emergency in which case notice shall not be required) and if requested by Tenant, accompanied by a representative of Tenant, without charge therefor and without diminution of the rent payable by Tenant, to examine, inspect or protect the Premises and the Building, to make such alterations or repairs as Landlord is obligated to perform under this Lease. Landlord agrees to use commercially reasonable efforts not to disturb or interfere with Tenant's business while exercising its rights under this Section 23.10.

23.11 This Lease shall be governed by the laws of New Hampshire, without taking into account choice of laws principles.

23.12 Headings are used for convenience and shall not be considered when construing this Lease. Use of words such as hereof, herein, hereafter and the like shall be deemed to be reference to this entire Lease and not to provision, paragraph, section or articles in which such words appear.

23.13 The submission of a copy of this document to Tenant shall not constitute an offer or option to lease. This Lease shall become effective and binding only upon execution and delivery by both Landlord and Tenant.

23.14 Time is of the essence with respect to each obligation of Tenant and Landlord.



23.15 This Lease may be executed in multiple counterparts, each of which is deemed an original and all of which constitute one and the same document.

23.16 This Lease shall not be recorded. Landlord and Tenant shall execute, in recordable form for recording in the Hillsborough County Registry of Deeds, upon execution of this Lease, a commercially reasonable notice of lease prepared by Tenant, identifying Landlord, Tenant, the Premises, and the term of this Lease, including the Renewal Term.

23.17 Except as otherwise provided in this Lease, any additional rent or other sum owed by Tenant to Landlord, and any cost, expense, damage or liability incurred by Landlord for which Tenant is expressly liable under this Lease, shall be considered additional rent payable pursuant to this Lease and paid by Tenant no later than ten (10) business days after the date Landlord notifies Tenant of the amount thereof, unless otherwise provided in this Lease.

23.18 Tenant's liabilities existing as of the expiration or earlier termination of the Lease Term shall survive such expiration or earlier termination.

23.19 If Landlord or Tenant is in any way delayed or prevented from performing any obligation due to fire, act of God, governmental act or failure to act, labor dispute, unforeseeable inability to procure materials or any cause beyond Landlord's or Tenant's reasonable control (whether similar or dissimilar to the foregoing events), then the time for performance of such obligation shall be excused for the period of such delay or prevention and extended for the time necessary to compensate for the period of such delay or prevention. Nothing herein shall excuse or modify Tenant's covenant to pay timely all monetary obligations hereunder, including, without limitation, Base Rent and additional rent.

23.20 If any Base Rent or additional rent is successfully collected by or through an attorney, Tenant shall pay the reasonable fees of such attorney together with all reasonable costs and expenses incurred by Landlord in connection with such matters, whether or not any legal proceedings have been commenced. If either party hereto brings an action at law or in equity to enforce or interpret this Lease, the prevailing party in such action shall be entitled to recover reasonable attorneys' fees and expenses and court costs for all stages of litigation, including, but not limited to, appellate proceedings, in addition to any other remedy granted.

23.21 Notwithstanding anything to the contrary contained in this Lease, Tenant shall look only to Landlord's ownership in the Project for satisfaction of Tenant's remedies for the collection of a judgment (or other judicial process) requiring the payment of money by Landlord in the event of any default by Landlord hereunder, and no other property or assets of the partners or principals of Landlord, disclosed or undisclosed, shall be subject to levy, execution or the enforcement procedure for the satisfaction of Tenant's remedies under or with respect to this

Lease, the relationship of Landlord and Tenant hereunder or Tenant's use or occupancy of the Premises. No personal liability or personal responsibility is assured by, nor shall at any time be asserted or enforceable against Landlord, its members, partners or its principals, or their respective heirs, legal representatives, successors and assigns on account of this Lease or any covenant, undertaking, or agreement to Landlord contained herein.

23.22. TENANT AND LANDLORD EXPRESSLY AGREE THAT THERE ARE AND SHALL BE NO IMPLIED WARRANTIES OF MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THOSE EXPRESSLY SET FOR IN THIS LEASE.

23.23. It is understood and agreed by and between the parties hereto that this Lease contains the final and entire agreement between said parties, and that they shall not be bound by any terms, statements, conditions or representations, oral or written, express or implied, not herein contained. This Lease may not be modified orally or in any manner other than by written agreement signed by the parties hereto.

23.24. Tenant shall, upon request of Landlord, promptly provide all reasonable information in the possession of Tenant required by or useful to Landlord for the purpose of Landlord's compliance with new markets tax credit information reporting requirements pursuant to the documents evidencing the loan to Landlord from MCD Subsidiary CDE 14, LLC, its successors and assigns. In addition, Tenant shall provide to Landlord and MCD Subsidiary CDE 14, LLC any notices of default or material reporting information received from any subtenant or operator with respect to the Premises.

23.25 In addition to the information to be provided pursuant to Section 23.24 of this Lease, on or before January 31st (with respect to the twelve-month period ending December 31<sup>st</sup> of the previous year) of each year the QLCI Loans are outstanding, Tenant shall provide and shall cause any subtenant or operator with respect to the Premises to provide to Landlord and MCD Subsidiary CDE 14, LLC all information necessary or desirable to complete that certain Community Benefits Report ("CBR").

*[No further text; signatures on next page]*

**COUNTERPART SIGNATURE PAGE**

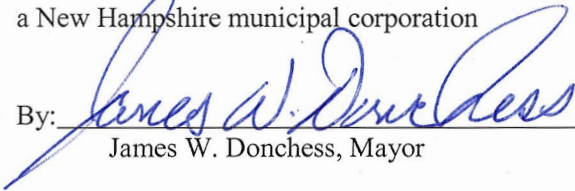
**TO**

**LEASE AGREEMENT**

**IN WITNESS WHEREOF**, the parties hereto have caused the above-referenced document to be executed by their respective duly authorized signatories as of the day and year written above.

**CITY OF NASHUA,**  
a New Hampshire municipal corporation

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

  
James W. Donchess, Mayor

**COUNTERPART SIGNATURE PAGE**

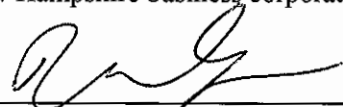
**TO**

**LEASE AGREEMENT**

**IN WITNESS WHEREOF**, the parties hereto have caused the above-referenced document to be executed by their respective duly authorized signatories as of the day and year written above.

**NPAC CORP.,**  
a New Hampshire business corporation

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

A handwritten signature in black ink, appearing to read 'R. G. Lannan', written over a horizontal line.

Richard G. Lannan, President

**SCHEDULE 3.7**

**FFE LIST**

## **EQUIPMENT**

### **Stage Rigging/Draperies**

Wenger Corporation

(1) Set of Stage Rigging/Drapers

### **Concessions Appliances and Equipment**

Various

KEGERATOR

BEV AIR

SODAR BAR GUN

PEPSI

COFFEE MAKER

BUNN

BEVERAGE COOLER

PEPSI

PRETZEL WARMER

NEMCO

RACK WARMER

HATCO

HOT ROG ROLLER

STAR

ICE CHEST

INFINITY

DISH WASHER

HOBART

ICE MACHINE

MANITOWOC

REFRIGERATOR

TRAULSEN

FREEZER

TRAULSEN

HOT BOX

TRAULSEN

WALK-IN REFRIGERATOR

KOLPAK

MOBILE KEGERATOR

BEV AIR

### **Seating**

Jezet Seating

41 Main Level Loose Chairs

324 Main Level Telescopic Chairs

54 Main Level Back Chairs

38 Main Level Box Loose Chairs

296 Balcony Chairs

### **Theatrical Lighting Control**

Port Lighting

Power Control Device

Emergency Assessories

Distribution Device(s)

Special Outbox

Type A

Type B

Type C

Type D

Type E

Type F

Equipment Rack (Panels A-L)

Wireless Access Points

Portable Gateways

Architectural Control Device (A-F)

Socapex Cable

**Audio/Visual Equipment**

HIGH OUTPUT

wired microphones  
audio mixing  
audio recorder  
audio processing  
production communications  
amplifiers and loudspeakers  
assistive listening system  
video projector, lens and accessories  
projection screen  
AV sources  
cameras  
video routing and processing  
systems control and accessories  
(2) loudspeakers signal processing/amp

**Electronic Security**

Johnson Control

Fire Alarm System

**VIP Drapery System**

Port Lighting

(1) Set of VIP Lounge Draperies

**Stage Lighting****Interior Signage Electronic Panels (5)**

(5) UHD Dual Sided Samsung Monitors

**Lobby Furnishings/Furniture**

**EXHIBIT A-1**  
**PLAN SHOWING PREMISES**







**EXHIBIT A-2**  
**DESCRIPTION OF PREMISES**

201 Main Street and 78-84 West Pearl Street, Nashua, New Hampshire

Two certain tracts of land with the buildings and improvements thereon, bounded and described as follows:

**TRACT I:**

Beginning at the Northwest corner of the premises on the Southerly side of Pearl Street and on the Easterly side of Garden Street; thence

- (1) Southerly by said Garden Street about one hundred (100) feet to land now or formerly of Hunt; thence
- (2) Easterly by said Hunt land about fifty-eight (58) feet to the land now or formerly of Coggin; thence
- (3) Northerly by said Coggin land and by land formerly of Parkinson, now or formerly of Wason, about one hundred (100) feet to said Pearl Street; thence
- (4) Westerly by said Pearl Street about fifty-eight (58) feet to the place of beginning.

Together with the rights and easements granted to the New Hampshire Improvement Company, its successors and assigns, by and under said party-wall agreement entered into between the said New Hampshire Improvement Company, Susan F. Crombie, Mary F. Arnold, Ralph A. Arnold and Robert B. Wason, and recorded in the Hillsborough County Registry of Deeds, Book 534, Page 47 – 49 and 52.

**TRACT II:**

A certain tract of land, with the buildings thereon, situate at the corner of Main and West Pearl Streets in Nashua, Hillsborough County, New Hampshire, bounded on the north by said West Pearl Street; on the west by land formerly of D. L. Holt; on the south by land now or formerly of Crombie; and on the east by Main Street.

Being a lot of land, with the buildings thereon, approximately one hundred (100) feet by one hundred (100) feet fronting on Main Street and on West Pearl Street and containing nine thousand nine hundred and nine (9,909) square feet, more or less.

### **EXHIBIT A-3**

#### **TITLE ENCUMBRANCES**

Easements granted to the New Hampshire Improvement Company, its successors and assigns, by and under said party-wall agreement entered into between the said New Hampshire Improvement Company, Susan F. Crombie, Mary F. Arnold, Ralph A. Arnold and Robert B. Wason, and recorded in the Hillsborough County Registry of Deeds, Book 534, Page 47-49 and 52.

## **EXHIBIT A-4**

### **FORM OF SUBORDINATION, NON-DISTURBANCE, ATTORNMENT AND RECOGNITION AGREEMENT**

#### **SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made and entered into as of December \_\_\_\_, 2020, by and among MCD SUBSIDIARY CDE 14, LLC, a New Hampshire limited liability company, having a place of business at 80 South Main Street, Hanover, New Hampshire 03755 ("Mortgagee"), NPAC CORP., a New Hampshire business corporation, having a place of business at c/o City of Nashua, 229 Main Street, Nashua, New Hampshire 03060 ("Landlord"), and the CITY OF NASHUA, a New Hampshire municipal corporation, having a place of business at 229 Main Street, Nashua, New Hampshire 03060 ("Tenant").

#### **Recitals**

**WHEREAS**, Landlord is the fee simple owner of that certain real property located in Nashua, Hillsborough County, New Hampshire, and more particularly described in Exhibit B attached hereto (the "Property"); and

**WHEREAS**, pursuant to that certain Loan Agreement by and between Landlord and Mortgagee dated as of the date hereof (the "Loan Agreement"), Mortgagee made certain loans to Landlord in the aggregate principal amount of \$9,555,000 (the "Loan") as evidenced by those two (2) promissory notes (collectively, the "Note"). The obligations under the Loan Agreement and Note are secured by that certain Mortgage, Security Agreement, Financing Statement and Assignment of Leases and Rents covering the Property (the "Mortgage") dated as of the date hereof, from Landlord in favor of Mortgagee, and recorded or to be recorded in the real estate records of the aforesaid County and State. The Loan Agreement, the Note and the Mortgage and any and all other documents executed in connection with the Loan, as the same may be amended, renewed, replaced or supplemented from time to time, collectively the "Loan Documents"; and

**WHEREAS**, under the terms of that certain Lease Agreement dated December \_\_\_\_, 2020 (the "Lease"), Landlord leased to Tenant all of the Property described in the Lease (the "Demised Premises") under the terms and conditions more particularly described therein; and

**WHEREAS**, the Mortgage provides that the Lease shall be subordinate to the Mortgage and the parties hereto desire to confirm such subordination and to establish rights of quiet and peaceful possession for the benefit of Tenant under the Lease and to define the terms, covenants and conditions precedent for such rights.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein contained and intending to be legally bound hereby, the parties hereto agree as follows:

**Section 1.      Subordination of Lease.** Notwithstanding the time of execution, delivery or any applicable recordation of the Lease or the Mortgage, the Lease and the entire right, title and interest of Tenant thereunder are and shall be subject and subordinate in all respects to the lien, right, title and terms of the Loan Documents and, in particular, the Mortgage and all advances made or to be made thereunder.

**Section 2. Consent of Tenant.** Tenant acknowledges notice of and consents to the Mortgage and the terms and conditions thereof. Tenant agrees to continue making payments of rent and other amounts owed under the Lease to Landlord, and to otherwise recognize the rights of Landlord under the Lease, until notified otherwise in writing by Mortgagee, as herein provided. Landlord and Tenant agree that, if Mortgagee delivers to Tenant a written notice stating that a default has occurred under the Loan Documents and requesting that all payments due under the Lease be thereafter paid directly to Mortgagee, Tenant shall thereafter make, and is hereby authorized and directed by Landlord to make, all such payments directly to Mortgagee, as provided in the Mortgage, without any duty of further inquiry on the part of Tenant.

**Section 3. Tenant's Duty to Notify Mortgagee of any Default Under the Lease.** Tenant shall provide Mortgagee with prompt written notice of any asserted default against Landlord under the Lease. In the event of any act or omission of Landlord which would give Tenant the right, immediately or after lapse of time, to cancel or terminate the Lease, or to claim a partial or total eviction or to exercise any other remedy, Tenant shall not exercise such right or remedy until Mortgagee has received written notice and a reasonable period of time to cure said default, said cure period commencing after the end of Landlord's cure period and after Mortgagee is entitled under the Mortgage to remedy same; provided that Mortgagee shall give Tenant written notice of its intention to, and shall commence and continue with due diligence to, remedy such act or omission. Notwithstanding the foregoing, Mortgagee shall have no obligation to remedy or to continue to remedy any such act or omission.

**Section 4. Nondisturbance of Tenant.** Provided: (i) the Lease shall at all times be in full force and effect; (ii) the term of the Lease has commenced; (iii) Tenant is in actual possession of the Demised Premises; and (iv) Tenant shall not be in default under the Lease or this Agreement, then:

(a) The right of possession by Tenant to the Demised Premises and any or all of Tenant's rights under the Lease shall not be terminated by Mortgagee (or by anyone claiming by, through or under Mortgagee) in the exercise of any of Mortgagee's rights under the Loan Documents.

(b) Tenant shall not be named as a party defendant to any foreclosure of the lien of the Mortgage for the purpose of terminating the Lease, unless Mortgagee is required by any applicable law, order, regulation, rule of court or judicial decision to name Tenant as a party defendant.

(c) If Mortgagee or its successors or assigns comes into possession of the Property (through receivership, as a mortgagee in possession, or otherwise) or acquires the leasehold interest of Landlord by foreclosure of the Mortgage, or by proceedings under the Loan Documents, deed in lieu or otherwise, the Lease shall not be terminated by any such foreclosure or proceedings; and the Lease shall continue in full force and effect upon Tenant's attornment, as hereinafter provided, as a direct lease between Tenant and Mortgagee upon all the terms, covenants, conditions and agreements set forth in the Lease and this Agreement.

(d) If the Property or Landlord's leasehold interest therein is sold or otherwise disposed of pursuant to any right or power contained in the Loan Documents or as a result of proceedings thereon, the Lease shall not be terminated thereby, and the Foreclosure Purchaser (as such term is defined in Section 11 hereof) of the Property or of Landlord's interest therein or any person acquiring title thereto shall so acquire the Property or such interest, subject to the Lease; and the Lease shall continue in full force and effect upon Tenant's attornment, as hereinafter provided, as a direct lease between Tenant and any party acquiring title to Landlord's leasehold

interest therein, as aforesaid, upon all the terms, covenants, conditions and agreements set forth in the Lease.

**Section 5. Attornment of Tenant to Mortgagee or Foreclosure Purchaser.** If Mortgagee or any Foreclosure Purchaser shall succeed to the rights of Landlord under the Lease, then Tenant shall upon Mortgagee's or such Foreclosure Purchaser's election, attorn to and recognize Mortgagee or such Foreclosure Purchaser as Tenant's landlord under the Lease and Mortgagee or such Foreclosure Purchaser shall be conclusively deemed to have accepted such attornment. Such attornment shall be self-operative and effective without execution and delivery of any further instrument, immediately upon Mortgagee's or any Foreclosure Purchaser's succession to the interest of Landlord under the Lease. Upon such attornment, the Lease shall continue in full force and effect as a direct lease between Mortgagee or such Foreclosure Purchaser and Tenant, provided that Mortgagee or such Foreclosure Purchaser shall not be bound by provisions of the Lease which are impossible for Mortgagee or such Foreclosure Purchaser to perform or by any amendment or modification of the Lease made without Mortgagee's prior written consent and provided further that Mortgagee or such Foreclosure Purchaser shall not be liable to Tenant:

(a) For any past act, misrepresentations, breach, default or omission on the part of Landlord or for any accrued obligation of Landlord under the Lease and Tenant shall have no right to assert the same or any damages arising therefrom as an offset or defense against Mortgagee or such Foreclosure Purchaser;

(b) For any offset, defense, claim or counterclaim which Tenant might be entitled to assert against any previous landlord (including Landlord);

(c) For the commencement or completion of any construction or any contribution toward construction or installation of any improvements upon the Demised Premises, or any expansion or rehabilitation of existing improvements thereon, or for restoration of improvements following any casualty not required to be insured under the Lease or for the costs of any restoration in excess of the proceeds recovered under any insurance required to be carried under the Lease; or

(d) For any prepayment of rent, rental security or any other sums deposited with Landlord under the Lease and not actually delivered to Mortgagee or such Foreclosure Purchaser.

Mortgagee or such Foreclosure Purchaser shall be liable to Tenant under the Lease only during Mortgagee's or such Foreclosure Purchaser's period of ownership, and such liability shall not continue or survive as to the transferor after a transfer by Mortgagee or such Foreclosure Purchaser of its interest in the Lease or the Demised Premises. Notwithstanding anything to the contrary contained herein, officers, directors, shareholders, agents, servants, employees and direct and indirect members and/or partners of Mortgagee or any Foreclosure Purchaser shall have no personal liability to Tenant and the liability of Mortgagee or such Foreclosure Purchaser shall be limited to Mortgagee's or such Foreclosure Purchaser's interest in the Property.

**Section 6. Modification of Lease.** Without Mortgagee's prior written consent, Tenant shall not: (i) amend or terminate the Lease; (ii) prepay any rent or other sums due under the Lease for more than one (1) month in advance of the due dates thereof; (iii) voluntarily surrender the Demised Premises; or (iv) assign the Lease or sublet the Demised Premises or any part thereof other than pursuant to the provisions of the Lease.

**Section 7. Representations of Tenant.** Tenant represents and warrants to Mortgagee that: (i) Tenant will occupy and is the leasehold owner of the Demised Premises pursuant to the terms of the

Lease; (ii) the Lease is in full force and effect, and Tenant has no offsets or defenses to the payment of rent or other sums due thereunder; (iii) no default exists under the Lease; and (iv) all rent and other sums due under the Lease have been paid in full, but have not been paid for more than one month in advance of the due dates thereof.

**Section 8. Application of Casualty Insurance Proceeds and Condemnation Awards.** Tenant hereby agrees that, notwithstanding anything to the contrary contained in the Lease, the terms and provisions of the Loan Agreement and the Mortgage with respect to the application of casualty insurance proceeds and condemnation awards shall control.

**Section 9. Confirmation of Lease Status.** Landlord and Tenant hereby agree that, upon Mortgagee's request, they shall from time to time execute and deliver to Mortgagee, and without charge to Mortgagee, an estoppel certificate setting forth whatever information Mortgagee may reasonably require to confirm the current status of the Lease including, without limitation, a confirmation that the Lease is and remains in full force and effect.

**Section 10. Use Restrictions.** Tenant hereby agrees that in no event shall Tenant use or permit any use of any part of the Property which will (A) include the rental to others of Residential Rental Property (as such term is defined in Code § 168(e)(2)), or (B) consist of the operation of any: (i) private or commercial golf course, (ii) country club, (iii) massage parlor, hot tub facility, or suntan facility, (iv) race track or other facility used for gambling, (v) store, the principal business of which is the sale of alcoholic beverages for consumption off premises, or (vi) trade or business, the primary purpose of which is farming (within the meaning of Code § 2032A(e)(5)(A) or (B)). Tenant acknowledges that a default or breach of its representations and covenants in this Section 10 shall be material, and upon any such breach Landlord shall have the right to exercise immediately (without the necessity of notice or any opportunity to cure), any and all remedies available pursuant to the Lease, such exercise of remedies being a requirement of Landlord's compliance with covenants contained in the Loan Documents. Notwithstanding anything contained herein to the contrary, the foregoing use restrictions shall only apply so long as the Lessor is required to restrict the use of the Property pursuant to the Loan Agreement.

**Section 11. Definitions.** As used in this Agreement, the word "Tenant" shall mean Tenant and/or the subsequent holder of an interest under the Lease, provided the interest of such holder is acquired in accordance with the terms and provisions of the Lease, the word "Mortgagee" shall mean Mortgagee or any subsequent holder or holders of the Mortgage, and the word "Foreclosure Purchaser" shall mean any party other than Mortgagee acquiring title to the Property by purchase at a foreclosure sale, by deed, by conveyance in lieu of foreclosure or otherwise or any successors or assigns thereto. Subject to the foregoing, this Agreement shall bind and inure to the benefit of Landlord, Tenant and Mortgagee, their heirs, legal representatives, successors and assigns.

**Section 12. GOVERNING LAW AND JURISDICTION.** **THIS AGREEMENT WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW HAMPSHIRE, EXCLUDING ITS CONFLICT OF LAWS RULES.** Tenant and Landlord each hereby irrevocably consents to the exclusive jurisdiction of any state or federal court in the county or judicial district in the State of New Hampshire; provided that nothing contained in this Agreement will prevent Mortgagee from bringing any action, enforcing any award or judgment or exercising any rights against Tenant and/or Landlord individually, against any security or against any property of Tenant and/or Landlord within any other county, state or other foreign or domestic jurisdiction. Mortgagee, Landlord and Tenant each agree that the venue provided above is the most convenient forum for all parties hereto. Landlord and Tenant each waive any objection to venue and any objection based on a more convenient forum in any action instituted under this Agreement.

**Section 13. Changes in Writing.** No modification, amendment or waiver of, or consent to any departure by Landlord and/or Tenant from, any provision of this Agreement will be effective unless made in a writing signed by the party to be charged, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on Landlord and Tenant will entitle Landlord and Tenant to any other or further notice or demand in the same, similar or other circumstance.

**Section 14. Entire Agreement.** This Agreement (including the documents and instruments referred to herein) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.

**Section 15. Further Assurances.** At the written request of Mortgagee, at any time and from time to time, at Landlord's sole cost and expense, Landlord and/or Tenant shall promptly take such action and execute and deliver such financing statements and further instruments and documents as Mortgagee may reasonably request in order to more fully perfect, evidence or effectuate the provisions of this Agreement and to enable Mortgagee to exercise, enforce and protect its/their rights and remedies hereunder.

**Section 16. Illegality.** If any provision contained in this Agreement should be invalid, illegal or unenforceable in any respect, it shall not affect or impair the validity, legality and enforceability of the remaining provisions of this Agreement.

**Section 17. Interpretation.** In this Agreement, unless Mortgagee, Landlord and Tenant otherwise agree in writing, the singular includes the plural and the plural the singular; words importing any gender include the other genders; references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute referred to; the word "or" shall be deemed to include "and/or", the words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; references to articles, sections (or subdivisions of sections) or exhibits are to those of this Agreement; and references to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications to such instruments, but only to the extent such amendments and other modifications are not prohibited by the terms of this Agreement. Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose. Unless otherwise specified in this Agreement, all accounting terms shall be interpreted and all accounting determinations shall be made in accordance with GAAP. If this Agreement is executed by more than one party as Landlord or Tenant, the obligations of such persons or entities will be joint and several.

**Section 18. Notices.** All notices, demands, requests, consents, approvals and other communications required or permitted hereunder ("Notices") must be in writing and will be effective upon receipt. Notices may be given in any manner to which the parties may separately agree, including electronic mail. Without limiting the foregoing, first-class mail, facsimile transmission and commercial courier service are hereby agreed to as acceptable methods for giving Notices. Regardless of the manner in which provided, Notices may be sent to a party's address as set forth in Exhibit A or to such other address as any party may give to the other for such purpose in accordance with this section.

**Section 19. Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the respective parties and their respective heirs, executors, administrators, successors and assigns.

**Section 20. Acknowledgement by Owner and Landlord.** Landlord, as landlord under the Lease and as grantor under the Mortgage, acknowledges and agrees for itself and its heirs, representatives,



successors and assigns, that: (a) this Agreement does not constitute a waiver by Mortgagee of any of its rights under the Mortgage, the Note, the Loan Agreement or the other Loan Documents, or in any way release Landlord from its obligations to comply with the terms, provisions, conditions, covenants, agreements and clauses of the Mortgage, the Note, the Loan Agreement or the other Loan Documents; (b) the provisions of the Mortgage, the Note, the Loan Agreement and the other Loan Documents remain in full force and effect and must be complied with by Landlord; and (c) Tenant is hereby authorized to pay its rent and all other sums due under the Lease directly to Mortgagee upon receipt of a notice as set forth in Section 2 above and that Tenant is not obligated to inquire as to whether a default actually exists under the Mortgage, the Note, the Loan Agreement or the other Loan Documents. Landlord hereby releases and discharges Tenant of and from any liability to Landlord resulting from Tenant's payment to Mortgagee in accordance with this Agreement.

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**WAIVER OF JURY TRIAL. EACH OF LANDLORD, TENANT AND MORTGAGEE IRREVOCABLY WAIVE ANY AND ALL RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS AGREEMENT, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED IN ANY OF SUCH DOCUMENTS. EACH OF LANDLORD, TENANT AND MORTGAGEE ACKNOWLEDGE THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.**

**LANDLORD AND TENANT ACKNOWLEDGE THAT EACH HAS READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS AGREEMENT, INCLUDING THE WAIVER OF JURY TRIAL, AND HAS BEEN ADVISED BY COUNSEL AS NECESSARY OR APPROPRIATE.**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

**LANDLORD:**

**NPAC CORP.,**  
a New Hampshire business corporation

By: \_\_\_\_\_  
Richard G. Lannan, President

STATE OF NEW HAMPSHIRE     )  
  )  
COUNTY OF HILLSBOROUGH    )     **SS.**  
\_\_\_\_\_

On this \_\_\_\_ day of December, 2020, before me, the undersigned, a Notary Public in aforesaid State personally appeared Richard G. Lannan, and who being by me duly sworn did say that he is the President of NPAC Corp., a New Hampshire business corporation ("Landlord"), and acknowledged to me that such individual executed the within instrument on behalf of said Landlord.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

My Commission Expires

\_\_\_\_\_

**WAIVER OF JURY TRIAL. EACH OF LANDLORD, TENANT AND MORTGAGEE IRREVOCABLY WAIVE ANY AND ALL RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR CLAIM OF ANY NATURE RELATING TO THIS AGREEMENT, ANY DOCUMENTS EXECUTED IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED IN ANY OF SUCH DOCUMENTS. EACH OF LANDLORD, TENANT AND MORTGAGEE ACKNOWLEDGE THAT THE FOREGOING WAIVER IS KNOWING AND VOLUNTARY.**

**LANDLORD AND TENANT ACKNOWLEDGE THAT EACH HAS READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS AGREEMENT, INCLUDING THE WAIVER OF JURY TRIAL, AND HAS BEEN ADVISED BY COUNSEL AS NECESSARY OR APPROPRIATE.**

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

**TENANT:**

**CITY OF NASHUA,**  
a New Hampshire municipal corporation

By: \_\_\_\_\_  
James W. Donchess, Mayor

STATE OF NEW HAMPSHIRE     )  
   )  
COUNTY OF HILLSBOROUGH    )     **SS.**  
\_\_\_\_\_

On this \_\_\_\_ day of December, 2020, before me, the undersigned, a Notary Public in aforesaid State personally appeared James W. Donchess and who being by me duly sworn did say that he is the Mayor of the City of Nashua, a New Hampshire municipal corporation ("Tenant"), and acknowledged to me that such individual executed the within instrument on behalf of said Tenant.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

My Commission Expires

\_\_\_\_\_

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the day and year first written above.

**MORTGAGEE:**

**MCD SUBSIDIARY CDE 14, LLC,**  
a New Hampshire limited liability company

By: Mascoma Community Development, LLC,  
a New Hampshire limited liability company,  
its managing member

By: \_\_\_\_\_  
Richard S. Jennings, Managing Director

STATE OF \_\_\_\_\_ )  
 )  
COUNTY OF \_\_\_\_\_ ) **SS.**

On this \_\_\_\_ day of December, 2020, before me, the undersigned, a Notary Public in aforesaid State personally appeared Richard S. Jennings, and who being by me duly sworn did say that he is the Managing Director of Mascoma Community Development, LLC, a New Hampshire limited liability company, managing member of MCD Subsidiary CDE 14, LLC, a New Hampshire limited liability company ("Mortgagee"), and acknowledged to me that such individual executed the within instrument on behalf of said Mortgagee.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

\_\_\_\_\_  
Notary Public

My Commission Expires

\_\_\_\_\_

## **EXHIBIT A**

### **NOTICES**

If to Mortgagee: MCD Subsidiary CDE 14, LLC  
c/o Mascoma Community Development, LLC  
80 South Main Street  
Hanover, NH 03755  
Attention: Deborah Blanc  
Facsimile: (603) 643-1538  
Email: [Deborah.Blanc@mascomabank.com](mailto:Deborah.Blanc@mascomabank.com)

*With a copy to:* Lathrop GPM LLP  
The Pierre Laclede Center  
7701 Forsyth Boulevard, Suite 500  
Clayton, Missouri 63105  
Attention: Frederick Miller  
Email: [Frederick.Miller@LathropGPM.com](mailto:Frederick.Miller@LathropGPM.com)

If to Landlord: NPAC Corp.  
c/o City of Nashua  
229 Main Street  
Nashua, NH 03060  
Attention: Timothy Cummings, Economic Development  
Director

If by U.S. mail to:

NPAC Corp.  
c/o City of Nashua  
P.O. Box 2019  
Nashua, NH 03061-2019  
Attention: Timothy Cummings, Economic Development  
Director

*With a copy to:* Celia Leonard, Esq., Deputy Corporation Counsel  
City of Nashua  
229 Main Street  
Nashua, NH 03060

If by U.S. mail to:

Celia Leonard, Esq., Deputy Corporation Counsel  
c/o City of Nashua  
P.O. Box 2019  
Nashua, NH 03061-2019

and

John S. Kaminski, Esq.

Drummond Woodsum  
84 Marginal Way, Suite 600  
Portland, ME 04101

If to Tenant:

City of Nashua  
229 Main Street  
Nashua, NH 03060  
Attention: Timothy Cummings, Economic Development  
Director

If by U.S. mail to:

City of Nashua  
P.O. Box 2019  
Nashua, NH 03061-2019  
Attention: Timothy Cummings, Economic Development  
Director

*With a copy to:* Celia Leonard, Esq., Deputy Corporation Counsel  
City of Nashua  
229 Main Street  
Nashua, NH 03060

If by U.S. mail to:

Celia Leonard, Esq., Deputy Corporation Counsel  
c/o City of Nashua  
P.O. Box 2019  
Nashua, NH 03061-2019

and

John S. Kaminski, Esq.  
Drummond Woodsum  
84 Marginal Way, Suite 600  
Portland, ME 04101

## **EXHIBIT B**

### **PROPERTY DESCRIPTION**

201 Main Street and 78-84 West Pearl Street, Nashua, New Hampshire

The land referred to herein below is situated in the County of Hillsborough, State of New Hampshire, and is described as follows:

Two certain tracts of land with the buildings and improvements thereon, bounded and described as follows:

#### **TRACT I:**

Beginning at the Northwest corner of the premises on the Southerly side of Pearl Street and on the Easterly side of Garden Street; thence

- (1) Southerly by said Garden Street about one hundred (100) feet to land now or formerly of Hunt; thence
- (2) Easterly by said Hunt land about fifty-eight (58) feet to the land now or formerly of Coggin; thence
- (3) Northerly by said Coggin land and by land formerly of Parkinson, now or formerly of Wason, about one hundred (100) feet to said Pearl Street; thence
- (4) Westerly by said Pearl Street about fifty-eight (58) feet to the place of beginning.

Together with the rights and easements granted to the New Hampshire Improvement Company, its successors and assigns, by and under said party-wall agreement entered into between the said New Hampshire Improvement Company, Susan F. Crombie, Mary F. Arnold, Ralph A. Arnold and Robert B. Wason, and recorded in the Hillsborough County Registry of Deeds, Book 534, Page 47 – 49 and 52.

#### **TRACT II:**

A certain tract of land, with the buildings thereon, situate at the corner of Main and West Pearl Streets in Nashua, Hillsborough County, New Hampshire, bounded on the north by said West Pearl Street; on the west by land formerly of D. L. Holt; on the south by land now or formerly of Crombie; and on the east by Main Street.

Being a lot of land, with the buildings thereon, approximately one hundred (100) feet by one hundred (100) feet fronting on Main Street and on West Pearl Street and containing nine thousand nine hundred and nine (9,909) square feet, more or less.

**EXHIBIT B**  
**BASE RENT SCHEDULE**

Year ending 31-Dec	Annualized Base Rent
2022	250,000
2023	500,000
2024	500,000
2025	500,000
2026	500,000
2027	504,950
2028	515,000
2029	520,200
2030	525,400
2031	530,700
2032	536,000
2033	541,400
2034	546,800
2035	552,300
2036	557,800
2037	563,400
2038	569,000
2039	574,700
2040	580,400
2041	586,200
2042	592,100
2043	598,000
2044	604,000
2045	610,000
2046	616,100
2047	622,300



**EXHIBIT C**  
**DESCRIPTION OF BASE BUILDING WORK**

Refer to Construction Contract attached as Exhibit D

**EXHIBIT D**  
**CONSTRUCTION CONTRACT**



# Document A133™ – 2009

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

**AGREEMENT** made as of the Nineteen day of December in the year 2018  
(In words, indicate day, month and year.)

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

City of Nashua  
229 Main Street  
Nashua, NH 03061-2019

and the Construction Manager:  
(Name, legal status and address)

Harvey Construction Corporation  
10 Harvey Road  
Bedford, NH 03110

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

Downtown Performing Art Center  
201 Main Street  
Nashua, NH 03061

The Architect:  
(Name, legal status and address)

ICON Architecture, Inc.  
101 Summer Street  
Boston, MA 02110

The Owner's Designated Representative:  
(Name, address and other information)

Mr. Tim Cummings Director of Economic Development  
City of Nashua, NH 03061-2019  
cummingst@nashuanh.gov  
(W) 603-589-3072

### **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.

AIA Document A201™-2007, 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.

Init.

The Construction Manager's Designated Representative:  
(Name, address and other information)

Carl DuBois, Vice President  
Harvey Construction Corporation  
10 Harvey Road  
Bedford, NH 03110  
cdubois@hccnh.com  
(W) 603-624-4600 x 148  
(C) 603-369-7207

The Architect's Designated Representative:  
(Name, address and other information)

Ned Collier AIA, LEED AP  
ICON Architecture, Inc.  
101 Summer Street  
Boston, MA 02110  
ncollier@iconarch.com  
(W) 617-939-0724  
(C) 617-460-7874

The Owner and Construction Manager agree as follows.

Init.

## TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	CONSTRUCTION MANAGER'S RESPONSIBILITIES
3	OWNER'S RESPONSIBILITIES
4	COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES
5	COMPENSATION FOR CONSTRUCTION PHASE SERVICES
6	COST OF THE WORK FOR CONSTRUCTION PHASE
7	PAYMENTS FOR CONSTRUCTION PHASE SERVICES
8	INSURANCE AND BONDS
9	DISPUTE RESOLUTION
10	TERMINATION OR SUSPENSION
11	MISCELLANEOUS PROVISIONS
12	SCOPE OF THE AGREEMENT

## EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

### ARTICLE 1 GENERAL PROVISIONS

#### § 1.1 The Contract Documents

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Bid Documents and Addenda issued prior to the 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. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 2.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 2.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern.

#### § 1.2 Relationship of the Parties

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

#### § 1.3 General Conditions

For the Preconstruction Phase, AIA Document A201™-2007, General Conditions of the Contract for Construction, shall apply only as specifically provided in this Agreement. For the Construction Phase, the general conditions of the contract shall be as set forth in A201-2007, which document is incorporated herein by reference. The term "Contractor" as used in A201-2007 shall mean the Construction Manager.

Init.



## ARTICLE 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 2.1 and 2.2. The Construction Manager's Construction Phase responsibilities are set forth in Section 2.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### § 2.1 Preconstruction Phase

§ 2.1.1 The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

### § 2.1.2 Consultation

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

§ 2.1.3 When Project requirements in Section 3.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities and identify items that could affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Owner.

### § 2.1.4 Phased Construction

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

### § 2.1.5 Preliminary Cost Estimates

§ 2.1.5.1 Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume or similar conceptual estimating techniques for the Architect's review and Owner's approval. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

§ 2.1.5.2 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, estimates of the Cost of the Work of increasing detail and refinement and allowing for the further development of the design until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. Such estimates shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect when estimates of the Cost of the Work exceed the latest approved Project budget and make recommendations for corrective action.

### § 2.1.6 Subcontractors and Suppliers

The Construction Manager shall develop bidders' interest in the Project.

§ 2.1.7 The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered well in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered well in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the

items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

#### **§ 2.1.8 Extent of Responsibility**

The Construction Manager shall exercise reasonable care in preparing schedules and estimates. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

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

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi governmental authorities for inclusion in the Contract Documents.

#### **§ 2.2 Guaranteed Maximum Price Proposal and Contract Time**

**§ 2.2.1** At a time to be mutually agreed upon by the Owner and the Construction Manager and in consultation with the Architect, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's review and acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, including contingencies described in Section 2.2.4, and the Construction Manager's Fee.

**§ 2.2.2** To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Construction Manager shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include such things as changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

**§ 2.2.3** The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 2.2.2, to supplement the information provided by the Owner and contained in the Drawings and Specifications;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, allowances, contingency, and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

**§ 2.2.4** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include its contingency for the Construction Manager's exclusive use to cover those costs considered reimbursable as the Cost of the Work but not included in a Change Order.

**§ 2.2.5** The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner and Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

**§ 2.2.6** If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following



acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

§ 2.2.7 The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the commencement of the Construction Phase, unless the Owner provides prior written authorization for such costs.

§ 2.2.8 The Owner shall authorize the Architect to provide the revisions to the Drawings and Specifications to incorporate the agreed upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish those revised Drawings and Specifications to the Construction Manager as they are revised. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the Guaranteed Maximum Price Amendment and the revised Drawings and Specifications.

§ 2.2.9 The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

### § 2.3 Construction Phase

#### § 2.3.1 General

§ 2.3.1.1 For purposes of Section 8.1.2 of A201–2007, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

§ 2.3.1.2 The Construction Phase shall commence upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal or the Owner's issuance of a Notice to Proceed, whichever occurs earlier.

#### § 2.3.2 Administration

§ 2.3.2.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or by other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect. The Owner shall then determine, with the advice of the Construction Manager and the Architect, which bids will be accepted. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 2.3.2.2 If the Guaranteed Maximum Price has been established and when a specific bidder (1) is recommended to the Owner by the Construction Manager, (2) is qualified to perform that portion of the Work, and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Contract Time and the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount and time requirement of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 2.3.2.3 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost plus fee basis, the Construction Manager shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Section 6.11 below.

§ 2.3.2.4 If the Construction Manager recommends a specific bidder that may be considered a "related party" according to Section 6.10, then the Construction Manager shall promptly notify the Owner in writing of such relationship and notify the Owner of the specific nature of the contemplated transaction, according to Section 6.10.2.

§ 2.3.2.5 The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes to the Owner and Architect.



**§ 2.3.2.6** Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and submittal schedule in accordance with Section 3.10 of A201–2007.

**§ 2.3.2.7** The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner. The Construction Manager 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.

**§ 2.3.2.8** The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 2.3.2.7 above.

#### **§ 2.4 Professional Services**

Section 3.12.10 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

#### **§ 2.5 Hazardous Materials**

Section 10.3 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

### **ARTICLE 3 OWNER'S RESPONSIBILITIES**

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

**§ 3.1.1** The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

**§ 3.1.2** Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Construction Manager may only request such evidence if (1) the Owner fails to make payments to the Construction Manager as the Contract Documents require, (2) a change in the Work materially changes the Contract Sum, or (3) the Construction Manager identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager and Architect.

**§ 3.1.3** The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1.1, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

**§ 3.1.4 Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 3.1.4.1** The Owner shall furnish tests, inspections and reports required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 3.1.4.2 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 surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 3.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 3.1.4.4 During the Construction Phase, 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 Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

### § 3.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201-2007, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 3.2.1 Legal Requirements. The Owner shall furnish all legal and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

### § 3.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™-2014, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition. The Owner shall provide the Construction Manager a copy of the executed agreement between the Owner and the Architect, and any further modifications to the agreement.

## ARTICLE 4 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

### § 4.1 Compensation

§ 4.1.1 For the Construction Manager's Preconstruction Phase services, the Owner shall compensate the Construction Manager as follows:

§ 4.1.2 For the Construction Manager's Preconstruction Phase services described in Sections 2.1 and 2.2:  
*(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

The Construction Manager pre-construction fee shall be a lump sum amount of \$20,000.00 plus reimbursable cost.

§ 4.1.3 If the Preconstruction Phase services covered by this Agreement have not been completed within twelve (12) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

§ 4.1.4 Compensation based on Direct Personnel Expense includes the direct salaries of the Construction Manager's personnel providing Preconstruction Phase services on the Project and the Construction Manager's costs for the mandatory and customary contributions and benefits related thereto, such as employment taxes and other statutory employee benefits, insurance, sick leave, holidays, vacations, employee retirement plans and similar contributions.

### § 4.2 Payments

§ 4.2.1 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

Init.



§ 4.2.2 Payments are due and payable  
(Paragraphs deleted)  
within thirty (30) days of the Construction Manager's invoice.

## ARTICLE 5 COMPENSATION FOR CONSTRUCTION PHASE SERVICES

§ 5.1 For the Construction Manager's performance of the Work as described in Section 2.3, the Owner shall pay the Construction Manager the Contract Sum in current funds. The Contract Sum is the Cost of the Work as defined in Section 6.1.1 plus the Construction Manager's Fee.

§ 5.1.1 The Construction Manager's Fee:  
(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

Construction Manager's Fee shall be 3.0% of the final Guaranteed Maximum Price.

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

Construction Manager shall be entitled to a 3.0% fee on all Owner request for changes resulting in an increase to the GMP. No fee adjustment on deduct Owner request changes.

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

Compensation for Additional Services of the Construction Manager's Subcontractors and Vendors shall be in the amount invoiced to the Construction Manager plus ten (10%) percent fee.

§ 5.1.4 Rental rates for Construction Manager-owned equipment shall not exceed ten percent (10 %) of the standard rate paid at the place of the Project.

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

Item	Units and Limitations	Price per Unit (\$0.00)
T.B.D.		

## § 5.2 Guaranteed Maximum Price

§ 5.2.1 The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, as it is amended from time to time. To the extent the Cost of the Work exceeds the Guaranteed Maximum Price, the Construction Manager shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the Owner.  
(Insert specific provisions if the Construction Manager is to participate in any savings.)

One Hundred percent (100%) of any savings generated which results in a reduction in cost below the Guaranteed Maximum Price will be returned to the Owner upon substantial completion.

§ 5.2.2 The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in the Contract Documents and the Date of Substantial Completion shall be subject to adjustment as provided in the Contract Documents.

## § 5.3 Changes in the Work

§ 5.3.1 The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Architect may make minor changes in the Work as provided in Section 7.4 of AIA Document A201-2007, General Conditions of the Contract for Construction. The Construction Manager shall be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

§ 5.3.2 Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Section 7.3.3 of AIA Document A201–2007, General Conditions of the Contract for Construction.

§ 5.3.3 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Section 7.3.3.3 of AIA Document A201–2007 and the term "costs" as used in Section 7.3.7 of AIA Document A201–2007 shall have the meanings assigned to them in AIA Document A201–2007 and shall not be modified by Sections 5.1 and 5.2, Sections 6.1 through 6.7, and Section 6.8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 5.3.4 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in the above-referenced provisions of AIA Document A201–2007 shall mean the Cost of the Work as defined in Sections 6.1 to 6.7 of this Agreement and the term "fee" shall mean the Construction Manager's Fee as defined in Section 5.1 of this Agreement.

§ 5.3.5 If no specific provision is made in Section 5.1.2 for adjustment of the Construction Manager's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 5.1.2 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## ARTICLE 6 COST OF THE WORK FOR CONSTRUCTION PHASE

### § 6.1 Costs to Be Reimbursed

§ 6.1.1 The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in Sections 6.1 through 6.7.

§ 6.1.2 Where any cost is subject to the Owner's prior approval, the Construction Manager shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing Guaranteed Maximum Price Amendment.

### § 6.2 Labor Costs

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

§ 6.2.2 Wages or salaries of the Construction Manager's supervisory and administrative personnel when stationed at the site with the Owner's prior approval.

*(If it is intended that the wages or salaries of certain personnel stationed at the Construction Manager's principal or other offices shall be included in the Cost of the Work, identify in Section 11.5, the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)*

§ 6.2.3 Wages and salaries of the Construction Manager's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 6.2.4 Costs paid or incurred by the Construction Manager for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 6.2.1 through 6.2.3.

§ 6.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, with the Owner's prior approval.



### **§ 6.3 Subcontract Costs**

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts.

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

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

**§ 6.4.2** Costs of materials described in the preceding Section 6.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

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

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

**§ 6.5.2** Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Construction Manager-owned item may not exceed the purchase price of any comparable item. Rates of Construction Manager-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

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

**§ 6.5.4** Costs of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

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

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

### **§ 6.6 Miscellaneous Costs**

**§ 6.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

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

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

**§ 6.6.4** Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 13.5.3 of AIA Document A201-2007 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 6.7.3.

**§ 6.6.5** Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Contract Documents; and payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs

of legal defenses, judgments and settlements shall not be included in the calculation of the Construction Manager's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section 3.17 of AIA Document A201–2007 or other provisions of the Contract Documents, then they shall not be included in the Cost of the Work.

§ 6.6.6 Costs for electronic equipment and software, directly related to the Work with the Owner's prior approval.

§ 6.6.7 Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

#### § 6.6.8

§ 6.6.9 Subject to the Owner's prior approval, expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work.

#### § 6.7 Other Costs and Emergencies

§ 6.7.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ 6.7.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section 10.4 of AIA Document A201–2007.

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

§ 6.7.4 The costs described in Sections 6.1 through 6.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2007 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 6.8.

#### § 6.8 Costs Not To Be Reimbursed

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

- .1 Salaries and other compensation of the Construction Manager's personnel stationed at the Construction Manager's principal office or offices other than the site office, except as specifically provided in Section 6.2, or as may be provided in Article 11;
- .2 Expenses of the Construction Manager's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Sections 6.1 to 6.7;
- .4 The Construction Manager's capital expenses, including interest on the Construction Manager's capital employed for the Work;
- .5 Except as provided in Section 6.7.3 of this Agreement, costs due to the negligence or failure of the Construction Manager, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Sections 6.1 to 6.7;
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .8 Costs for services incurred during the Preconstruction Phase.

#### § 6.9 Discounts, Rebates and Refunds

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



§ 6.9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 6.9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

#### § 6.10 Related Party Transactions

§ 6.10.1 For purposes of Section 6.10, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Construction Manager; any entity in which any stockholder in, or management employee of, the Construction Manager owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Construction Manager. The term "related party" includes any member of the immediate family of any person identified above.

§ 6.10.2 If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods or service from the related party, as a Subcontractor, according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3. If the Owner fails to authorize the transaction, the Construction Manager shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Sections 2.3.2.1, 2.3.2.2 and 2.3.2.3.

#### § 6.11 Accounting Records

The Construction Manager shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, purchase orders, vouchers, memoranda and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

### ARTICLE 7 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

#### § 7.1 Progress Payments

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

§ 7.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

§ 7.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the certified amount to the Construction Manager not later than the 25th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.

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

§ 7.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, less that portion of those payments attributable to the Construction Manager's Fee, plus payrolls for the period covered by the present Application for Payment.

§ 7.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Construction Manager's Fee

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shall be shown as a single separate item. 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, unless objected to by the Architect, shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

**§ 7.1.6** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work for which the Construction Manager has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

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

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201-2007;
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Construction Manager's Fee, less retainage of five percent ( 5 %). The Construction Manager's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 Subtract retainage of five percent ( 5 %) from that portion of the Work that the Construction Manager self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Construction Manager in the documentation required by Section 7.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007.

**§ 7.1.8** The Owner and Construction Manager agree upon (1) a mutually acceptable procedure for review and approval of payments to Subcontractors and (2) the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

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

**§ 7.1.10** In taking action on the Construction Manager's Applications for Payment, the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 7.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections; or that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

## **§ 7.2 Final Payment**

**§ 7.2.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when



- .1 the Construction Manager has fully performed the Contract except for the Construction Manager's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-2007, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect.

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

**§ 7.2.2** The Owner's auditors will review and report in writing on the Construction Manager's final accounting within 30 days after delivery of the final accounting to the Architect by the Construction Manager. Based upon such Cost of the Work as the Owner's auditors report to be substantiated by the Construction Manager's final accounting, and provided the other conditions of Section 7.2.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's auditors, either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-2007. The time periods stated in this Section supersede those stated in Section 9.4.1 of the AIA Document A201-2007. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

**§ 7.2.3** If the Owner's auditors report the Cost of the Work as substantiated by the Construction Manager's final accounting to be less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Section 15.2 of A201-2007. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

**§ 7.2.4** If, subsequent to final payment and at the Owner's request, the Construction Manager incurs costs described in Section 6.1.1 and not excluded by Section 6.8 to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager such costs and the Construction Manager's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Construction Manager has participated in savings as provided in Section 5.2.1, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Construction Manager.

## ARTICLE 8 INSURANCE AND BONDS

For all phases of the Project, the Construction Manager shall purchase and maintain insurance, and the Construction Manager shall provide bonds as set forth in Article 11 of AIA Document A201-2007.

*(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201-2007.)*

Type of Insurance or Bond	Limit of Liability or Bond Amount (\$0.00)
Performance & Payment Bonds	100% of construction GMP
Automobile Liability	\$ 1,000,000.00 each accident
Commercial General Liability	\$ 1,000,000.00 each occurrence, \$ 2,000,000.00 Aggregate
General Liability Umbrella	\$ 10,000,000.00
Property Insurance shall be by owner	\$ 1,000.00 deductible per occurrence

## ARTICLE 9 DISPUTE RESOLUTION

**§ 9.1** Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 9 and Article 15 of A201-2007. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 9.3 of this Agreement shall not apply.

**§ 9.2** For any Claim subject to, but not resolved by mediation pursuant to Section 15.3 of AIA Document A201–2007, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box. If the Owner and Construction Manager do not select a method of binding dispute resolution below, 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.)*

*(Paragraph deleted)*

☒ [ X ] Litigation in New Hampshire Superior Court Hillsborough South

☐ [ ] Other: *(Specify)*

### **§ 9.3 Initial Decision Maker**

The Architect will serve as the Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the 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.)*

## **ARTICLE 10 TERMINATION OR SUSPENSION**

### **§ 10.1 Termination Prior to Establishment of the Guaranteed Maximum Price**

**§ 10.1.1** Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Section 14.1.1 of A201–2007.

**§ 10.1.2** In the event of termination of this Agreement pursuant to Section 10.1.1, the Construction Manager shall be equitably compensated for Preconstruction Phase services performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 4.1.

**§ 10.1.3** If the Owner terminates the Contract pursuant to Section 10.1.1 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 10.1.2:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager which the Owner elects to retain and which is not otherwise included in the Cost of the Work under Section 10.1.3.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 10, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or

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rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

#### **§ 10.2 Termination Subsequent to Establishing Guaranteed Maximum Price**

Following execution of the Guaranteed Maximum Price Amendment and subject to the provisions of Section 10.2.1 and 10.2.2 below, the Contract may be terminated as provided in Article 14 of AIA Document A201–2007.

**§ 10.2.1** If the Owner terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager pursuant to Sections 14.2 and 14.4 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received pursuant to Sections 10.1.2 and 10.1.3 of this Agreement.

**§ 10.2.2** If the Construction Manager terminates the Contract after execution of the Guaranteed Maximum Price Amendment, the amount payable to the Construction Manager under Section 14.1.3 of A201–2007 shall not exceed the amount the Construction Manager would otherwise have received under Sections 10.1.2 and 10.1.3 above, except that the Construction Manager's Fee shall be calculated as if the Work had been fully completed by the Construction Manager, utilizing as necessary a reasonable estimate of the Cost of the Work for Work not actually completed.

#### **§ 10.3 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007. In such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 5.1 and 5.3.5 of this Agreement.

### **ARTICLE 11 MISCELLANEOUS PROVISIONS**

**§ 11.1** Terms in this Agreement shall have the same meaning as those in A201–2007.

#### **§ 11.2 Ownership and Use of Documents**

Section 1.5 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

#### **§ 11.3 Governing Law**

Section 13.1 of A201–2007 shall apply to both the Preconstruction and Construction Phases.

#### **§ 11.4 Assignment**

The Owner and Construction Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Construction Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement. Except as provided in Section 13.2.2 of A201–2007, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

#### **§ 11.5 Other provisions:**

See Exhibit B Labor Rate Schedule

See Exhibit C Certificate of Insurance

List of Construction Documents (These will be included and summarized on attachment A once developed)

### **ARTICLE 12 SCOPE OF THE AGREEMENT**

**§ 12.1** This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

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§ 12.2 The following documents comprise the Agreement:

- .1 AIA Document A133–2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price
- .2 AIA Document A201–2007, General Conditions of the Contract for Construction
- .3 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed, or the following:
- .4 AIA Document E202™–2008, Building Information Modeling Protocol Exhibit, if completed, or the following:
- .5 Other documents:  
(List other documents, if any, forming part of the Agreement.)

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

OWNER (Signature)

James W. Dowd  
(Printed name and title)

CONSTRUCTION MANAGER (Signature)

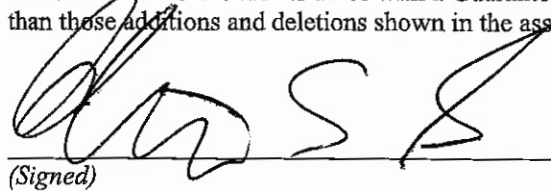
William E. Stevens President  
(Printed name and title)

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## Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, William E. Stevens, President, 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 09:43:43 ET on 03/19/2019 under Order No. 5969000221 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

  
(Signed)

PRESIDENT  
(Title)

03/19/2019  
(Dated)



# AIA® Document A201™ – 2007

## General Conditions of the Contract for Construction

### for the following PROJECT:

*(Name and location or address)*

Downtown Performing Art Center  
Main Street  
Nashua, NH 03061

### THE OWNER:

*(Name, legal status and address)*

The City of Nashua  
Main Street  
Nashua, NH 03061-2019

### THE ARCHITECT:

*(Name, legal status and address)*

ICON Architecture, Inc.  
101 Summer Street  
Boston, MA 02110

### 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.

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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 and agreed to in writing by the Owner. 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 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's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

#### **§ 1.1.3 THE WORK**

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

#### **§ 1.1.4 THE PROJECT**

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

#### **§ 1.1.5 THE DRAWINGS**

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

#### **§ 1.1.6 THE SPECIFICATIONS**

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

#### **§ 1.1.7 INSTRUMENTS OF SERVICE**

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

#### **§ 1.1.8 INITIAL DECISION MAKER**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

### **§ 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.



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

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

### § 1.3 CAPITALIZATION

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

### § 1.4 INTERPRETATION

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

### § 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

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

### § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

## ARTICLE 2 OWNER

### § 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in 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 Thirty days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

### § 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

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

**§ 2.2.3** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall 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.

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

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

### **§ 2.3 OWNER'S RIGHT TO STOP THE WORK**

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

### **§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK**

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

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 GENERAL**

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

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

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

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or 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, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect.

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

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

### § 3.4 LABOR AND MATERIALS

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

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

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

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### § 3.5 WARRANTY

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.

### § 3.6 TAXES

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

### § 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

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

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

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

§ 3.7.4 **Concealed or Unknown Conditions.** If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 21 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 an equitable adjustment 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 in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

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

### § 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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- .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 furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

**§ 3.9.3** The Contractor shall not employ a proposed superintendent 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 SCHEDULES**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

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

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

## **§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE**

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be 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 the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the 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 requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing 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 written 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. 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 cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.



### **§ 3.13 USE OF SITE**

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

### **§ 3.14 CUTTING AND PATCHING**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and 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 such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's 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 or 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 Owner shall be entitled to reimbursement from the Contractor.

### **§ 3.16 ACCESS TO WORK**

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

### **§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS**

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

### **§ 3.18 INDEMNIFICATION**

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

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

## ARTICLE 4 ARCHITECT

### § 4.1 GENERAL

§ 4.1.1 The 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.

§ 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.

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

### § 4.2 ADMINISTRATION OF THE CONTRACT

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

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 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 report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

### § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

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

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

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such 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, material and equipment 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, unless otherwise specifically stated by the Architect, 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 authorize 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 duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

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

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

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

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

## **ARTICLE 5 SUBCONTRACTORS**

### **§ 5.1 DEFINITIONS**

**§ 5.1.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or 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 or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the

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Architect requires additional time for review. Failure of the Owner or Architect to reply within the 14-day period shall constitute notice of no reasonable objection.

**§ 5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner 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 previously selected if the Owner or Architect makes reasonable objection to such substitution.

### **§ 5.3 SUBCONTRACTUAL RELATIONS**

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these 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 in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

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



## **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 Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

**§ 6.1.2** When 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 other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the 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, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

### **§ 6.2 MUTUAL RESPONSIBILITY**

**§ 6.2.1** The Contractor 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 report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

**§ 6.2.3** The Contractor shall reimburse the Owner for costs the Owner incurs 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 the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors 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, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work.

## § 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the 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 7.3.7.

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

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the 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.

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the 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 7.3.7 shall be limited to the following:



- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 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 related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.

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

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

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

#### § 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor.

### ARTICLE 8 TIME

#### § 8.1 DEFINITIONS

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

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

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

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial 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 an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

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

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

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 CONTRACT SUM

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

### § 9.2 SCHEDULE OF VALUES

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

### § 9.3 APPLICATIONS FOR PAYMENT

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

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

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

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

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



## § 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amount as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. 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. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. 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 material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

## § 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The 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 for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

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

§ 9.5.3 If the 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 material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

## § 9.6 PROGRESS PAYMENTS

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

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the

Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

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

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

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

## **§ 9.7 FAILURE OF PAYMENT – Intentionally Omitted**

### **§ 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, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any,



the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

### **§ 9.9 PARTIAL OCCUPANCY OR USE**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor 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 written 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 and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

**§ 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 and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the 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

(Paragraphs deleted)

- Deleted

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

### ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

#### § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

#### § 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

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

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

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

§ 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, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 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.

§ 10.2.7.1 It is the Contractor's responsibility to initiate and maintain safety training and compliance programs that meet or exceed OSHA standards and all applicable Federal, State, and local safety health and environmental regulations. The Owner maintains the right to inspect the work site to determine if conditions exist that could reasonably be expected to cause death, serious physical harm or will compromise the safety and health of the Owner,



including visitors and contractor's employees and sub-employees. If such conditions exist, the Owner has the right to suspend work deemed unsafe.

#### **§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY**

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

#### **§ 10.3 HAZARDOUS MATERIALS**

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

**§ 10.3.2** Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify 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 such material or substance or who are to perform the task of removal or safe containment of such 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 in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, 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 materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

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

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

## § 10.4 EMERGENCIES

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

## ARTICLE 11 INSURANCE AND BONDS

### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

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

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

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

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner 10 days prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness.

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

Contractor shall carry and maintain in effect during the performance of services under this contract.

Comprehensive or Commercial General Liability insurance which shall include contractual, XCU, products and completed operations liability coverages. Bodily injury and property damage with combined single limits of not less than \$1,000,000 per occurrence; and if written on an aggregate basis, \$2,000,000 aggregate limit – include per project aggregate endorsement. The Owner must be named as an additional insured;



- Commercial Automobile Liability insurance endorsed for "any auto" with combined single limits of liability of not less than \$1,000,000 each occurrence. The owner must be named as an additional insured;
- And Workers' Compensation insurance in compliance with the State of New Hampshire statutes, \$100,000/\$500,000/\$100,000.

None of the requirements as to types and limits to be maintained by Contractor are intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Contractor under this contract. The Owner shall not maintain any insurance on behalf of Contractor. Subcontractors are subject to the same insurance requirements as Contractor and it shall be the Contractor's responsibility to ensure compliance of this requirement.

The parties agree that Contractor shall have the status of and shall perform all work under this contract as an independent contractor, maintaining control over all its consultants, sub consultants, contractors, or subcontractors. The only contractual relationship created by this contract is between the Owner and Contractor, and nothing in this contract shall create any contractual relationship between the Owner and Contractor's consultants, sub consultants, contractors, or subcontractors. The parties also agree that Contractor is not the Owner's employee and that there shall be no:

- (1) Withholding of income taxes by the Owner;
  - (2) Industrial insurance coverage provided by the Owner;
  - (3) Participation in group insurance plans which may be available to employees of the Owner;
  - (4) Participation or contributions by either the independent contractor or the Owner to the public employee's retirement system;
  - (5) Accumulation of vacation leave or sick leave provided by the Owner;
  - (6) Unemployment compensation coverage provided by the Owner.
- All deductibles and self-insured retentions shall be fully disclosed in the certificate(s) of insurance.
  - If aggregate limits of less than \$2,000,000 are imposed on bodily injury and property damage, Contractor must maintain umbrella liability insurance of at least \$1,000,000. All aggregates must be fully disclosed on the required certificate of insurance.
  - The specified insurance requirements do not relieve Contractor of its responsibilities or limit the amount of its liability to the Owner or other persons, and Contractor is encouraged to purchase such additional insurance, as it deems necessary.
  - The insurance provided herein is primary, and no insurance held or owned by the Owner shall be called upon to contribute to a loss.

## § 11.2 OWNER'S LIABILITY INSURANCE

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

## § 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

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

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**§ 11.3.1.2 - Deleted**

**§ 11.3.1.3 – Deleted**

**§ 11.3.1.4** This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit. The insurance shall include a permission to occupy endorsement.

**§ 11.3.1.5** Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

**§ 11.3.2 BOILER AND MACHINERY INSURANCE**

The Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

**§ 11.3.3 LOSS OF USE INSURANCE**

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

**§ 11.3.4 – Deleted**

**§ 11.3.5 – Deleted**

**§ 11.3.6** Before an exposure to loss may occur, the Contractor shall file with the Owner a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

**§ 11.3.7 WAIVERS OF SUBROGATION - Deleted**

**§ 11.3.8 – Deleted**

**§ 11.3.9** If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

**§ 11.3.10** The Owner as fiduciary shall have power to adjust and settle a loss with insurers.

**§ 11.4 PERFORMANCE BOND AND PAYMENT BOND**

**§ 11.4.1** The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

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



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

### **§ 12.1 UNCOVERING OF WORK**

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

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

### **§ 12.2 CORRECTION OF WORK**

#### **§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION**

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's 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 an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor. 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 2.4.

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

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

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

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

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

### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located. All disputes arising from or in connection with the Contract shall be brought in the State of New Hampshire, Superior Court Hillsborough South.

### § 13.2 SUCCESSORS AND ASSIGNS

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

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

### § 13.3 WRITTEN NOTICE

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

### § 13.4 RIGHTS AND REMEDIES

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

§ 13.4.2 No action or failure to act by the Owner, 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 there under, except as may be specifically agreed in writing.

### § 13.5 TESTS AND INSPECTIONS

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

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the 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 13.5.3, shall be at the Owner's expense.

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



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

§ 13.5.5 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.

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

#### § 13.6 INTEREST – Intentionally Omitted

#### § 13.7 -Deleted

### 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 60 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner 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 for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

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

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

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

§ 14.2.4 If the 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 maybe adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum may 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 written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 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.
- .4 assist Owner in the orderly transition of the Work to another contractor of the Owner's choosing or to the Owner in the Owner's sole discretion.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, on the Work not executed.

### ARTICLE 15 CLAIMS AND DISPUTES

#### § 15.1 CLAIMS

##### § 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.



### § 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker.

### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

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

### § 15.1.4 CLAIMS FOR ADDITIONAL COST

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

### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

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

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

### § 15.1.6 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 15.1.6 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

### § 15.2 INITIAL DECISION - Deleted

*(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.

### § 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 15.1.6 may be subject to mediation.

**§ 15.3.2** The parties may endeavor to resolve their Claims by mediation. 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..

§ 15.3.3 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 – Intentionally Omitted

*(Paragraphs deleted)*

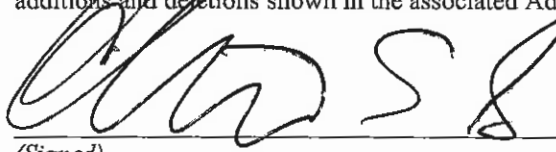
§ 15.4.4 CONSOLIDATION OR JOINDER – Intentionally Omitted

*(Paragraphs deleted)*

## Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, William E. Stevens, President, 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 07:59:31 ET on 02/07/2019 under Order No. 5969000221 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™ – 2007, 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)

PRESIDENT  
(Title)

03/19/2019  
(Dated)

**THE CITY OF NASHUA  
DOWNTOWN PERFORMING ART CENTER  
HOURLY RATE SCHEDULE  
EXHIBIT "B"  
12/19/2018**

Harvey Construction Corporation Rate Schedule Pre-Construction & Construction Management  
Services

Pre-construction Personnel	Rate
Director of Estimating	\$ 110.00
Estimating Executive	\$ 100.00
Architectural Estimator/Revit Engineer	\$ 85.00
Mechanical Estimator	\$ 100.00
Electrical Estimator	\$ 100.00
Earthwork Estimator	\$ 80.00

Construction Personnel	Rate
Project Executive	\$ 125.00
Project Manager	\$ 110.00
Assistant Project Manager	\$ 80.00
Project Engineer	\$ 60.00
General Superintendent	\$ 125.00
Superintendent	\$ 115.00
Assistant Superintendent	\$ 75.00
Layout Engineer	\$ 65.00
Laborer Foreman	\$ 68.00
Laborer	\$ 60.00
Project Accountant	\$ 65.00

Rates do not include overtime or night work.

All rates are subject to annual review.



**THE CITY OF NASHUA  
DOWNTOWN PERFORMING ART CENTER  
CERTIFICATE OF INSURANCE  
EXHIBIT "C"  
12/19/2018**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/17/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> THE ROWLEY AGENCY INC. 45 Constitution Avenue P.O. Box 511 Concord NH 03302-0511		<b>CONTACT NAME:</b> Jennifer Letendre <b>PHONE (A/C, No. Ext):</b> (603) 224-2562 <b>E-MAIL ADDRESS:</b> jletendre@rowleyagency.com <b>FAX (A/C, No):</b> (603) 224-8012	
<b>INSURED</b> Harvey Construction Corporation 10 Harvey Road Bedford NH 03110		<b>INSURER(S) AFFORDING COVERAGE</b> <b>INSURER A:</b> Firemen's Ins Co of Wash. DC <b>INSURER B:</b> Starr Indemnity & Liability Co <b>INSURER C:</b> Liberty Insurance Underwriters, Inc <b>INSURER D:</b> <b>INSURER E:</b> <b>INSURER F:</b>	
		<b>NAIC #</b> 21784 38318 19917	

**COVERAGES****CERTIFICATE NUMBER:** 18/19 All Lines**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER:			CPA0184919-22	7/1/2018	7/1/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			CAA0184920-22	7/1/2018	7/1/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0			1000585217181	7/1/2018	7/1/2019	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	3A States: NH/MA/VT/ME WPA0242726-20	3/1/2018	3/1/2019	<input checked="" type="checkbox"/> PER STATUTE E.L. EACH ACCIDENT \$ 500,000 E.L. DISEASE - EA EMPLOYEE \$ 500,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
C	Excess Liability			1000307631-01	7/01/2018	7/01/2019	Ea Occurrence 15,000,000 Aggregate 15,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Project: Downtown Performing Art Center, Nashua, NH. The City of Nashua, ICON Architecture, INC and their Consultants are additional insureds with respects to general liability when required by written contract.

**CERTIFICATE HOLDER**

The City of Nashua  
229 Main St  
Nashua, NH 03061-2019

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Jennifer Letendre/JLP

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# AIA Document A133™ – 2009 Exhibit A

## Guaranteed Maximum Price Amendment

### for the following PROJECT:

*(Name and address or location)*

Downtown Performing Art Center  
201 Main Street  
Nashua, NH 03061

### THE OWNER:

*(Name, legal status and address)*

City of Nashua  
229 Main Street  
Nashua, NH 03061-2019

### THE CONSTRUCTION MANAGER:

*(Name, legal status and address)*

Harvey Construction Corporation  
10 Harvey Road  
Bedford, New Hampshire 03110

### ARTICLE A.1

#### § A.1.1 Guaranteed Maximum Price

Pursuant to Section 2.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of this Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed Fifteen Million Eight Hundred Twenty-One Thousand Eight Hundred Ninety and no/100 Dollars

(\$ 15,821,890.00 ), subject to additions and deductions by Change Order as provided in the Contract Documents.

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Construction Manager's Fee, and other items that comprise the Guaranteed Maximum Price.

*(Provide below or reference an attachment.)*

See Attached Exhibits

§ A.1.1.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:  
*(State the numbers or other identification of accepted alternates. If the Contract Documents permit the Owner to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the amount for each and the date when the amount expires.)*

### 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.

AIA Document A201™–2007, 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.

Init.

See Attached Exhibit D

§ A.1.1.4 Allowances included in the Guaranteed Maximum Price, if any:  
(Identify allowance and state exclusions, if any, from the allowance price.)

Item	Price (\$0.00)
See Attached Exhibit E	

§ A.1.1.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

See Attached Exhibit F

§ A.1.1.6 The Guaranteed Maximum Price is based upon the following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
None			

§ A.1.1.7 The Guaranteed Maximum Price is based upon the following Specifications:  
(Either list the Specifications here, or refer to an exhibit attached to this Agreement.)  
See Attached Exhibit G

Section	Title	Date	Pages
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§ A.1.1.8 The Guaranteed Maximum Price is based upon the following Drawings:  
(Either list the Drawings here, or refer to an exhibit attached to this Agreement.)  
See Attached Exhibit G

Number	Title	Date
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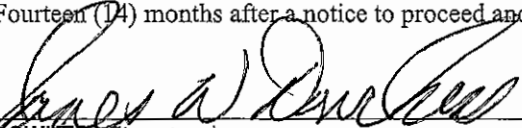
§ A.1.1.9 The Guaranteed Maximum Price is based upon the following other documents and information:  
(List any other documents or information here, or refer to an exhibit attached to this Agreement.)

See Attached Exhibit H – GMP Estimate  
See Attached Exhibit I – Construction Schedule  
See Attached Exhibit J – Exclusions  
See Attached Exhibit K – Value Engineering Matrix

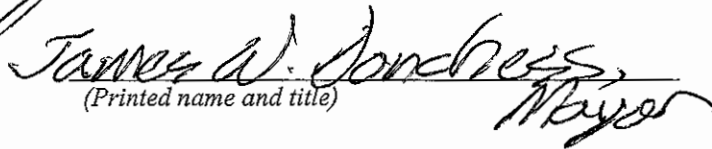
## ARTICLE A.2

§ A.2.1 The anticipated date of Substantial Completion established by this Amendment:

Fourteen (14) months after a notice to proceed and the utility lines are relocated on West Pearl Street

  
OWNER (Signature)

  
CONSTRUCTION MANAGER (Signature)

  
(Printed name and title)

William E. Stevens President  
(Printed name and title)

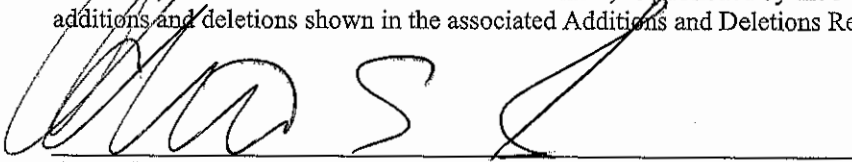
Init.



## Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, William E. Stevens, President, 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 16:38:51 ET on 10/20/2020 under Order No. 4797552925 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2009 Exhibit A, Guaranteed Maximum Price Amendment, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

  
(Signed)

PRESIDENT  
(Title)

10/21/2020  
(Dated)

**THE CITY OF NASHUA  
DOWNTOWN PERFORMING ART CENTER  
NASHUA, NEW HAMPSHIRE  
ALTERNATES  
EXHIBIT "D"  
10/20/2020**

The following is a list of add alternates presently not included in Harvey Construction's GMP:  
(Alternates include labor, material, equipment and mark-ups unless noted otherwise).

**NONE**

**THE CITY OF NASHUA  
DOWNTOWN PERFORMING ART CENTER  
NASHUA, NEW HAMPSHIRE  
ASSUMPTIONS & CLARIFICATIONS  
EXHIBIT "F"  
10/20/2020**

The following is a list of assumptions and clarifications to Harvey Construction's GMP:

- The construction schedule and proposed end date is based on the assumption of no delay(s) due to the Covid 19 pandemic. The Owner potential for delay(s) in manufacturing, fabrication and delivery of necessary materials and/ or labor beyond the control of Harvey Construction due to the Covid 19 pandemic that may affect the date of occupancy. The Parties agree that they will cooperate in good faith to negotiate a reasonable time extension as well as a change order to allocate between the parties any additional costs incurred by Harvey Construction due to the said delays.
- Construction Waste Management will consist of a single stream plan that will maximize recycling and reuse.
- Industrial Hygienist by Owner

**THE CITY OF NASHUA  
DOWNTOWN PERFORMING ART CENTER  
NASHUA NEW HAMPSHIRE  
LIST OF DOCUMENTS  
EXHIBIT "G"  
10/20/2020**

**REPORTS**

**DATE**

SW Cole Geotech Report	5/29/2019
RPF Hazardous Material Report – File No. 199123	5/10/2019

**PROJECT DRAWINGS & SPECIFICATIONS**

**General - As prepared by ICON Architects**

• G-000	Cover Sheet	8/14/2020
• G-001	Drawing Set	8/14/2020
• G-002	Abbreviations & Graphic Symbols	8/14/2020

**Civil Set – As Prepared by Rist Frost Shumway Engineering, P.C.**

• C-001	Civil Notes, Legend & Abbreviations	8/14/2020
• C-002	Existing Conditions & Demolition Plan	8/14/2020
• C-201	Site Layout & Materials Plan	8/14/2020
• C-301	Site Grading & Drainage Plan	8/14/2020
• C-401	Site Utilities Plan	8/14/2020
• C-501	Erosion Control Plan	8/14/2020
• C-502	Erosion Control Notes & Details	8/14/2020
• C-601	Civil Details	8/14/2020

**Life Safety – As prepared by Code Red Consultants**

• LS-100	Code Sheet	8/14/2020
• LS-101	Basement Life Safety Plan	8/14/2020
• LS-102	First Floor / Orchestra Level Life Safety Plan	8/14/2020
• LS-103	Second Floor Parterre Level Life Safety Plan	8/14/2020
• LS-104	Third Floor /Terrace Level Life Safety Plan	8/14/2020
• LS-105	Fourth Floor Balcony Level Life Safety Plan	8/14/2020

**Architectural Demolition - As prepared by ICON Architects**

• D-101	Demolition Basement Plan	8/14/2020
• D-102	Demolition First Floor Plan	8/14/2020
• D-103	Demolition Second Floor Plan	8/14/2020
• D-104	Demolition Third Floor Plan	8/14/2020
• D-105	Demolition Fourth Plan	8/14/2020
• D-106	Demolition Roof Plan	8/14/2020
• D-107	Demolition Reflected Ceiling Plan	8/14/2020
• D-108	Demolition Reflected Ceiling Plan	8/14/2020
• D-109	Demolition Reflected Ceiling Plan	8/14/2020
• D-110	Demolition Reflected Ceiling Plan	8/14/2020
• D-111	Demolition Reflected Ceiling Plan	8/14/2020
• D-201	Demolition Elevations	8/14/2020
• D-202	Demolition Elevations	8/14/2020
• D-203	Demolition Elevations	8/14/2020
• D-301	Demolition Building Sections	8/14/2020



**Structural Set - As Prepared by Rist Frost Shumway Engineering, P.C.**

• S-001	Structural Notes & Legends	8/14/2020
• S-002	Typical Details – Concrete	8/14/2020
• S-003	Typical Details – Steel -1	8/14/2020
• S-004	Typical Details – Steel -2	8/14/2020
• S-005	Typical Details – Steel Joist	8/14/2020
• S-006	Typical Details – Concrete	8/14/2020
• S-100	Foundation Plan	8/14/2020
• S-101	First Level Framing Plan	8/14/2020
• S-102	Stage Level Framing Plan	8/14/2020
• S-103	Parterre Level Framing Plan	8/14/2020
• S-104	Third Level Framing Plan	8/14/2020
• S-105	Low Roof & Balcony Level Framing Plan	8/14/2020
• S-106	Balcony Framing Plan	8/14/2020
• S-107	Roof Framing Plan	8/14/2020
• S-108	Dunnage Framing Plan	8/14/2020
• S-201	Frame Elevations	8/14/2020
• S-202	Column Schedule	8/14/2020
• S-301	Sections	8/14/2020
• S-302	Sections	8/14/2020
• S-303	Sections	8/14/2020
• S-304	Sections	8/14/2020

**Architectural Set - As prepared by ICON Architects**

• A-101	Basement Key Plan	8/14/2020
• A-102	First Floor / Orchestra Level Key Plan	8/14/2020
• A-103	Second Floor / Parterre Level Key Plan	8/14/2020
• A-104	Third Floor / Terrace Key Plan	8/14/2020
• A-105	Fourth Floor Balcony Level Key Plan	8/14/2020
• A-106	Roof Plan	8/14/2020
• A-107	Enlarged Floor Plan-Basement West	8/14/2020
• A-108	Enlarged Floor Plan-Basement East	8/14/2020
• A-109	Enlarged Floor Plan-First Floor West	8/14/2020
• A-110	Enlarged Floor Plan- First Floor East	8/14/2020
• A-111	Enlarged Floor Plan-Second Floor West	8/14/2020
• A-112	Enlarged Floor Plan-Second Floor East	8/14/2020
• A-113	Enlarged Floor Plan-Third Floor West	8/14/2020
• A-114	Enlarged Floor Plan-Third Floor East	8/14/2020
• A-115	Enlarged Floor Plan-Fourth Floor West	8/14/2020
• A-116	Enlarged Floor Plan-Fourth Floor East	8/14/2020
• A-117	Basement Reflected Ceiling Plan	8/14/2020
• A-118	First Floor / Orchestra Level Reflected Ceiling Plan	8/14/2020
• A-119	Second Floor / Parterre Level Reflected Ceiling Plan	8/14/2020
• A-120	Third Floor / Terrace Level Reflected Ceiling Plan	8/14/2020
• A-121	Fourth Floor / Balcony Level Reflected Ceiling Plan	8/14/2020
• A-122	Enlarged RCP – Basement West	8/14/2020
• A-123	Enlarged RCP – Basement East	8/14/2020
• A-124	Enlarged RCP – First Floor West	8/14/2020
• A-125	Enlarged RCP – First Floor East	8/14/2020
• A-126	Enlarged RCP – Second Floor West	8/14/2020
• A-127	Enlarged RCP – Second Floor East	8/14/2020
• A-128	Enlarged RCP – Third Floor West	8/14/2020
• A-129	Enlarged RCP – Third Floor East	8/14/2020
• A-130	Enlarged RCP – Fourth Floor West	8/14/2020
• A-131	Enlarged RCP – Fourth Floor East	8/14/2020

• A-132	Basement Slab Plan	8/14/2020
• A-133	First Floor / Orchestra Level Slab Plan	8/14/2020
• A-134	Second Floor / Parterre Level Slab Plan	8/14/2020
• A-135	Third Floor / Terrace Level Slab Plan	8/14/2020
• A-136	Fourth Floor / Balcony Level Slab Plan	8/14/2020
• A-137	Basement Level Floor Finish Plan	8/14/2020
• A-138	First Floor / Orchestra Level Floor Finish Plan	8/14/2020
• A-139	Second Floor / Parterre Level Floor Finish Plan	8/14/2020
• A-140	Third Floor / Terrace Level Floor Finish Plan	8/14/2020
• A-141	Fourth Floor / Balcony Level Floor Finish Plan	8/14/2020
• A-201	Building Elevations	8/14/2020
• A-202	Building Elevations	8/14/2020
• A-301	North-South Building Section	8/14/2020
• A-302	East-West Building Section	8/14/2020
• A-303	East-West House Section	8/14/2020
• A-304	East-West Stage Section	8/14/2020
• A-305	Audience Chamber Elevations	8/14/2020
• A-305 ALT	Audience Chamber Elevations ADD ALT	8/14/2020
• A-306	Stage House Elevations	8/14/2020
• A-400	Floor & Roof Assemblies	8/14/2020
• A-401	Wall Sections	8/14/2020
• A-402	Wall Sections	8/14/2020
• A-403	Wall Sections	8/14/2020
• A-404	Wall Sections	8/14/2020
• A-405	Wall Sections	8/14/2020
• A-406	Wall Sections - Interior	8/14/2020
• A-407	Wall Sections - Interior	8/14/2020
• A-408	Wall Sections - Interior	8/14/2020
• A-501	Enlarged Elevations – Public Space	8/14/2020
• A-502	Enlarged Elevations – Public Space	8/14/2020
• A-504	Enlarged Elevations – Public Space	8/14/2020
• A-505	Enlarged Elevations – Public Space	8/14/2020
• A-506	Enlarged Elevations – Public Space	8/14/2020
• A-507	Enlarged Elevations – Public Space	8/14/2020
• A-508	Enlarged Elevations – Public Restrooms	8/14/2020
• A-509	Enlarged Elevations – Public Restrooms	8/14/2020
• A-510	Enlarged Elevations – BOH Spaces	8/14/2020
• A-511	Enlarged Elevations – BOH Spaces	8/14/2020
• A-512	Enlarged Elevations – BOH Spaces	8/14/2020
• A-513	Enlarged Elevations – BOH Spaces	8/14/2020
• A-514	Enlarged Elevations – BOH Spaces	8/14/2020
• A-515	Enlarged Elevations – BOH Spaces	8/14/2020
• A-516	Enlarged Elevations – BOH Spaces	8/14/2020
• A-517	Enlarged Elevations – BOH Spaces	8/14/2020
• A-518	Enlarged Elevations – BOH Restrooms	8/14/2020
• A-519	Enlarged Elevations – BOH Restrooms	8/14/2020
• A-520	Enlarged Elevations – Concessions	8/14/2020
• A-521	Enlarged Elevations – Audience Chamber	8/14/2020
• A-522	Enlarged Elevations – Audience Chambers	8/14/2020
• A-523	Enlarged Elevations – Balcony	8/14/2020
• A-601	Stair 1 Plans	8/14/2020
• A-602	Stair 1 Sections	8/14/2020
• A-603	Stair 1 Sections	8/14/2020

• A-604	Stair 2 Plans	8/14/2020
• A-605	Stair 2 Sections	8/14/2020
• A-606	Stair 2 Sections	8/14/2020
• A-607	Stair 3 Plans & Sections	8/14/2020
• A-608	Stair 3 Sections	8/14/2020
• A-609	Stair 3 Sections	8/14/2020
• A-610	Stair 4 Plans & Sections	8/14/2020
• A-611	W. Pearl & Main St. Stair, Ramp Plan & Sections	8/14/2020
• A-612	Typical Stair Details	8/14/2020
• A-613	Typical Stair Details	8/14/2020
• A-619	Elevator Plans & Elevations	8/14/2020
• A-620	Elevator Sections	8/14/2020
• A-621	Elevator Details	8/14/2020
• A-701	Exterior Details – Façade Base Sections	8/14/2020
• A-703	Exterior Details – Polycarbonate	8/14/2020
• A-704	Exterior Details – Decorative Fiber Panel	8/14/2020
• A-705	Exterior Details – CMP & Fiber Cement Panel	8/14/2020
• A-706	Exterior Details – CMU & Exterior Mock-up	8/14/2020
• A-707	Exterior Details – Oculus	8/14/2020
• A-708	Exterior Details – Canopy & Balcony	8/14/2020
• A-709	Exterior Details – Loading Dock, OHD, & Roof Details	8/14/2020
• A-720	Interior Details – Misc.	8/14/2020
• A-721	Interior Details – Misc.	8/14/2020
• A-751	Interior Details – BOH Casework	8/14/2020
• A-752	Interior Details – Stage House	8/14/2020
• A-753	Interior Details – Parterre	8/14/2020
• A-754	Interior Details – Balcony	8/14/2020
• A-755	Interior Details – Audience Chamber	8/14/2020
• A-755	Interior Details – Audience Chamber	8/14/2020
• A-756	Interior Details – Audience Chamber	8/14/2020
• A-757	Interior Details – Audience Chamber	8/14/2020
• A-801	Partition Types	8/14/2020
• A-802	Partition Types	8/14/2020
• A-803	Door Schedule	8/14/2020
• A-805	Exterior Door Details	8/14/2020
• A-808	Exterior Storefront Elevations	8/14/2020
• A-809	Interior & Exterior Storefront Schedule & Elevations	8/14/2020
• A-811	Room Finish Schedule	8/14/2020
• A-812	Signage	8/14/2020
• A-901	First Floor / Orchestra Level Furniture Plan	8/14/2020
• A-902	Second Floor / Parterre Level Furniture Plan	8/14/2020
• A-901	Third Floor / Terrace Level Furniture Plan	8/14/2020
• A-901	Fourth Floor / Balcony Level Furniture Plan	8/14/2020

**Fire Protection - As Prepared by Rist Frost Shumway Engineering, P.C.**

• FP-001	Fire Protection Legend, Note & Abbreviations	8/14/2020
• FP-101	Basement Floor Fire Protection Plan	8/14/2020
• FP-102	Ground Floor Fire Protection Plan	8/14/2020
• FP-103	Parterre Floor Fire Protection Plan	8/14/2020
• FP-104	Third Floor Fire Protection Plan	8/14/2020
• FP-105	Fourth Floor Fire Protection Plan	8/14/2020
• FP-106	Roof Fire Protection Plan	8/14/2020
• FP-201	Fire Protection Details	8/14/2020

**Plumbing – As Prepared by Rist Frost Shumway Engineering, P.C.**

• P001	Plumbing Legend, Notes & Abbreviations	8/14/2020
• P100	Basement Floor Plumbing Under Slab Plan	8/14/2020
• P101	Basement Floor Plumbing Plan	8/14/2020
• P102	Ground Floor Plumbing Plan	8/14/2020
• P103	Parterre Floor Plumbing Plan	8/14/2020
• P104	Third Floor Plumbing Plan	8/14/2020
• P105	Fourth Floor Plumbing Plan	8/14/2020
• P106	Roof Plumbing Plan	8/14/2020
• P201	Plumbing Details	8/14/2020
• P202	Plumbing Details & Part Plan	8/14/2020
• P201	Plumbing Schedules	8/14/2020

**Mechanical – As Prepared by Rist Frost Shumway Engineering, P.C.**

• M001	Mechanical Legend, Notes & Abbreviations	8/14/2020
• MD101	Basement Floor Mechanical Demolition Plan	8/14/2020
• MD102	Ground Floor Mechanical Demolition Plan	8/14/2020
• MD103	Parterre Floor Mechanical Demolition Plan	8/14/2020
• MD104	Third Floor Mechanical Demolition Plan	8/14/2020
• MD105	Fourth Floor Mechanical Demolition Plan	8/14/2020
• MD106	Roof Mechanical Demolition Plan	8/14/2020
• M101	Basement Floor Ductwork Plan	8/14/2020
• M102	Ground Floor Ductwork Plan	8/14/2020
• M103	Parterre Floor Ductwork Plan	8/14/2020
• M104	Third Floor Ductwork Plan	8/14/2020
• M105	Fourth Floor Ductwork Plan	8/14/2020
• M201	Basement Floor Piping Plan	8/14/2020
• M202	Ground Floor Piping Plan	8/14/2020
• M203	Parterre Floor Piping Plan	8/14/2020
• M204	Third Floor Piping Plan	8/14/2020
• M205	Fourth Floor Piping Plan	8/14/2020
• M301	Roof Mechanical Plan	8/14/2020
• M401	Mechanical Sections	8/14/2020
• M501	Mechanical Piping Schematics	8/14/2020
• M601	Mechanical Details	8/14/2020
• M602	Mechanical Details	8/14/2020
• M603	Mechanical Details	8/14/2020
• M701	Mechanical Schedules	8/14/2020
• M702	Mechanical Schedules	8/14/2020

**Electrical – As Prepared by Rist Frost Shumway Engineering, P.C.**

• E-001	Electrical Legend, Notes & Abbreviations	8/14/2020
• E-002	Electrical One-Line Diagram	8/14/2020
• E-003	Electrical Schedules	8/14/2020
• E-004	Panelboard Schedules	8/14/2020
• E-005	Panelboard Schedules	8/14/2020
• E-101	Basement Floor Lighting Plan	8/14/2020
• E-102	Ground Floor Lighting Plan	8/14/2020
• E-103	Parterre Floor Lighting Plan	8/14/2020
• E-104	Third Floor Lighting Plan	8/14/2020
• E-105	Fourth Floor Lighting Plan	8/14/2020
• E-106	Roof Lighting Plan	8/14/2020
• E-107	Audience Chamber HS1 Lighting Elevations	8/14/2020
• E-201	Basement Floor Power Plan	8/14/2020
• E-202	Ground Floor Power Plan	8/14/2020



• E-203	Parterre Floor Power Plan	8/14/2020
• E-204	Third Floor Power Plan	8/14/2020
• E-205	Fourth Floor Power Plan	8/14/2020
• E-206	Roof Power Plan	8/14/2020
• E-301	Basement Floor Systems Plan	8/14/2020
• E-302	Ground Floor Systems Plan	8/14/2020
• E-303	Parterre Floor Systems Plan	8/14/2020
• E-304	Third Floor Systems Plan	8/14/2020
• E-305	Fourth Floor Systems Plan	8/14/2020
• E-401	Lighting Schedules	8/14/2020
• E-402	Lighting Schedules	8/14/2020
• E-403	Lighting Details	8/14/2020
• E-501	Electrical Details	8/14/2020
• E-502	Electrical Details	8/14/2020
• E-503	Electrical Details	8/14/2020
• E-504	Theatrical Details	8/14/2020
• ES-101	Electrical Site Plan	8/14/2020
• ES-102	Electrical Site Details	8/14/2020

**Fire Alarm – As Prepared by Rist Frost Shumway Engineering, P.C.**

• FA-001	Fire Alarm Legend, Notes & Abbreviations	8/14/2020
• FA-101	Basement Floor Fire Alarm Plan	8/14/2020
• FA-102	Ground Floor Fire Alarm Plan	8/14/2020
• FA-103	Parterre Floor Fire Alarm Plan	8/14/2020
• FA-104	Third Floor Fire Alarm Plan	8/14/2020
• FA-105	Fourth Floor Fire Alarm Plan	8/14/2020
• FA-106	Roof Fire Alarm Plan	8/14/2020
• FA-201	Fire Alarm Details	8/14/2020

**A/V – As Prepared by ICON Architects**

• AV-000	AV Systems Symbols & Legends	8/14/2020
• AV-001	AV Systems Installation Details 1	8/14/2020
• AV-002	AV Systems Installation Details 2	8/14/2020
• AV-101	AV Systems Basement Floor Plan	8/14/2020
• AV-102	AV Systems First Floor / Orchestra Plan	8/14/2020
• AV-103	AV Systems Second / Parterre Floor Plan	8/14/2020
• AV-104	AV Systems Third / Terrace Floor Plan	8/14/2020
• AV-105	AV Systems Fourth / Balcony Floor Plan	8/14/2020
• AV-202	AV Systems First Floor / Orchestra RCP	8/14/2020
• AV-203	AV Systems Second / Parterre Floor RCP	8/14/2020
• AV-204	AV Systems Third / Terrace Floor RCP	8/14/2020
• AV-205	AV Systems Fourth / Balcony Floor RCP	8/14/2020
• AV-301	AV Systems Interior Elevations 1	8/14/2020
• AV-302	AV Systems Interior Elevations 2	8/14/2020
• AV-303	AV Systems Interior Elevations 3	8/14/2020
• AV-401	AV Systems Riser Diagrams 1	8/14/2020
• AV-402	AV Systems Riser Diagrams 2	8/14/2020
• AV-501	AV Functional Diagrams 1	8/14/2020
• AV-502	AV Functional Diagrams 2	8/14/2020
• AV-503	AV Functional Diagrams 3	8/14/2020
• AV-601	AV Rack & Plate Details 1	8/14/2020
• AV-602	AV Rack & Plate Details 2	8/14/2020

**Telecom – As Prepared by ICON Architects**

• T-001	Telecom Legend, Notes & Abbreviations	8/14/2020
• T-101	Basement Floor Telecom Plan	8/14/2020
• T-102	Ground Floor Telecom Plan	8/14/2020
• T-103	Parterre Floor Telecom Plan	8/14/2020
• T-104	Third Floor Telecom Plan	8/14/2020
• T-105	Fourth Floor Telecom Plan	8/14/2020
• T-201	Telecom Riser Diagram	8/14/2020
• T-301	Telecom Details & Schedules	8/14/2020

**Theatrical Lighting – As Prepared by ICON Architects**

• ETL-110	Theatrical Lighting Functional Diagram	8/14/2020
• ETL-120	Theatrical Lighting Longitudinal Section	8/14/2020
• ETL-130	Theatrical Lighting Outlet Device Details	8/14/2020
• ETL-131	Theatrical Lighting Outlet Device Details	8/14/2020
• ETL-140	Theatrical Lighting Control Device Details	8/14/2020
• ETL-150	Theatrical Lighting House Control Device Details	8/14/2020
• ETL-160	Theatrical Lighting Equipment Rack Details	8/14/2020
• ETL-170	Theatrical Lighting Relay Panel Details	8/14/2020
• ETL-180	Theatrical Lighting Relay Panel Schedules	8/14/2020

**Rigging – As Prepared by ICON Architects**

• R-101	Theatre Rigging Stage Plan	8/14/2020
• R-102	Theatre Rigging Plans	8/14/2020
• R-201	Theatre Rigging Center Line Section	8/14/2020
• R-202	Theatre Rigging Elevations	8/14/2020
• R-301	Theatre Rigging Elevations	8/14/2020

**Telescoping Seating – As Prepared by ICON Architects**

• TS-100	Main Level Seating Plan	8/14/2020
• TS-101	Balcony Level Seating Plan	8/14/2020
• TS-102	Seating Section	8/14/2020
• TS-103	Seating Section	8/14/2020
• TS-100	Seating Section	8/14/2020

**Project Specifications****DIVISION 01 - GENERAL REQUIREMENTS**

011000 - Summary  
012300 - Alternates  
014110 - Special Inspections & Testing  
014110a - Statement of Special Inspections  
016200 - Substitution Request Form  
017419 - Construction Waste Management

**DIVISION 02 – EXISTING CONDITIONS**

021210- Environmental Controls  
024100 – Demolition  
024113 – Selective Site Demolition

**DIVISION 03 – CONCRETE**

033000 – Cast-in-Place Concrete  
033300 – Architectural Concrete  
033515 – Concrete Finishing  
034150- Precast Prestressed Concrete Planks

**DIVISION 04 – MASONRY**

- 040120 – Masonry Restoration & Cleaning
- 042000 – Unit Masonry
- 044000 – Exterior Stonework

**DIVISION 05 – METALS**

- 051200 – Structural Steel
- 051250 – Architecturally Exposed Structural Steel
- 052100 – Steel Joist
- 053100 – Steel Decking
- 054000 – Cold-Formed Metal Framing
- 055000 – Metal Fabrications
- 055100 – Metal Stair & Railings
- 057300 – Decorative Metal Railings
- 057500 – Decorative Formed Metal
- 059000 – Hot Dip Galvanized Coatings

**DIVISION 06- WOOD, PLASTICS & COMPOSITES**

- 061000 – Rough Carpentry
- 061600 – Sheathing
- 062020 – Wood Plaza Decking
- 064020 – Interior Architectural Woodwork

**DIVISION 07 – THERMAL & MOISTURE PROTECTION**

- 070150 – Modifications to Existing Roofing
- 072100 – Thermal Insulation
- 072700 – Air Barriers
- 072800 – Liquid Applied Insulative Coating
- 074200 – Wall Cladding Support System
- 074210 – Metal Composite Material Panels
- 074300 – Fiber-Cement Panel Siding
- 075400 – Thermoplastic Membrane Roofing
- 075500 – Roof Pavers
- 076100 – Sheet Metal Roofing
- 076200 – Sheet Metal Flashing & Trim
- 077100 – Roof Specialties
- 077200 – Roof Accessories
- 078100 – Applied Fireproofing
- 078410 – Penetration Firestopping
- 078440 – Fire Resistive Joint Systems
- 079200 – Joint Sealants
- 079500 – Expansion Control

**DIVISION 08 – OPENINGS**

- 081110 – Hollow Metal Doors and Frames
- 081210 – Interior Aluminum Frames
- 081400 – Flush Wood Doors
- 083110 – Access Doors & Frames
- 083310 – Overhead Coiling Doors
- 083320 – Overhead Coiling Grilles
- 083470 – Interior Sound Control Door Assemblies
- 084110 – Aluminum Framed Entrances & Storefront
- 084226 – Frameless Glass Entrances
- 084513 – Structured Polycarbonate Panel Assemblies
- 085110 – Aluminum Windows
- 086300 – Metal Framed Skylights
- 087100 – Door Hardware
- 088000 – Glazing
- 089000 – Louvers & Vents

**Division 09 – FINISHES**

- 092110 – Gypsum Board Assemblies
- 092120 – Gypsum Board Shaft Wall Assemblies
- 092409 – Plaster Patching and Repairs
- 093000 – Tiling
- 095100 – Acoustical Ceilings
- 096454 – Stage Floor
- 096510 – Resilient Flooring & Accessories
- 096800 – Carpeting
- 099000 – Painting & Coating

**DIVISION 10 – SPECIALTIES**

- 101400 – Signage
- 102110 – Toilet Compartments
- 102210 – Wire Mesh Partitions
- 102800 – Toilet Accessories
- 10440 – Fire Protection Specialties
- 105110 – Metal Lockers

**Division 11- EQUIPMENT**

- 110630 – Stage Curtains
- 111300 – Loading Dock Equipment
- 113100 – Appliances
- 115210 – Projection Screens
- 116133 – Stage Rigging & Draperies

**DIVISION 12- FURNISHINGS**

- 122210 – Drapery
- 122400 – Shades
- 124810 – Entrance Floor Mats & Frames
- 126613 – Theatre Seating

**DIVISION 14- CONVEYING EQUIPMENT**

- 142100 – Electric Traction Elevator
- 144200 – Wheelchair Lifts

**DIVISION 21 – FIRE PROTECTION**

- 210100 – Basic Fire Protection Requirements
- 213250 – Fire Protection

**DIVISION 22 – PLUMBING**

- 220100 – Basic Plumbing Requirements
- 244100 – Plumbing Piping
- 224300 – Plumbing Specialties
- 224400 – Plumbing Fixtures
- 224500 – Plumbing Equipment

**DIVISION 23-MECHANICAL**

- 230100 – Basic Mechanical Requirements
- 231210 – Expansion Compensation
- 231400 – Supports and Anchors
- 231700 – Motors and Variable Frequency Drives
- 231900 – Mechanical Identification
- 232420 – Vibration Isolation
- 232600 – Piping Insulation
- 232800 – Equipment Insulation
- 232900 – Ductwork Insulation
- 235100 – Hydronic Above Ground Piping
- 235150 – Hydronic Specialties
- 235350 – Refrigeration Piping & Specialties

- 235360 – Mini-Split Air Conditioning Systems
- 235400 – HVAC Pumps
- 235450 – Hydrostatic Testing & Chemical Water Treatment
- 237300 – Variable Refrigerant Flow Systems
- 237810 – Dedicated Outside Air Unit
- 238350 – Terminal Heat Transfer Units
- 238450 – Energy Recovery Units
- 238900 – Ductwork
- 239100 – Ductwork Accessories
- 239200 – Sound Attenuators
- 239300 – Air Terminal Units
- 239360 – Air Outlets & Inlets
- 239750 – Building Automation System
- 239800 – Instrumentation
- 239900 – Testing, Adjusting and Balancing

#### **DIVISION 26 – ELECTRICAL**

- 260100 – Basic Electrical Requirements
- 260150 – Short Circuit Coordination Study / Arc Flashing Hazard Analysis
- 260600 – Grounding & Bonding
- 260700 – Supporting Devices
- 260750 – Electrical Identification
- 260800 – Electrical Testing
- 260961 – Theatrical Lighting Controls
- 260963 – Theatrical Lighting Controls Installation
- 261190 – Underground Electrical Work
- 261200 – Conductors and Cables
- 261300 – Raceways
- 261310 – Surface Raceways
- 261330 – Cable Tray
- 261370 – Outlet Boxes & Enclosures
- 216400 – Wiring Devices
- 261500 – Electrical Connections
- 263323 – Central Battery Equipment for Emergency Lighting
- 264100 – Enclosed Switches & Circuit Breakers
- 264400 – Switchboards and Panelboards
- 265030 – Lighting Control Systems
- 267100 – Fire Alarm System
- 267120 – Elevator Lobby Communication System
- 267170 – CCTV System
- 267215 – Public Safety Radio Distributed Antennae System
- 267220 – Access Control System
- 268550 – Heat Trace Cables

#### **DIVISION 27 – TELECOMMUNICATIONS**

- 270100 – Basic Telecommunications Requirements
- 274100 – Audiovisual Systems
- 277400 – Telecommunications Systems

#### **DIVISION 31- EARTHWORK**

- 311000 – Site Clearing
- 312000 – Earth Moving
- 312319 – Dewatering
- 312500 - Erosion & Sediment Control
- 315000 – Excavation Support & Protection

#### **DIVISION 32- EXTERIOR IMPROVEMENTS**

- 321216 – Asphalt Paving
- 321300 – Concrete Sidewalks
- 321416 – Brick Pavers



321640 – Granite Curb  
321723 – Pavement Markings  
321726 – Tactile Warning Surfacing  
323113 – Chain Link Fences & Gate  
323130 – Bollards

**Division 33 – UTILITIES**

331100 – Water Distribution System  
333100 – Sanitary Sewer System  
334100 – Storm Drainage

**ADDENDUMS** - None

**DATE**

**RFI'S (Pre-Bid)**

**DATE**

Pre-Bid # 1 – Doors	8/21/2020
Pre-Bid # 2 – Fire Doors	8/26/2020
Pre-Bid # 3 – Aluminum Storefront / Curtainwall	8/26/2020
Pre-Bid # 4 – Divisions 10 & 12	9/03/2020
Pre-Bid # 5 – Misc. Trades	9/04/2020
Pre-Bid # 6 – Fire Rated Aluminum Entrance	9/04/2020
Pre-Bid # 7 – Applied Fireproofing	9/08/2020
Pre-Bid #8 – Misc. Items	9/09/2020

**THE CITY OF NASHUA  
DOWNTOWN PERFORMING ART CENTER  
NASHUA, NEW HAMPSHIRE  
GMP ESTIMATE  
EXHIBIT "H"  
10/20/2020**

Project name	Nashua PAC GMP PostBid VE 201 Main St. Nashua NH
Estimator	JEB
Labor rate table	NH
Job size	57000 sf
Bid date	10/2/2020 2:00 PM
Notes	Based on 100% CD Drawings & Specifications dated 8/14/20  Exclusions: -Design Contingency -Recent Tariffs. -Construction Testing & Air Quality Testing -Building Permit Fee, Sewer Impact Fee, Water Meter Fee -Sidewalk Closure Fee, Sidewalk encumbrance Fee. -Winter Concrete or Masonry -Purchasing Construction Parking spaces. -Clerks Office -Purchase CADD Files -Utility (Electric, water, gas) Consumption cost -Ledge or Boulders -Unsuitable Soils -Lightweight Concrete -Architectural Concrete -Isolated Concrete Floating Floor. -Wood Plaza Decking. -Roof Davits -Overhead Coiling Grilles. -Metal Framed Skylight. -Exterior Lighted Poster Cases. -Lath & Plaster. -Acoustic Ceiling Tile & Grid systems. -Roof Screens, Roof Railings -Vertical Acoustic Operable Panels -BDA System -Monitored Fire Extinguishers -Telephone & Data system equipment. -Blue Print matched wood panelling. -Demountable Trap Stage Floor -Glass Shower Enclosures -Wallcoverings. -Grouting or reinforcement of existing Masonry. -Level 5 GWB Finish. -Painted wood base. All base is resilient or tile. -Painted concrete -Exterior Paint other than 4-story window frames, HM Ext. doors &



**Notes**

- Frames and Painted Terrace rails.
- Banquet Tables or Chairs / Moveable Furniture.
- No Foundation demolition at the 2-Story Building.
- SSP6 AESS Prep.
- Architectural As-Built in CADD
- Design Services, Cost associated with Special Inspections, Sales Tax
- See exhibit "J"

**Report format**

Sorted by 'Group phase/Phase'  
'Detail' summary



1000		GENERAL CONDITIONS											
	1001	Project Dimensions											
		Project Square Footage	57,000.00 sf	-	-	-	-					/sf	
	1050	General Conditions											
		General Conditions (See Totals)	14.00 mn	-	-	-	-					/mn	
1950		GENERAL REQUIREMENTS											
	1974	Trade Scaffolds											
		Scaffolding at Main St. Sidewalk (6-months)	1.00 ls	-	-	-	-	27,359.00	27,359	Associated		27,359.00 /ls	27,359
2000		EXISTING CONDITIONS											
	2030	Demolition											
		Building Takedown - 2 Story Bldg.	1.00 ls	-	-	-	-	141,500.00	141,500	NH Demo		141,500.00 /ls	141,500
		Selective Demolition 4-Story Bldg	1.00 ls	-	-	-	-	110,630.00	110,630	NH Demo		110,630.00 /ls	110,630
		Use Alternate Landfill (Included)	ls					-	-			/ls	
		Completed Exploratory Demolition Inv #19-079	1.00 ls					26,166.00	26,166			26,166.00 /ls	26,166
		Police Details on Main St. during Takedown Demolition (1 Officer-No cruiser)	15.00 day					555.44	8,332			555.44 /day	8,332
	2035	Asbestos Removal											
		Asbestos Removal	1.00 ls	-	-	-	-	86,525.00	86,525	NH Demo		86,525.00 /ls	86,525
		Concealed Asbestos Removal - Allowance	1.00 ls	-	-	-	-	10,000.00	10,000	Allowance		10,000.00 /ls	10,000
	2285	Shoring & Underpinning											
		Shoring of 4-story Structure	1.00 /ls	-	-	-	-	-	-			0.00 /ls	0
		2-Story Foundation Wall Shores at A-Ln, 11-Ln & N-Ln. (prior to Bldg Takedown)	1.00 ls	-	-	-	-	40,000.00	40,000	Associated		40,000.00 /ls	40,000
		Underpinning Allowance	1.00 ls	-	-	-	-	50,000.00	50,000	Allowance		50,000.00 /ls	50,000
3000		CONCRETE											
	3010	Foundation Sub											
		Foundation Sub (Column Figs, Loading Dock Figs & Walls) - Incl VE-9, VE-10	301.00 cy	-	-	-	-	561.01	168,865			561.01 /cy	168,865
		Winter Heat & Weather Protection for Column Footings (Excluded)	0.00 wks					-	-			0.00 /wks	0
	3015	Flatwork Sub											
		Flatwork Sub includes 19 pumps Incl. VE-9, VE-10	40,286.00 sf	-	-	-	-	4.94	198,860	Premier		4.94 /sf	198,860
		Placing & Finishing Housekeeping Pads	300.00 sf	-	-	-	-	12.00	3,600			12.00 /sf	3,600
		Wet Curing Slabs	1.00 ls	-	-	-	-	5,400.00	5,400			5,400.00 /ls	5,400
	3200	Vapor Barrier											
		Stegowrap 15	11,324.00 sf	-	-	0.20	2,214	-	-			0.20 /sf	2,214
		Stego Tape 4", (180" per roll, avg, 2 to 3 rolls per roll)	27.00 roll	-	-	35.00	945	-	-			35.00 /roll	945
	3205	Concrete Sealer											
		Concrete Sealer - Ashford Formula	1.00 ls	-	-	-	-	18,109.00	18,109	Kaloutas		18,109.00 /ls	18,109
	3250	Cont. Footing Concrete											
		Continuous Footing Conc4000 psi	16.00 cy	-	-	104.00	1,664	-	-			104.00 /cy	1,664
	3251	Fdn Wall Concrete											
		Additives for foundations	306.00 cy	-	-	18.89	5,780	-	-			18.89 /cy	5,780



	3251	Fdn Wall Concrete											
		Foundation Wall Conc4000 psi	27.00 cy	-	-	106.00	2,862	-	-			106.00 /cy	2,862
		Pileasters Conc4000 psi (6 ea.)	1.00 cy	-	-	106.00	106	-	-			106.00 /cy	106
	3252	Isolated Footing Concrete											
		Isolated Footing Conc4000 psi (56 ea.)	233.00 cy	-	-	106.00	24,698	-	-			106.00 /cy	24,698
	3253	Elevator Pit Concrete											
		ELEV-2 Elevator Pit & Walls Conc4000 psi	29.00 cy	-	-	106.00	3,074	-	-			106.00 /cy	3,074
		ELEV-2 Flowable Fill	10.00 cy	-	-	106.00	1,060	-	-			106.00 /cy	1,060
	3255	Slab Concrete											
		4" Basement SOG 2-Story Conc3500 psi (11,208 sf)	140.00 cy	-	-	110.00	15,400	-	-			110.00 /cy	15,400
		5" SOD Conc3500 psi (26,000 sf)	402.00 cy	-	-	110.00	44,220	-	-			110.00 /cy	44,220
		Misc Conc; Stair Pans, Housekeeping Pads & Loading Dock slab Concrete	60.00 cy	-	-	110.00	6,600	-	-			110.00 /cy	6,600
		Additives for Flatwork	501.00 cy	-	-	9.98	5,000	-	-			9.98 /cy	5,000
		4" Basement SOG Infills 4-Story Conc3500 psi (00 sf)	10.00 cy	-	-	110.00	1,100	-	-			110.00 /cy	1,100
	3260	Site Concrete											
		Site Conc 4" Loading Dock, Ramp & Stairs 4000 psi (631 sf)	15.00 cy	-	-	112.00	1,680	-	-			112.00 /cy	1,680
		Site Conc 4" Door Pads & Ramps 4000 psi (627 sf)	15.00 cy	-	-	112.00	1,680	-	-			112.00 /cy	1,680
	3408	Grout Baseplate											
		Grout Column Baseplates	80.00 ea	50.00	4,000	30.00	2,400	-	-			80.00 /ea	6,400
		Drill & Epoxy AB's	56.00 ea	15.00	840	15.00	840	-	-			30.00 /ea	1,680
	3425	Joint Filler											
		Premold. Jt Filler 1/2"x 6"	1,100.00 lnft	-	-	0.40	440	0.25	275			0.65 /lnft	715
	3430	Waterstop											
		Waterstop 6"	665.00 lnft	0.12	83	2.00	1,330	-	-			2.12 /lnft	1,413
	3450	Perimeter Insul											
		Perimeter Insulation 2", Dow Styrofoam SE 2' X 8' Sheets	1,200.00 sf	0.16	188	1.16	1,392	-	-			1.32 /sf	1,580
	3452	Underslab Insulation											
		Underslab Insulation 2" - 4' wide at Ext. Perimeter only	800.00 sf	0.16	125	1.06	848	-	-			1.22 /sf	973
		Rigid Insul 25 psi 2" 4' X 8' Sheets	7,500.00 sf	-	-	1.65	12,375	-	-			1.65 /sf	12,375
	3810	Reinf. Steel											
		F&I Foundation Reinforcing Steel	33.00 tn	-	-	943.50	31,136	750.00	24,750			1,693.50 /tn	55,886
	3850	Wire Mesh											
		S.O.G. Wire Mesh 6 X 6 -w2.9 x w2.9	44,000.00 sf	-	-	0.24	10,474	0.05	2,200			0.29 /sf	12,674
		Wire Mesh accessories	44,000.00 sf	-	-	0.20	8,800	-	-			0.20 /sf	8,800
	3900	Precast Bleachers											
		Segmented Pre-cast Bleachers and steps at Balcony	1.00 ls	-	-	-	-	165,300.00	165,300	Newstress		165,300.00 /ls	165,300
		Crane Rental for Segmented Pre-cast Bleachers and steps at Balcony	6.00 day	-	-	-	-	4,000.00	24,000	Newstress		4,000.00 /day	24,000
		Grout & Caulk Precast Joints	1.00 ls	-	-	-	-	10,000.00	10,000			10,000.00 /ls	10,000
		Embedded conduit & Boxes for Handrail lighting - Allowance	1.00 ls	-	-	-	-	5,000.00	5,000	Allowance		5,000.00 /ls	5,000
4000		MASONRY											

Item	Page	Description	Unit	QTY	UNIT PRICE	TOTAL PRICE	VE	VE PRICE	VE PRICE	VE PRICE	VE PRICE	VE PRICE
4100		<b>Masonry</b>										
		Masonry (Includes rebar & cavity wall insulation)	1.00 ls	-	-	-	-	221,050.00	221,050	Northeast	221,050.00 /ls	221,050
		<del>Winter Heat/Weather Protection for Masonry</del>	<del>1.00 ls</del>	<del>-</del>	<del>-</del>	<del>-</del>	<del>-</del>			<del>Excluded</del>	<del>/ls</del>	
4105		<b>Granite</b>										
		Granite Sills w/Thermal finish - Ramps, Steps & Landings deleted by VE13	1.00 sf	-	-	-	-	44,750.00	44,750	Northeast	44,750.00 /sf	44,750
		<del>Upgrade to Polished Granite Finish - Deleted with VE-13</del>	<del>1.00 sf</del>	<del>-</del>	<del>-</del>	<del>-</del>	<del>-</del>			<del>Excluded</del>	<del>/sf</del>	
4117		<b>Masonry Veneers</b>										
		Clean Brick & Granite	0.00 sf	-	-	-	-		15,180	Northeast	/sf	15,180
		Misc. Masonry Infill Allowance	500.00 sf	-	-	-	-	20.00	10,000	Allowance	20.00 /sf	10,000
		Thin-Brick (in lieu of Swisspearl FCP)	3,741.00 sf	-	-	-	-	40.00	149,640	Northeast	40.00 /sf	149,640
5000		<b>METALS</b>										
5100		<b>Structural Steel</b>										
		Structural Steel Columns, Beams, Joist, Decking & Bracing Incl. VE-9, VE-10	1.00 ls	-	-	-	-	1,395,000.00	1,395,000	SL Chasse	1,395,000.00 /ls	1,395,000
		<del>AESS Structural Steel/SP-6 Prep. (Excluded)</del>	<del>ls</del>	<del>-</del>	<del>-</del>	<del>-</del>	<del>-</del>			<del>Excluded</del>	<del>/ls</del>	
		Police Detail on Main St. during Steel & Joist Erection (1-Officer No cruiser)	15.00 days	-	-	0.00	0	555.44	8,332		555.44 /days	8,332
		Cut Deck Openings	1.00 ls	-	-	-	-	5,000.00	5,000		5,000.00 /ls	5,000
		Insulative Coating on steel outside thermal envelop (Tnemic)	1.00 ls	-	-	-	-	5,000.00	5,000		5,000.00 /ls	5,000
		<del>Shore Cantilevered Structural Steel at W. Pearl</del>	<del>tn</del>	<del>-</del>	<del>-</del>	<del>-</del>	<del>-</del>			<del>SL Chasse</del>	<del>/tn</del>	
5500		<b>Misc. Metal</b>										
		Misc Metals Sub	1.00 ls	-	-	-	-	475,000.00	475,000	SL Chasse	475,000.00 /ls	475,000
		Misc Metals Not Shown - Allowance	1.00 ls	-	-	-	-	10,000.00	10,000	Allowance	10,000.00 /ls	10,000
6000		<b>WOOD &amp; PLASTIC</b>										
6020		<b>Infill Wood Framed Floors</b>										
		Infill floor framing - Materials	1.00 ls	-	-	-	-	55,000.00	55,000	Millford	55,000.00 /ls	55,000
		Infill floor framing - Labor & Equipment	1.00 ls	-	-	-	-	162,600.00	162,600	Pelcon	162,600.00 /ls	162,600
6100		<b>Rough Carpentry</b>										
		Infill ceiling Framing not shown on Plans - Allowance	1.00 ls	-	-	5,000.00	5,000	7,500.00	7,500	Allowance	12,500.00 /ls	12,500
		Support Labor	4.00 wk	2,620.00	10,480	-	-	-	-		2,620.00 /wk	10,480
		Temp. Brace exist. 4-story structure at all floor openings prior to Steel erection	1.00 ls	-	-	-	-	30,000.00	30,000		30,000.00 /ls	30,000
		Open & Close Roof Openings for Steel erection at 4-Story	1.00 ls	-	-	-	-	10,000.00	10,000		10,000.00 /ls	10,000
6115		<b>Scaffolding</b>										
		Common Staging in Audience Chamber (3-mos.)	4,800.00 sf	-	-	-	-	17.84	85,640	Associated	17.84 /sf	85,640
6150		<b>Misc. Carpentry</b>										
		Misc. Carpentry	1.00 ls	0.00	0	0.00	0	30,000.00	30,000		30,000.00 /ls	30,000

	6150	Misc. Carpentry										
		Temp. Protection	1.00 ls	0.00	0	0.00	0	5,000.00	5,000		5,000.00 /ls	5,000
	6600	Arch. Millwork										
		Audience Chamber Wall Paneling - Book Matched (Not Blue Print Matched)	1:00/ls	-	-	-	-	-	Aubin	0:00 /ls	0	0
		Architectural Millwork - Incl. VE-12, VE-18	1.00 ls	-	-	-	-	200,664.00	200,664	Aubin	200,664.00 /ls	200,664
		Wood Panel/Railing/Infills - Audience Chamber	1:00/ls	-	-	-	-	-	Aubin	0:00 /ls	0	0
7000		THERMAL/MOISTURE										
	7120	Waterproofing										
		Waterproofing - 2 Elevator Pit	2.00 ls	-	-	-	-	2,500.00	5,000		2,500.00 /ls	5,000
	7210	Building Insulation										
		3" Mineral Wool Insulation behind all Cladding systems	1:00/ls	-	-	-	-	-	Middlesex	0:00 /ls	0	0
	7262	Air/Vapor Barrier System										
		Sheet Applied Air Vapor Barrier & Membrane strips	1.00 ls	-	-	-	-	65,200.00	65,200	Reliable	65,200.00 /ls	65,200
		Preformed Silicone Transition strips at SF frames	1,100.00 lf	-	-	-	-	10.00	11,000		10.00 /lf	11,000
	7410	Metal Roofing										
		Metal Roof at Loading Dock - Reduce per VE-10	9.00 sqs	-	-	-	-	400.00	3,600	Skyline	400.00 /sqs	3,600
	7430	Structured Polycarbonate Panels										
		EXTECH LIGHTWALL 3440 Structured Polycarbonate Panels	1.00 ls	-	-	-	-	128,951.00	128,951	Middlesex	128,951.00 /ls	128,951
	7440	Metal Composite Panels & Trim										
		Metal Composite Material Panels - Deleted by VE-14	1:00/ls	-	-	-	-	-	Excluded	0:00 /ls	0	0
		Add Cembria Patina per VE-14	7,608.00 sf	-	-	-	-	25.00	190,200		25.00 /sf	190,200
		Change CMP Column Covers to brake metal per VE-15	1:00/ls	-	-	-	-	-		0:00 /ls	0	0
	7480	Fiber-Cement Board Panels										
		Swisspearl/FCP System (see 041 Thin Brick)	3,741.00 sf	-	-	-	-	-	Excluded	/sf		
		Hardie FCP System	2,696.00 sf	-	-	-	-	20.21	54,477	Middlesex	20.21 /sf	54,477
	7500	Membrane Roofing										
		Reinforce Surf Rest. Roof Structure & Misc Unidentified Carpentry on Roof	1,500.00 sf	-	-	-	-	14.67	22,000		14.67 /sf	22,000
		Surf Restaurant - Strip & Re-Roof ABOVE STRUCTURAL UPGRADE ONLY (1500 SF)	1.00 LS	-	-	-	-	24,200.00	24,200	Skyline	24,200.00 /LS	24,200
		New TPO Roof - Theater Bldg.	1.00 ls	-	-	-	-	239,400.00	239,400	Skyline	239,400.00 /ls	239,400
		New TPO Roof at 4-Story Bldg (Incl. Strip 4-story)	1:00/ls	-	-	-	-	-	Skyline	0:00 /ls	0	0
		Roof Pavers at Terrace	1.00 ls	-	-	-	-	22,900.00	22,900	Skyline	22,900.00 /ls	22,900
		Temp Roofing Allowance	1.00 ls	-	-	-	-	5,000.00	5,000		5,000.00 /ls	5,000

	7500	Membrane Roofing											
		Furnish & Install 5/8" densdeck substrate board at all roofs	1.00 ls	-	-	-	-	-	-	Skyline	0.00 /ls	0	0
	7720	Smoke Vents											
		Test Smoke Vents	2.00 ea	-	-	-	-	6,000.00	12,000		6,000.00 /ea	12,000	
		Furnish (2) STC48 Rated Smoke Vents	1.00 ls	-	-	-	13,552.00	13,552	-		13,552.00 /ls	13,552	
		Install Smoke Vents	1.00 ls	-	-	-	-	-	-	Skyline	0.00 /ls	0	0
	7810	Intumes. & Cement. Fireproofing											
		Intum. Fireproof of all Vert. Steel, Columns and bracing at IIIA Construction (1-Hr. per RFI-7)	1.00 ls	-	-	-	-	132,500.00	132,500	Northern Plasterwork	132,500.00 /ls	132,500	
		Intum. Fireproof of Cast Iron Columns - ALLOWANCE	1.00 ls	-	-	-	-	14,500.00	14,500	Allowance	14,500.00 /ls	14,500	
		Patch Fireproofing Allowance	1.00 ls	-	-	-	-	5,000.00	5,000	Allowance	5,000.00 /ls	5,000	
	7840	Firestopping											
		Firestop at Edge of Slabs	1.00 ls	-	-	-	-	34,800.00	34,800	Amherst	34,800.00 /ls	34,800	
		Firestop at Head of Walls	1.00 ls	-	-	-	-	-	-	Genex	0.00 /ls	0	0
	7920	Joint Sealants											
		Joint Sealants Sub	1.00 ls	-	-	-	-	26,125.00	26,125	ACC	26,125.00 /ls	26,125	
	7950	Expansion Control											
		Expansion Control	1.00 ls	-	-	-	-	55,000.00	55,000		55,000.00 /ls	55,000	
8000		DOORS & WINDOWS											
	8100	HM Doors/Frame											
		Doors , Frames & Hardware (98 leafs)	1.00 ls	-	-	-	-	181,115.00	181,115	Eaton	181,115.00 /ls	181,115	
		Pair Bifold Doors at VIP Lounge	1.00 ls	-	-	-	-	2,100.00	2,100		2,100.00 /ls	2,100	
	8310	Access Panels											
		Access Doors & Frames	1.00 ls	-	-	-	-	2,500.00	2,500		2,500.00 /ls	2,500	
	8330	Coiling Doors & Dock Bumpers											
		Coiling Grille (None Shown)	ls	-	-	-	-	-	-	Excluded	0.00 /ls	0	0
		Ext. Insulated (1) & Int. Steel (1) OH Coiling Doors - Motorized, Dock Bumpers (4 ea) - V2	1.00 ls	-	-	-	-	97,956.00	97,956	Door Services	97,956.00 /ls	97,956	
		Vertical Fire Door ST1-1	1.00 ls	-	-	-	-	-	-	Door Services	0.00 /ls	0	0
	8410	Glass & Aluminum											
		Alum. & Glass Sub (All Exterior is carried as Storefront w/ Horiz. mullions)	1.00 ls	-	-	-	-	304,753.00	304,753	Middlesex	304,753.00 /ls	304,753	
		Clean Glass both sides	12,150.00 sf	-	-	-	-	0.35	4,253		0.35 /sf	4,253	
		Box Office Teller Windows (Included)	1.00 ls	-	-	-	-	5,400.00	5,400	Middlesex	5,400.00 /ls	5,400	
	8415	Automatic Door Operators											
		Automatic Door Operators	2.00 each	-	-	-	-	-	-	Middlesex	0.00 /each	0	0
	8900	Louvers											
		Louver	1.00 ls	-	-	0.00	0	4,500.00	4,500		4,500.00 /ls	4,500	
9000		FINISHES											
	9200	Assist Labor											
		Laborer Foreman	52.00 wks	2,720.00	141,440	-	-	-	-		2,720.00 /wks	141,440	
		Lath & Plaster (Excluded)	ls	-	-	-	-	-	-	Excluded	0.00 /ls	0	0

[illegible]



Group	Div	Description	Unit	QTY	Unit Price	Amount	Brand	Unit Price	Amount
	10605	Wire Mesh Partitions							
		Wire Mesh Partitions (200 lf) & Doors (2 ea.)	1.00 ls	-	-	23,962.00	23,962	NEPI	23,962.00 /ls
	10800	Toilet Accessories							
		Toilet Accessories	1.00 ls	-	-	11,578.00	11,578	NEPI	11,578.00 /ls
11000		EQUIPMENT							
	11060	Rigging & Draperies							
		Stage Rigging & Draperies (By Owner)	1.00 /ls	-	-	-	-	FFE	0.00 /ls
		Support work for Stage Rigging & Draperies	1.00 ls	-	-	3,000.00	3,000		3,000.00 /ls
	11132	Projection Screens (See Div. 27)							
		Projection Screens - Carried in Audio Visual	1.00 /ls	-	-	-	-		0.00 /ls
	11400	Concessions & Catering Equipment							
		Concessions & Catering Appliance / Equipment	1.00 /ls	-	-	-	-	FFE	0.00 /ls
		3-Compartment Stainless Sink Allowance	1.00 /ls	-	-	-	-	FFE	0.00 /ls
		Hand Sink Allowance	3.00 /ea	-	-	-	-	FFE	0.00 /ea
	11452	Appliances							
		Fridge (3 ea) & MWO (3 ea) at Artist, Crew, Office Lounges	1.00 /ls	-	-	-	-	FFE	0.00 /ls
12000		FURNISHINGS							
	12020	Blinds & Shades							
		Blinds & Shades (69 ea) Manual roller shades with 1% or 3% open	1.00 ls	-	-	10,351.00	10,351	DWC	10,351.00 /ls
	12025	Drapes/Curtains							
		Draperies VIP Room	1.00 /ls	-	-	-	-	FFE	0.00 /ls
	12670	Entrance Mats							
		Entrance Mats	200.00 sf	-	-	90.00	18,000	Allowance	90.00 /sf
	12700	Auditorium Seating							
		Galant Model Seating Option	1.00 /ls	-	-	-	-	FFE	0.00 /ls
14000		CONVEYING SYS							
	14020	Elevators							
		EL-A 4-Stop/Passenger - Gearless Traction Elevator 3500 LB VE-9	1.00 /ls	-	-	-	-	Excluded	0.00 /ls
		EL-B 5-Stop Service - Gearless Traction Elevator 4500 LB	1.00 ls	-	-	184,800.00	184,800	Schindler	184,800.00 /ls
		ELEV-1 Elevator Operator Time (1.5 Days)	12.00 mh	-	-	191.00	2,292	Schindler	191.00 /mh
		ELEV-2 Decommission existing Elevator (Included)	0.00 ea	-	-	-	5,000		/ea
		ELEV-2 Operator Time (1.5 Days) VE-9	0.00 /mh	-	-	-	-	Excluded	0.00 /mh

Group	Category	Description	Unit	QTY	UNIT PRICE	TOTAL PRICE	VE	VE PRICE	VE UNIT PRICE	VE TOTAL PRICE
14020	Elevators	Temp Working Platforms at T.O. Shafts Incl. VE-9	1.00 ea	-	-	5,000.00	5,000		5,000.00 /ea	5,000
14025	Vertical Wheelchair Lift	Vertical Wheelchair Lift 750 LB Capacity	1.00 ls	-	-	14,357.00	14,357	All-Ways Accessible	14,357.00 /ls	14,357
		Add 3" Pit - Allowance	1.00 ls	-	-	2,500.00	2,500	Allowance	2,500.00 /ls	2,500
		Add Battery Lowering at Vertical Wheelchair Lift (if req'd)	1.00 /ls	-	-	-	-	Garaventa	0.00 /ls	0
210000	FIRE SUPPRESSION									
211300	Fire-Suppression Sprinkler Systems	Sprinkler Sub (Includes attic space at 4-story) Incl. VE-9	62,500.00 sf	-	-	3.14	196,500	Hampshire Fire	3.14 /sf	196,500
220000	PLUMBING									
220100	Plumbing	Plumbing Equipment	1.00 ls	-	-	90,000.00	90,000	Eckhardt & Johnson	90,000.00 /ls	90,000
		Plumbing Fixtures	1.00 ls	-	-	127,000.00	127,000	Eckhardt & Johnson	127,000.00 /ls	127,000
		Plumbing Piping, Valves & Insulation Incl. VE-9, VE-16	1.00 ls	-	-	456,630.00	456,630	Eckhardt & Johnson	456,630.00 /ls	456,630
		Plumbing Misc.	1.00 ls	-	-	51,000.00	51,000	Eckhardt & Johnson	51,000.00 /ls	51,000
230000	HVAC									
230100	HVAC	Winter Heat Allowance	1.00 ls	-	-	50,000.00	50,000	Allowance	50,000.00 /ls	50,000
		HVAC Subcontract Incl. VE-22	1.00 ls	-	-	1,864,779.00	1,864,779	Eckhardt & Johnson	1,864,779.00 /ls	1,864,779
		Disconn. & Reconn. existing Surf Rooftop HVAC Equipment - Allowance	1.00 ls	-	-	5,000.00	5,000	Allowance	5,000.00 /ls	5,000
260000	ELECTRICAL									
260100	Electrical	Electrical Sub Incl. VE-9, VE-23	1.00 ls	-	-	1,111,096.00	1,111,096	Longchamps	1,111,096.00 /ls	1,111,096
		BDA Bi-Directional Amplification (See Alternate)	1.00 /ls	-	-	-	-	Excluded	0.00 /ls	0
		Disconn. Reconn Surf Rooftop equip - Allowance	1.00 ls	-	-	1,500.00	1,500	Allowance	1,500.00 /ls	1,500
		Light Fixture Package	1.00 ls	-	-	436,000.00	436,000	Longchamps	436,000.00 /ls	436,000
260170	Theatrical Lighting Controls	Theatrical Lighting Controls	1.00 /ls	-	-	-	-	FFE	0.00 /ls	0
260190	Site Electrical	Primary & Secondary Ductbanks	1.00 ls	-	-	120,000.00	120,000	Longchamps	120,000.00 /ls	120,000
		Telcom Ductbank	1.00 /ls	-	-	-	-	Longchamps	0.00 /ls	0
		Site Electric Demo. & Make Safe	1.00 /ls	-	-	-	-	Longchamps	0.00 /ls	0

Group	Item	Unit	Quantity	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount	Unit Price	Amount
260190	Site Electrical										
	Exterior Lighting Allowance (includes install)	1.00 /ls						Longchamps	0.00 /ls		0
260300	Utility Work										
	Eversource - Electric Utility Backcharges New Power - (By Utility Co.)	1.00 /ls						Excluded	0.00 /ls		0
	Eversource - Electric Utility Backcharge to Move Lines on West Pearl St. - (See Alt #11)	1.00 /ls						Excluded	0.00 /ls		0
	Consolidated Comm Telephone Backcharges at W. Pearl St. - (See Alt #11)	1.00 /ls						Excluded	0.00 /ls		0
	Consolidated Comm - Telephone Backcharges at Garden St. - Allowance	1.00 ls					60,000.00	60,000	Allowance	60,000.00 /ls	60,000
	Comcast - CATV Backcharges - W. Pearl St. (See Alt #11)	1.00 /ls						Excluded	0.00 /ls		0
	Comcast - CATV Backcharges - Garden St.	1.00 ls					17,235.00	17,235	Comcast	17,235.00 /ls	17,235
	ALL W.PEARL ST. OH Relo.'s 5-28-20 (from offsite 2-20 budget)	1.00 ls					300,000.00	300,000		300,000.00 /ls	300,000
270000	AUDIOVISUAL										
270100	Audiovisual Systems										
	AudioVisual Systems	1.00 /ls						FFE	0.00 /ls		0
280000	ELECTRONIC SAFTEY & SECURITY										
280050	Security Systems										
	CCTV (Using JCI)	1.00 /ls						FFE	0.00 /ls		0
	Access Control (Using JCI)	1.00 /ls						FFE	0.00 /ls		0
310000	EARTHWORK										
310100	Earthwork										
	Site Prep, Select Materials, Basement Access Ramp Incl. VE-10	1.00 ls					283,834.00	283,834	Colonial	283,834.00 /ls	283,834
	Snow Removal	1.00 ls					5,000.00	5,000		5,000.00 /ls	5,000
	Site Utility Support Work (Water, Sewer, Storm, Electric, Comm.)	1.00 ls					25,000.00	25,000		25,000.00 /ls	25,000
	Relocate Traffic Control Signal Box to North Side of W. Pearl St. - Allowance	1.00 ls					40,000.00	40,000	Allowance	40,000.00 /ls	40,000
	Traffic Control-Police Detail	5.00 day					1,000.00	5,000		1,000.00 /day	5,000
	De-watering	1.00 ls					33,000.00	33,000		33,000.00 /ls	33,000
	Restripe Intersection W. Pearl	1.00 ls					5,000.00	5,000		5,000.00 /ls	5,000
	Jersey Barriers on W. Pearl St. / Signage (Deliver, Rent, Set, Remove, Trucking, 1 year) Included	225.00 lf						Colonial	/lf		
	Additional E&B, Gravels & Handwork along West Pearl	1.00 ls						Colonial	/ls		

Group	Item	Description	Quantity	Unit	Rate	Amount	Unit	Rate	Amount	Unit	Rate	Amount
	312300	Excavation and BackFill										
		Elevator Pit Excavation & Backfill at Service Elevator Incl. VE-9	1.00	ea	-	-	-	-	9,192.00	9,192		9,192.00 /ea 9,192
<b>320000</b>		<b>EXTERIOR IMPROVEMENTS</b>										
	321200	Paving										
		Asphalt Patch Paving	1:00	/ls	-	-	-	-		Colonial	/ls	
		Asphalt Patching at Lot behind Florist	1:00	/ls	-	-	-	-		Colonial	/ls	
	321400	Unit Paving										
		Remove, Salvage, Deliver for Re-install Existing Brick Unit Pavers at Sidewalks & Alley	1,810.00	sf	-	-	-	-	10.00	18,100		10.00 /sf 18,100
		Replacement of damaged Brick Unit Pavers at Sidewalks & Alley ALLOWANCE	450.00	sf	-	-	-	-	10.00	4,500	Allowance	10.00 /sf 4,500
	321500	Curbs										
		Remove & Reset VGC at W Pearl (Included)	200:00	/lf	-	-	-	-		Colonial	/lf	
		Reconfigure VGC behind Florist shop	0:00	/lf	-	-	-	-		Colonial	/lf	
	321650	Site Concrete										
		Transformer Pad	1.00	ls	-	-	-	-	2,000.00	2,000		2,000.00 /ls 2,000
		Dumpster Pad	36.00	sf	-	-	-	-	10.00	360		10.00 /sf 360
	323100	Fences and Gates										
		Chain Link Fence & Gates at Dumpster & Transformer	1.00	ls	-	-	-	-	15,000.00	15,000		15,000.00 /ls 15,000
<b>330000</b>		<b>UTILITIES</b>										
	331000	Water Utilities										
		Remove & Replace 6" Water Main to Building W Pearl (Included)	20:00	/lf	-	-	-	-		Colonial	/lf	
		Add New Domestic Water Line at W Pearl St (Included)	20:00	/lf	-	-	-	-		Colonial	/lf	
		Terminate Old 4" DI Water Service in Garden St (Included)	1:00	/ls	-	-	-	-		Colonial	/ls	
	335000	Gas Backcharges										
		Liberty Utilities	1:00	/ls	-	-	-	-		Excluded	0:00 /ls	0

### Estimate Totals

Description	Amount	Totals	Hours	Rate	Cost Basis	Cost per Unit	Percent of Total
Labor	157,156		372.741 hrs			2.757 /sf	0.99%
Material	206,670					3.626 /sf	1.31%
Subcontract	13,173,939					231.122 /sf	83.26%
Equipment			160.000 hrs				
Other							

**Estimate Totals**

	<u>13,537,765</u>	<u>13,537,765</u>		<u>237.505 /sf</u>	<u>85.56</u>
General Conditions 14-mo's.	667,450		L	11.710 /sf	4.22%
Performance & Payment Bond	102,933		B	1.806 /sf	0.65%
Software Licenses	22,151	0.140 %	T	0.389 /sf	0.14%
Pre Con Lump Sum	20,000		L	0.351 /sf	0.13%
Builders Risk Ins I.S	18,000		L	0.316 /sf	0.11%
General Liability & Umbrella P	141,606	0.895 %	T	2.484 /sf	0.89%
Design Contingency %			T		
CM Contingency Lump Sum	600,000		L	10.526 /sf	3.79%
Escalation %	237,328	1.500 %	T	4.164 /sf	1.50%
CM Fee %	474,657	3.000 %	T	8.327 /sf	3.00%
<b>Total</b>		<b>15,821,890</b>		<b>277.577 /sf</b>	



**THE CITY OF NASHUA  
DOWNTOWN PERFORMING ART CENTER  
NASHUA, NEW HAMPSHIRE  
CONSTRUTION SCHEDULE  
EXHIBIT "I"  
10/20/2020**

**To follow once a notice to proceed is issued**

**THE CITY OF NASHUA  
DOWNTOWN PERFORMING ART CENTER  
NASHUA, NEW HAMPSHIRE  
EXCLUSIONS  
EXHIBIT "J"  
10/20/2020**

The following is a list of exclusions to Harvey Construction's GMP:

- Design Contingency
- Recent Tariffs
- Construction Testing, Air Quality Testing
- Sidewalk closure fee, sidewalk encumbrance fee
- Winter Concrete or Masonry
- Purchase CADD Files
- Purchasing Construction parking spaces
- Clerk's Office
- Unsuitable soils
- Lightweight or Architectural Concrete
- Isolated concrete floating floor
- Wood Plaza Decking
- Roof Davits
- Overhead coiling grilles
- Metal framed skylight
- Exterior Lighted Poster cases
- Lath & Plaster
- Acoustic Ceiling Tile & Grid
- Vertical acoustic operable panels
- BDA System
- Monitored Fire Extinguishers
- Blueprint matched wood paneling
- Demountable trap stage floor
- Glass shower enclosures
- Wall coverings
- Grouting or reinforcement of existing masonry
- Painted wood base. All base is resilient or tile
- Painted concrete
- Exterior Paint other than 4-story aluminum window frames, HM exterior doors and frames and painted terrace rails
- Banquet tables or chairs / moveable furniture
- Foundation demolition at the 2-story building
- SSP6 AESS Prep
- Architectural as built in CADD
- Design Services
- Cost Associated with Special Inspections
- Sales Tax
- Fire Watch/Temp Fire Pump
- Security Watch

- LEED Certification
- Municipal Impact / Connection Fees
- Sewer Impact Fees
- Water Meter Fees
- Geotechnical Services & Monitoring Fees
- Industrial Hygienist Fees
- Electronic Documents Fees
- Commissioning Agent Fees
- F.F.&E. – unloading, uncrating, disposal of crating and installation
- Cost associated with Eversource or National Grid rebate program
- Cost to dispose contaminated ground water
- Removal of Ledge and boulders over 2 cy in size.
- Cost to remove and dispose of any hazardous materials found in ground.
- Work Stoppage for archeological findings
- Termite Control
- Owners Furniture
- Residential Appliances
- Special Coatings
- Exhaust Fan & Piping for Radon
- Lightning Protection System
- Building Permit Fees
- Electrical Power Consumption Cost
- Gas Consumption Cost
- Water Consumption Cost
- Level 5 Finish
- Roof Screens for Mechanical equipment
- Roof Railings
- Room Clocks, WAP's, Computers, Switches, and Patch Cords
- Phone System
- Projectors
- Security Cameras and Card Readers
- Intercom System
- Spray on Fireproofing
- Engineered Dewatering System

**THE CITY OF NASHUA  
DOWNTOWN PERFORMING ART CENTER  
NASHUA, NEW HAMPSHIRE  
VALUE ENGINEERING MATRIX  
EXHIBIT "K"  
10/20/2020**

The GMP amount is based on the contract documents and the attached Value Engineering Matrix. The items listed as accepted have been incorporated into the GMP Estimate attached as Exhibit H.

See attached



Project Nashua Performing Arts Center  
Location Nashua, NH  
Value Engineering Log

# EXHIBIT K

Date Oct. 19, 2020

10 Harvey Road  
Bedford, NH 03110  
P: (603) 624-4600  
F: (603) 668-0389  
harveyconstruction.com

Item	Description	Date	Estimated Cost	1: Acc 2: Rej 3: Tot	Accepted Items	Rejected Items	Tentative Items	Notes
1	Move Stage Rigging & Draperies to FFE	Oct. 19, 2020	\$ (328,149)	1	(\$328,149)	\$0	\$0	
2	Move Concessions, Catering Appliances & Equipment to FFE	Oct. 19, 2020	\$ (84,312)	1	(\$84,312)	\$0	\$0	
3	Move Seating to FFE	Oct. 19, 2020	\$ (576,571)	1	(\$576,571)	\$0	\$0	
4	Move Theatrical Lighting Control to FFE	Oct. 19, 2020	\$ (180,893)	1	(\$180,893)	\$0	\$0	
5	Move Audio / Visual to FFE	Oct. 19, 2020	\$ (610,070)	1	(\$610,070)	\$0	\$0	
6	Move Electronic Security to FFE	Oct. 19, 2020	\$ (56,563)	1	(\$56,563)	\$0	\$0	
7	Move VIP Drapery System to FFE	Oct. 19, 2020	\$ (13,635)	1	(\$13,635)	\$0	\$0	
8	Substitute Thin Brick for Swisspearl Fiber Cement Panel	Oct. 19, 2020	\$ (134,662)	1	(\$134,662)	\$0	\$0	Middlesex
9	Eliminate 3500 LB Capacity Elevator	Oct. 19, 2020	\$ (227,006)	1	(\$227,006)	\$0	\$0	
10	Modify Loading Dock	Oct. 19, 2020	\$ (43,230)	1	(\$43,230)	\$0	\$0	
11	Reduce Wood Veneer Panels in Audience Chamber Option #1	Oct. 19, 2020	\$ (93,329)	2	\$0	(\$93,329)	\$0	Recommend Option #2 (VE#12)
12	Reduce Wood Veneer Panels in Audience Chamber Option #2	Oct. 19, 2020	\$ (144,733)	1	(\$144,733)	\$0	\$0	
13	Change Granite Steps, landings & Ramps to Concrete	Oct. 19, 2020	\$ (86,584)	1	(\$86,584)	\$0	\$0	
14	Change CMP to Cembrit Patina	Oct. 19, 2020	\$ (320,752)	1	(\$320,752)	\$0	\$0	Middlesex
15	Change CMP Column Covers to brake metal	Oct. 19, 2020	\$ (9,225)	1	(\$9,225)	\$0	\$0	Middlesex
16	Reduce Plumbing Costs	Oct. 19, 2020	\$ (32,600)	1	(\$32,600)	\$0	\$0	
17	Replace 1/4" x 2" all Audience Chamber Handrail Posts with 1-1/2" x 1-1/2" Primed CS Tubing	Oct. 19, 2020	\$ 4,717	2	\$0	\$4,717	\$0	The change would result in an add.
18	Remove wood infill at Back row of Parterre handrails	Oct. 19, 2020	\$ (6,070)	1	(\$6,070)	\$0	\$0	
19	Replace wood infill Handrails with Metal mesh or perforated metal	Oct. 19, 2020	\$ 13,100	2	\$0	\$13,100	\$0	The change would result in an add.
20	Use Better Sub Pricing on Cladding, Glass & Aluminum Package	Oct. 19, 2020	\$ 15,728	1	\$15,728	\$0	\$0	Middlesex
21	Reduced Builders Risk Insurance	Oct. 19, 2020	\$ (23,061)	1	(\$23,061)	\$0	\$0	
22	Use Trans YSC102 8.5in RTU at st-1	Oct. 19, 2020	\$ (13,627)	1	(\$13,627)	\$0	\$0	
23	Electrical Changes per 10/6 RFS e-mail	Oct. 19, 2020	\$ (53,035)	1	(\$53,035)	\$0	\$0	
24	Lighting Changes	Oct. 19, 2020	\$ (52,787)	3	\$0	\$0	(\$52,787)	
25	Provide Cembrit Inline versus Swisspearl FCF	0-Jan-00	\$ -		\$0	\$0	\$0	Middlesex
26	Provide UNIT COST PER SQ. FT. for Design Wall DWF 12" mounted vertically and Versa-Line VSN 160	0-Jan-00	\$ -		\$0	\$0	\$0	\$50-\$55 sf
27	Delete Balcony above Main St.	0-Jan-00	\$ -		\$0	\$0	\$0	
TARGET								
Total			(3,057,351)		(2,929,052)	(75,512)	(52,787)	\$15,803,563
Current Construction Cost Estimate			\$18,750,942	Current Estimate Total				
Adjustments			(\$2,929,052)	FURTHER SAVINGS REQUIRED				
Revised Construction Cost			\$15,821,890	\$ 18,326.82				



**EXHIBIT E**  
**FORM OF CERTIFICATE CONFIRMING OCCUPANCY COMMENCEMENT DATE**

The Certificate to be provided to Tenant pursuant to 3.2(b) of the Lease Agreement pertaining to the Occupancy Commencement Date and Expiration Date shall provide as follows:

“This Certificate is being provided to Tenant pursuant to the terms and provisions of that certain Lease Agreement dated as of \_\_\_\_\_ (the “Lease”), by and between \_\_\_\_\_. as Landlord, and \_\_\_\_\_ as Tenant. This Certificate confirms the following:

The Occupancy Commencement Date of the Lease is: \_\_\_\_\_, 202\_\_\_\_.

The initial Lease Term shall expire on: \_\_\_\_\_, 20\_\_\_\_, subject to extension as provided in Section 3.5.”

## EXHIBIT F

### INSURANCE REQUIREMENTS

*Throughout the term of this Lease, Tenant shall obtain, and maintain in full force and effect, the following policies of insurance:*

1. Commercial General Liability insurance, insuring for third party claims of legal liability, and caused by bodily injury, property damage, personal injury or advertising injury, arising out of the ownership or management of the land and buildings, and including the costs to defend such actions, as well as hired and non-owned automobile liability insurance. The policy shall name the City as Named Insured and include an endorsement(s) adding as Additional Insured:

- Mascoma Bank (using form CG 2026 or equivalent)
- NPAC Investment Fund, LLC (using form CG 2026 or equivalent)
- MCD Subsidiary CDE 14, LLC (using form CG 2018 or equivalent)

Limits of the policy shall be at least \$1 million per occurrence and \$2 million in the general aggregate. If coverage is provided under blanket policies insuring other locations or entities, then the general aggregate must apply to each insured location separately.

2. Automobile Liability including coverage on owned, hired and non-owned automobiles and other vehicles, if used in connection with the performance of the work, with Bodily Injury and Property Damage limits of not less than \$1,000,000.00 per occurrence combined single limit, with a waiver of subrogation against all parties named as additional insured.
3. Excess/Umbrella Liability insurance, with the Commercial General Liability, Automobile Liability and Employers Liability policies scheduled as underlying policies. Limits of the policy shall be at least \$3 million per occurrence and in the annual aggregate. All entities added as Additional Insureds to the Commercial General Liability shall also be Additional Insureds under the Excess/Umbrella Liability policy.
4. Property insurance with limits at least equal to the replacement value of the existing structure(s), and containing the following provisions and coverage:
  - "All risk" or "Special Form" coverage, covering at least the following: building collapse, fire, flood, hurricane, impact of vehicles and aircraft, lightning, malicious mischief, mudslide, subsidence, vandalism, water damage, and windstorm;
  - Claims shall be paid on a Replacement Cost basis;
  - \$100,000 maximum deductible;
  - No coinsurance; if there is a coinsurance provision, please provide evidence than an Agreed Amount endorsement will appear on the policy;
  - Business Income coverage with limits equal to at least 12 months expected loss of rents and other income. No coinsurance is permitted;
  - Limits of policy will be at least the estimated replacement value of the subject property, plus the value of other property insured;
  - Ordinance or Law coverage including loss in value to the undamaged portion, demolition and increased cost of construction;

The City shall be Named Insured on the policy. The policy shall include an endorsement naming MCD Subsidiary CDE 14, LLC, as Mortgagee and Loss Payee, and shall allow such party to be associated in the adjustment of any claim.

*Prior to the commencement of any construction of the Project, the Tenant shall obtain (or cause to be obtained by the Landlord or by the Contractor) and keep in force during the term of any construction:*

5. Builder's Risk insurance, insuring for all risks of physical loss of or damage (including, without limitation, windstorm, fire, theft, and malicious mischief, and excluding the perils of earthquake and flood, unless specifically required) to:
  - a. Existing structures (if applicable);
  - b. the buildings and structures being constructed;
  - c. fixtures, materials, supplies, machinery and equipment to be used in construction;
  - d. scaffolding, falsework, fences, forms, etc.;
  - e. trailers and temporary structures incidental to the construction;
  - f. foundations and underground work;
  - g. sidewalks and paving;
  - h. personal property of others for which the Landlord may be liable;
  - i. personal property of the Landlord used to maintain or service the Project construction

whether located at the site or elsewhere, including while in-transit. The construction site shall be specifically scheduled on the policy as a Covered Location. Limits of policy will be at least the estimated replacement value of the completed Project, plus the value of other property insured. Coverage and limits shall be extended to include soft cost for additional costs made necessary by a delay in completion of construction; such soft costs should include payment for:

- Debt service payments and bond interest payment (where appropriate)
- Construction loan fees and refinancing charges;
- Legal fees;
- Design professional fees;
- Real estate taxes;
- Insurance premiums

Amounts of coverage for soft costs should be sufficient to meet the likely costs of each category for a delay period of twelve months. Policy shall provide for claims to be paid based upon replacement cost of the lost or damaged property without deduction for depreciation; loss payment shall be to the Named Insured. The policy shall have a deductible of no greater than \$10,000 per occurrence. The policy shall carry no coinsurance provisions. The Landlord shall be Named Insured on the policy. The policy shall include an endorsement naming MCD Subsidiary CDE 14, LLC, as Mortgagee and Loss Payee, and shall allow such party to be associated in the adjustment of any claim.

6. Workers' Compensation and Employer's Liability Insurance in accordance with the applicable laws of the state in which the work is to be performed or of the state in which

Landlord is obligated to pay compensation to employees engaged in the performance of the work. The policy limit under the Employer's Liability Insurance section shall not be less than \$1,000,000 for any one accident.

All insurance policies shall be underwritten by companies licensed to write such insurance in the state in which the Property is located, and shall be rated in the latest A.M. Best's Insurance Rating Guide with a rating of at least A-, and be in a financial category of at least IX. The Landlord shall furnish to all entities added as Additional Insureds a complete copy of each such policy of insurance required under #1, #2, #3, #4, #7 & #8. If an insurance policy is not available when required, as set forth above, then Certificates of Insurance detailing the policy terms and conditions as noted above shall be provided, but the policies must then be provided within sixty days. All such policies shall include endorsements requiring at least 30 days prior written notice to all entities added as Additional Insureds of any cancellation, termination or reduction of coverage therein. Notice of the renewal of any policy shall be made at least 10 days prior to the scheduled date of such renewal, and shall be in the form of endorsement to the policy. Notice to all entities added as Additional Insureds of any replacement of any policy shall be made at least 10 days prior to such replacement, and shall be in the form of a copy of the replacement policy, or by certificate, as noted above.

Evidence of insurance under #5 & #6 above may be provided on a Certificate of Insurance issued to the Landlord and each entity added as an Additional Insured, as applicable. All Certificates shall be amended in the Cancellation provision by deleting the words "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives."

By requiring insurance limits, the entities added as Additional Insureds do not represent that coverage and limits will necessarily be adequate to protect the Landlord, Architect, or Contractor, and such coverage and limits shall not be deemed as a limitation or release of any party's liability under any indemnification granted to any entity added as an Additional Insured.

The requirements specified herein shall not be waived by delivery of a certificate or policy to the entities added as Additional Insureds (or their respective counsel) not in conformance with these requirements unless these requirements are specifically modified in writing by such entities added as Additional Insureds.

#### Notes:

- These insurance requirements are intended to protect the additional insureds under each policy for their contingent liability exposures as partners, investors, or lenders in the transaction.
- The use of so-called 'blanket' additional insured endorsements must be limited to those entities which have a written contract with the Named Insured; in cases where no direct written contract between the parties exists, the recommended additional insured forms should be used.