AGENDA REPORT

Meeting Date: July 7, 2009

Item Number: E-1

To: Honorable City Council and Parking Authority Members

From: Mahdi Aluzri, Assistant City Manager/Economic Sustainability
Alan Schneider, Director of Project Administration

Subject:

A) CITY APPROVAL OF A **GRANT DEED AND LICENSE** CONVEYING PROPERTY TO THE PARKING AUTHORITY OF THE CITY OF BEVERLY HILLS FOR THE PURPOSE OF CONSTRUCTING A SUBTERRANEAN PARKING STRUCTURE AT 455 NORTH CRESCENT DRIVE.

B) PARKING AUTHORITY **ACCEPTANCE OF A GRANT DEED AND LICENSE CONVEYING PROPERTY TO THE PARKING AUTHORITY** OF THE CITY OF BEVERLY HILLS FOR THE PURPOSE OF CONSTRUCTING A SUBTERRANEAN PARKING STRUCTURE AT 455 NORTH CRESCENT DRIVE.

C) RESOLUTION OF THE BOARD OF DIRECTORS OF THE CITY OF BEVERLY HILLS **PARKING AUTHORITY DECLARING INTENTION TO REIMBURSE EXPENDITURES** RELATING TO PUBLIC PARKING PROJECTS FROM THE PROCEEDS OF TAX-EXEMPT OBLIGATIONS OF THE AUTHORITY.

D) APPROVAL OF AN AGREEMENT BETWEEN THE PARKING AUTHORITY OF THE CITY OF BEVERLY HILLS AND **MATT CONSTRUCTION CORPORATION** FOR PRECONSTRUCTION SERVICES FOR THE 455 CRESCENT GARAGE PROJECT, GENERAL CONDITIONS AND GUARANTEED MAXIMUM PRICE FOR THE UTILITY RELOCATION WORK IN CONNECTION WITH THE 455 CRESCENT GARAGE PROJECT, AND APPROVING PLANS AND SPECIFICATIONS FOR THE UTILITY RELOCATION WORK THEREFOR; AND

APPROVAL OF A PURCHASE ORDER IN THE AMOUNT OF $3,765,000 TO MATT CONSTRUCTION CORPORATION FOR THESE SERVICES AND CONTRACT WORK.

Attachments:

1. Agreement
2. Resolution of the Parking Authority
3. Grant Deed
4. Certificate of Acceptance

RECOMMENDATION

Staff recommends the following actions by the City Council or the Parking Authority as appropriate:

1. City Council approval of a grant deed and license conveying the property and acceptance of the same by the Parking Authority for the purpose of constructing a subterranean parking structure at 455 North Crescent Drive;

2. Approval of an agreement between the Parking Authority and Matt Construction Corporation for preconstruction services, general conditions and guaranteed maximum price for the 455 Crescent Garage Utility Relocation (Project) in the amount of $3,465,000; approve the construction contingency of $300,000; approve the plans and specifications for the Project dated June 26, 2009, which are adopted and approved with respect to design criteria; and approve a purchase order in the amount of $3,765,000.

3. Approval of a Resolution of Intent to Bond by the Parking Authority to issue in an aggregate principal amount which is sufficient to raise funds for the project in an approximate amount of $30,000,000.

INTRODUCTION

On January 22, 2009, the Parking Authority approved a lease amendment with the Wallis Annenberg Center for the Performing Arts ("Annenberg Center"), which in part, requires the Parking Authority to construct the 455 Crescent Garage ("Garage"). The Garage is proposed to be built under Crescent Drive between Big and Little Santa Monica Boulevards. In order to facilitate the construction there are several steps that are required by the City and the Parking Authority beginning with transferring the roadway property and the front portion of City Hall property where the Garage extend onto, from the City to the Parking Authority.

DISCUSSION

Property Conveyance

Exhibit A referred to in the Grant Deed for property transfer clearly outlines the boundaries of the property proposed to be conveyed from the City to the Parking Authority. It includes the entire width of Crescent Drive right-of-way, City Hall front lawn and extends beyond to include the access ramps to the Garage both from Crescent Drive and Little Santa Monica Boulevard. The conveyance however does not include Crescent Drive roadway improvements and up to 2 feet below the surface and therefore the City, as the grantor, is also giving a license to the Parking Authority to excavate for the Garage construction and reconstruct the roadway improvement after the Garage is built. Conveyance of the property to the Parking Authority allows for the selection of the proposed construction management firm being recommended by staff and who is also the same firm selected by the Annenberg Cultural Center as their general contractor as contemplated by the Lease work letter.

Project Description

The project contains two major components. The Annenberg Center will renovate the historic Post Office and construct a 500 seat theater on the eastern portion of the site fronting Crescent Drive. The Garage will be located beneath Crescent Drive and the west City Hall lawn, and provide approximately 470 parking spaces on three subterranean levels. Access and egress will be provided by driveways from Santa Monica Boulevard South, Crescent Drive, and a valet ramp from the Annenberg Center motor court.

Crescent Drive between Santa Monica Boulevard North and Santa Monica Boulevard South, and the west City Hall lawn will be excavated for the Garage construction and reconstructed once the Garage is completed. The City project also includes the street improvements around the Annenberg Center that was stipulated in Environmental Impact Report. The City is responsible for the street improvement costs associated with the garage and the Annenberg Center is responsible for the costs associated with the theater.

International Parking Design, a well recognized parking architect, was engaged to design the Garage in March 2008. Review of the above ground building elements, such as the elevator and stairway will be presented to the Architectural Commission for their input. The construction documents are currently being prepared and will be completed in the fall 2009. The architect and Psomas, a civil engineering firm, were engaged to prepare plans for the relocation of the utilities in Crescent Drive.

Project Approvals

The City Council action on January 22, 2009 certified the Environmental Impact Report for the Annenberg Center and Garage and approved a comprehensive Lease Amendment. The Lease includes a Work Letter outlining coordination among the parties to complete construction. The Work Letter provides for selection of a single contractor selected by Tenant and the Parking Authority in order to minimize costs and expedite the overall project.

The Work Letter also provides that all contracts shall be based on a stipulated sum or cost of the work with a guaranteed maximum price.

General Contractor Selection

The GMP General Contractor review process consisted of obtaining detailed information from six large contractors. The Annenberg Center, in coordination with City staff, narrowed the group to three firms on the basis of relevant experience and qualifications. These firms were Matt Construction Corporation, Hunt Construction Group and Charles Pankow Builders. The contractor finalists then competed on fee, preconstruction services, general conditions, shared savings, insurance and bonding, staffing, construction time and similar items. A summary of the major business points that were considered in the process are:

	Matt	Pankow	Hunt
Fee	2.5%	3.25%	3.0%
General Conditions	$1.7million	$1.8 million	$2.2 million
Shared Savings	75% owner/ 25% contractor	100% owner	100% owner
Change Order Fee	2.5%	4.0%	3.0%
Preconstruction Fee	$51,000	$151,000	$67,000
Construction time	19 months	23 months	24 months

While the factors considered are wide ranging, financially these items generally represent approximately 10% to 15% of a final GMP. The remaining 85% to 90% of the total cost are the actual subcontractor bids. After careful evaluation of the business points, staff recommends the selection of Matt Construction Corporation as the General Contractor, which is the same firm independently selected by the Annenberg Center. Their experience includes numerous large garages, museums, office buildings, schools, and a wide range of other facilities. They presented the best combination of fee and costs, and a highly qualified team to build the Garage.

Guaranteed Maximum Price (GMP)

The GMP format can be used because the Parking Authority has discretion in selecting various methods for contracting work, as compared to the City's compliance with the Public Contracting Code for lowest responsive bid. This requires that the Garage site be transferred to, and accepted by the Parking Authority. The Grant Deed will implement that transfer, except for the street right-of-way surface of Crescent Drive which will remain City street right-of-way. The Deed also provides a license for the Parking Authority to rebuild the right-of-way over the garage. This transfer has no impact on the Annenberg Center for the Performing Arts, which has a three-party agreement (lease) among the Annenberg Center, the City and the Parking Authority.

Matt Agreement Business Points

The initial GMP agreement contains the business points and basic language required for the entire project with a guaranteed maximum price for the utility relocation work. This would allow the general contractor to begin work immediately and provide the preconstruction and utility relocation to clear the Garage site so that the excavation can begin in January 2010.

The agreement anticipates that it would be amended when the bids for the garage excavation, construction and street work are received; and the GMP increased for those components of the project.

The business terms for the final GMP contract were negotiated as follows:

- Contractor's fee 2.5%
- Fixed general conditions (for greater scope than initially bid).....$1,929,000
- Shared savings.....75% owner / 25% contractor
- Fee for the first $250,000 of change orders 0
- Fee for change orders over $250,000..... 2.5%
- Contractor's contingency 1.5%
- Contractor's fee for certain items, such as insurance and bonds 0
- Liquidated damages .....$5,000 per day

Construction Phasing & Schedule

The current plan is to relocate the existing utilities beneath Crescent Drive commencing late summer, with the goal of completing the work in the public right-of-way prior to the 2009 holiday season. The utilities include Southern California Edison power feeds (serving City Hall, Fire Station #1, and the Post Office), a large City sewer line, Time Warner cables, and a City water pipe line. The Garage construction, including closing Crescent Drive, shoring and excavation would begin in January 2010, with completion in the fall of 2011.

The Garage construction schedule has been coordinated with that of the Annenberg Center. At the present time it is our understanding they intend to begin their construction in March-April 2010.

Ad Hoc Committee Review

Staff reviewed the proposed concept and project components with the City Council Ad Hoc Committee (Council members Brucker and Mirisch) on June 22, 2009 and the Committee agreed in general with the suggested approach. The Committee also asked for evaluation of two specific redesign items, one related to a connection from the Garage to the second floor in City Hall to facilitate direct public access to the Council Chambers. The second is the opportunity for expanding the subterranean garage easterly to Rexford under the current North Parking Lot which would provide added spaces and the potential for expanding the green space in front of City Hall along Big Santa Monica. That concept could have several design challenges including the necessary space that a driveway ramp would require but staff is currently working with the parking design architect to evaluate that option as well as the suggested access and hope to have that presented to the Committee no later than July 17, 2009.

Resolution of Intent to Bond

This Resolution is required to be adopted by the Board in order to use a portion of the proceeds of the bonds to reimburse expenditures made by the Parking Authority within 60 days prior to issuing the bonds. This coverage offers flexibility for the Parking Authority to retain more cash flow in the CIP project funding. Actual bonds issuance is not expected until September or October 2009 subject to the Parking Authority approval.

FISCAL IMPACT

The current budget estimate for the total project, based on schematic drawings and best estimates, is as follows:

Utility Relocation	$ 3,500,000
Garage Construction	$ 36,030,000
Street Improvements (including Crescent Drive reconstruction and the landscaping at City Hall)	$ 3,205,000
Consultants & Fees	$ 2,100,000
Contingency	$ 2,200,000
Total Project	$ 47,000,000

The initial phase and current GMP agreement submitted for approval is for the utility relocation, as follows:

Matt Construction Agreement (preconstruction services & utility relocation)	$ 3,465,000
City contingency	$ 300,000
Total	$ 3,765,000

Funding for this project will be a combination of the following sources:

- $13.3 million in the FY 09-10 Capital Improvement Program budget for this project account

- $7.1 million to be contributed by the Annenberg Center for their 100 parking spaces in the garage ($5 million in cash and $2.1 million in bonds to be issued by the Parking Authority, but supported by the revenue on the Center parking spaces)
- $1,165,025 million in additional Annenberg funding pursuant to a Lease provision that requires the Annenberg Center to fully fund amenities they propose for the Garage that would be beyond the scope of a municipal garage (the current budget estimate includes just over $1 million of such upgrades primarily related to the inclusion of escalators adjacent to the Center)
- $25.6 million acquired from bonds issued by the Parking Authority

Scott G. Miller
Finance Approval

Mahdi Aluzri
Approved By

Attachment 1

Agreement

AIA® Document A102™ – 2007

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

AGREEMENT made as of the twenty sixth day of June in the year two thousand nine
(In words, indicate day, month and year.)

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

The Parking Authority of the City of Beverly Hills
Beverly Hills City Hall
455 Rexford Drive
Beverly Hills, CA 90210

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

Matt Construction Corporation
9814 Norwalk Blvd., Suite 100
Santa Fe Springs, CA 90670
Telephone Number: (562) 903-2277
Fax Number: (562) 903-2290
License No.: 631020

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

The planning, preconstruction, traffic diversion, and the relocation of existing conflicting utilities for the proposed 455 Crescent Garage to be located at 455 North Crescent Drive between Santa Monica Boulevards North and South. The work includes, but is not limited to, the following:

Phase I – Preconstruction Services
Preconstruction Services for the relocation of the utilities in the garage construction zone, and the planning, estimating and value engineering of the garage, the reconstruction of Crescent drive and the City Hall lawn, and the interface and coordination with the adjacent Annenberg Center. These services shall include intensive periodic reviews and consultation with the Owner and its consultants to assure that value engineering concepts and efficiencies are included, to assure that the drawings are sufficiently complete and buildable in an economical manner, and that the Work can be built within the prescribed schedule.

Phase II – Utility Relocation
Relocation of the existing underground utilities in the garage construction zone to locations outside of the construction zone of the proposed garage and the traffic diversion modifications, including:

1. The existing Southern California Edison conduits and vaults that will be replaced with new conduits and pull boxes around the eastern boundary of the garage, including a new transformer and devices. The revised location will continue to serve City Hall and the Fire Station, and provide new service to the proposed garage.

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.

This document is not intended for use in competitive bidding.

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.

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2. The existing city sewer that will be replaced by a new line in Park Way, Canon Drive, Santa Monica South and Crescent Drive south of Santa Monica Boulevard South.
3. The existing Time Warner conduit will be replaced by new conduits around the east side of the garage; the Time Warner conduit shares a common trench with Southern California Edison conduit for most but not all of the length of the Time Warner conduit.
4. The existing east-west water line that will be replaced by a new pipe in Santa Monica North from Canon Drive to Rexford Drive.
5. Signal modifications and striping to divert traffic around the construction site and minimize congestion.
6. Other services (within the Contractor's control) that may be required to assure that construction of the garage can commence mid-January 2010.

Phase III – Garage Bidding
Bid the 455 Crescent Garage and the Annenberg street improvements, when those plans are completed.

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

The Architect is the following, except for the water line and the traffic diversion improvements:
International Parking Design, Inc.
14144 Ventura Blvd., Suite 100
Sherman Oaks, CA 91423
Telephone Number: (818) 986-1494
Fax Number: (818) 906-8697

The Engineer for the water line and traffic diversion improvements is:
Psomas
555 South Flower Street, suite 4400
Los Angeles, CA 90071
Telephone Number: (213) 223-1400
Fax Number: (213) 223-1444

The Owner and Contractor agree as follows.

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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. All references to the General Conditions of the Contract or AIA document A-201-2007 shall be deemed to refer to the modified version of that document attached hereto as Exhibit F.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall perform services pursuant to this Contract in the following two phases:

§ 2.1 Pre-Construction.

§ 2.1.1 The Contractor shall provide full pre-construction services including attending regular meetings and providing periodic budgets and updates, value engineering analysis, site issues, constructability reviews, scheduling, and means & methods. In addition to individual pricing efforts, project budgets for the Garage shall be provided at (i) within 5 days from commencement the Architect's initial Schematic Design, and (ii) shall be updated at (100%) of Design Development. Upon completion of the Construction Drawings and Specifications, the Contractor shall

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obtain bids for the Work in accordance with the provisions of Section 5.2.1 and shall submit to Owner the proposed Guaranteed Maximum Price for the Work. The foregoing bidding process is included in General Conditions Costs (as defined below). If such proposed Guaranteed Maximum Price exceeds the budget prepared by the Contractor at the completion of the Design Development, the Owner may elect not to utilize the services of the Contractor for the Construction phase. The Owner may terminate this Agreement in its entirety or in phases, and pay the Contractor for Preconstruction Services, including General Conditions on an hourly basis for services rendered by the Contractor calculated by multiplying the hours devoted by the Contractor's personnel by the hourly rates applicable to such personnel as set forth on Exhibit A attached hereto; provided that the Contractor shall not be entitled to payment for hours worked unless such hours have been contemporaneously recorded, and provided further that, in no event shall the Owner be obligated to pay to the Contractor for Pre-Construction services an amount in excess of the Pre-Construction Fee Cap (as that term is defined in the next sentence. As used herein, the "Pre-Construction Fee Cap" shall be an amount that is initially $90,000.

§ 2.1.2 Intentionally omitted.

§ 2.1.3 Intentionally omitted.

§ 2.1.4 The Contractor's compensation for Pre-Construction services and Utilities Relocation general conditions shall be lump sum to be paid in 6 equal monthly installments from commencement of the work. Contractor shall submit monthly invoices and Owner shall have thirty (30) days to pay. If the Contractor completes the work early, the Owner shall pay the Contractor all remaining funds thirty (30) days after the completion of the work.

§ 2.2 Construction. The Contractor shall fully execute the Work described in, or reasonably inferred from, the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 RELATIONSHIP OF THE PARTIES

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect, the Owner and the Owner's other consultants, including, without limitation, any structural engineer, civil engineer, shoring and waterproofing consultant and other consultants designated from time to time by the Owner as part of the Project team, and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to staff the Project with and 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 , within ten (10) days, information reasonably required by the Contractor and requested in writing that is reasonably available to Owner and is, to the actual knowledge of Owner, accurate in all material respect and to make payments to the Contractor in accordance with the requirements of the Contract Documents. If information requested by the Contractor is in the possession of the Owner at the time of such request, the Owner shall deliver the same to the Contractor within ten days following such request. If the information is not currently in the possession of the Owner, the Owner shall endeavor to obtain and deliver the same to the Contractor as expeditiously as possible under the circumstances.

ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 4.1 The date of commencement of the Pre-Construction phase of the Work shall be the date of this Agreement (unless the Owner has authorized the Contractor to begin earlier, at the Owner's sole option) and shall extend to the earlier of (i) the Owner's election to terminate this Contract, or (ii) the Commencement Date (as defined in the next sentence). The date of commencement of the Phase II of the Work shall be the date to be fixed in a notice to
(Paragraphs deleted)
proceed issued by the Owner and is referred to herein as the "Commencement Date" which shall not be before the necessary permits are issued. The anticipated Commencement Date for the relocation of the existing underground utilities and traffic diversion modifications is August 3, 2009. The anticipated Commencement Date for the Garage Project shall be approximately January 11, 2010.

§ 4.2 The Contract Time shall be measured from the Commencement Date.

§ 4.3 The Contractor shall achieve Substantial Completion of the
(Paragraphs deleted)

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Work in accordance with the construction schedule attached as Exhibit B, subject to adjustments of this Contract Time as provided in the Contract Documents. The Contractor shall prosecute the Work in accordance with the schedule attached as **Exhibit B** ("Project Schedule"), as that schedule may be adjusted from time to time as necessary and as approved by the Owner. Contractor represents and warrants that the Project Schedule and Guaranteed Maximum Price (as that term is defined in Paragraph 5.2.1, below) are based upon and include 10 days of delay for adverse weather conditions for the location of the Project and the timeframe for construction, but such schedule is subject to adjustments of this Contract Time as provided in the Contract Documents.

(Paragraph deleted)
In the event the Contractor, due solely to conditions within his control, fails to achieve Substantial Completion by the following: 1) within 176 calendar days (excluding holidays) or 125 work days from notice to proceed Liquidated Damages in the amount of Five **Hundred** dollars ($500.00) per day will be assessed against the Contractor, but such Liquidated Damages shall not exceed a total of Twenty Five Thousand dollars ($25,000.00). The parties hereby stipulate and agree that the liquidated damages amounts described herein are reasonable and are an attempt to estimate various types of damages that are by their nature extremely difficult to quantify or to calculate with certainty.

ARTICLE 5 CONTRACT SUM

§ 5.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum is the Cost of the Work as defined in Articles 7 and 8 plus the Contractor's Fee.

§ 5.1.1 The Contractor's
(Paragraphs deleted)
Fee shall be 2.5% of the Cost of the Work. The cost of bonds and liability insurance shall not be considered Cost of the Work for purposes of determining the Contractor's Fee as detailed in Exhibit C.

§ 5.1.2 The method of adjustment of the Contractor's Fee for changes in the Work: 2.5% of the net additional Cost of the Work.

§ 5.1.3 Limitations, if any, on the Contractor's fee for increases in the cost of the Work: There shall be no additional fee for the first $50,000 of net additional Cost of the Work.

§ 5.1.4 Rental rates for Contractor-owned equipment shall not exceed the standard rate paid at the place of the Project.

(Table deleted)
(Paragraphs deleted)

§ 5.2 GUARANTEED MAXIMUM PRICE

§ 5.2.1 The Contract Sum shall be guaranteed by the Contractor not to exceed an amount (the "Guaranteed Maximum Price") that shall be set forth in Exhibit C to be attached to this Contract in accordance with the following provisions. Following completion of Construction Drawings and Specifications, the Contractor shall obtain a minimum of three (3) bids for all subtrades comprising the Work; provided, however, that the Owner shall have the right, in its sole and absolute discretion, to add (with mutual agreement by the Contractor not to be unreasonably withheld or delayed) or exclude prospective bidders, and to designate certain specialty work to be performed by subcontractors identified by the Owner for which bids shall not be required provided such subcontractors will execute the Contractor's subcontract agreement without material modifications and will qualify for bonding. The Contractor shall prepare bid analyses for each subtrade and shall deliver the same to the Owner. The Owner shall have the right to approve all subcontracts in excess of $20,000. Based on the lowest qualified bids received by the Contractor, as approved by the Owner, the Contractor shall prepare a proposed Guaranteed Maximum Price, together with a detailed schedule of values, summary of subcontractors and qualifications and assumptions, and shall submit the same to the Owner for review and approval. Such proposed Guaranteed Maximum Price shall include the amount of $1,651,993 for those items identified on Exhibit D attached hereto (the "General Conditions Costs") and shall include no more than a 1.5% contingency. All Pre-Construction costs and those General Conditions costs associated with the first phase of the Project (i.e. all Work prior to start of the Garage construction) will be a lump sum amount of $279,000 and will be paid in six (6) equal monthly payments beginning July, 2009 and ending December, 2009. If the Contractor completes the work early, the Owner shall pay the Contractor all remaining funds at the time of the completion of the work. The General Conditions for the remaining phases of the Project (i.e.

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all Work after commencement of the Garage construction) will not be a lump sum amount and the foregoing contingency may be used for overages on these costs. The Contractor shall also provide to the Owner a reasonable description of the bases for the calculation of the General Conditions Costs based upon the Project Schedule, contract value and site coordination. Contractor shall not have the right to duplicate charges included in General Conditions Costs by billing for such items elsewhere as Cost of the Work. General Conditions Costs shall be paid monthly.

When the proposed Guaranteed Maximum Price and schedule of values has been approved by the Owner, the same shall be attached to this Contract as Exhibit C. The proposed Guaranteed Maximum Price set forth in Exhibit C shall be the Guaranteed Maximum Price and the schedule of values set forth in Exhibit C shall be referred to herein as the "Schedule of Values."

The Guaranteed Maximum Price includes a Contractor contingency line item which is intended to cover gaps in the bidding process, including, without limitations, those resulting from changes, which the Contractor should have anticipated, bankruptcies of Subcontractors, and acceleration if the Work falls behind schedule [liquidated damages, if any] through no fault of the Owner, overruns of the Contractor's General Conditions, and errors or negligence of the Contractor. Utilization of the Contractor Contingency shall be under the direction of the Contractor. The Contractor shall give notice to the Owner in the monthly pay applications of its utilization of such contingency funds, and the monies so utilized fall within the definition of Cost of Work items as described in Article 7 hereof. The Contractor's Contingency is not for design changes, changes in scope, or unforeseen conditions.

Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

Upon final completion of the Work, to the extent the total Cost of the Work plus the Contractor's Fee is less than the Guaranteed Maximum Price, the difference shall be "Savings." The Savings shall be allocated as follows:

Savings shall be allocated 75% to the Owner and 25% to the Contractor.

§ 5.2.2
(Paragraphs deleted)
Intentionally omitted.

§ 5.2.3 Allowances included in the Guaranteed Maximum Price, if
(Paragraphs deleted)
any, shall be identified on Exhibit C.
(Table deleted)
§ 5.2.4 Assumptions, if any, on which the Guaranteed Maximum Price is based shall be identified on Exhibit C.

§ 5.2.5 To the extent that the Drawings and Specifications are anticipated to require further development by the Architect, the Contractor shall provide in the Guaranteed Maximum Price for such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development shall 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.

ARTICLE 6 CHANGES IN THE WORK

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

§ 6.2 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 except as may be modified by Articles 5, 7 and 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.

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§ 6.3 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 Article 7 of this Agreement and the term "fee" shall mean the Contractor's Fee as defined in Section 5.1.1 of this Agreement.

§ 6.4 Without limiting the foregoing, the Owner shall have the right to alter the schedule by phasing the Work and/or delaying commencement of the same, provided that, if, by doing so, the Contract Time is extended on a net basis, the General Conditions Costs shall be modified to reflect the increase in such Contract Time.

ARTICLE 7 COSTS TO BE REIMBURSED

§ 7.1 COST OF THE WORK

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

§ 7.1.2 Where any cost is subject to the Owner's prior approval, the Contractor shall obtain this approval prior to incurring the cost. The parties shall endeavor to identify any such costs prior to executing this Agreement.

§ 7.2 LABOR COSTS

§ 7.2.1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops, but not including the Contractor's supervisory personnel, it being understood that the cost of such personnel is included in the General Conditions Costs.

§ 7.2.2 Intentionally omitted.

§ 7.2.3 Intentionally omitted.

§ 7.2.4 Costs paid or incurred by the Contractor 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 Section 7.2.1.

§ 7.2.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to any Subcontractor or vendor, with the Owner's prior approval.

§ 7.3 SUBCONTRACT COSTS

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

§ 7.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

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

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

§ 7.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

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

§ 7.5.2 To the extent not included in General Conditions Costs, rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Contractor at the

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site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Contractor-owned item may not exceed the purchase price of any comparable item. Rates of Contractor-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

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

§ 7.5.4 Costs of document reproductions, facsimile transmissions (provided Contractor shall utilize, to the extent available, computer-assisted transmission rather than facsimile) and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.

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

§ 7.6 MISCELLANEOUS COSTS

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract, subject to those limitations set forth in Article 15, below. Self-insurance for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

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

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

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded 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 7.7.3.

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

§ 7.6.6 Intentionally omitted.

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

§ 7.6.8 Legal, mediation and arbitration costs, including attorneys' fees reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work, but only if the Contractor has become involved in such proceedings at the request of the Owner. Legal, mediation and arbitration costs, including attorneys' fees, arising from disputes between the Owner and Contractor, shall not be included in Costs of the Work.

§ 7.6.9 Intentionally omitted.

§ 7.6.10 General Conditions Costs, which costs shall be as described in Section 5.2.1.

§ 7.7 OTHER COSTS AND EMERGENCIES

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

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

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

§ 7.8 RELATED PARTY TRANSACTIONS

§ 7.8.1 For purposes of Section 7.8, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Contractor; any entity in which any stockholder in, or management employee of, the Contractor 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 Contractor. The term "related party" includes any member of the immediate family of any person identified above.

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

ARTICLE 8 COSTS NOT TO BE REIMBURSED

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

- **.1** Salaries and other compensation of the Contractor's personnel, except as specifically provided in Section 7.2. or as may be provided in Article 15;
- **.2** Expenses of the Contractor's principal office and offices;
- **.3** Overhead and general expenses, except as may be expressly included in Article 7;
- **.4** The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- **.5** Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence or failure of the Contractor, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- **.6** Any cost not specifically and expressly described in Article 7;
- **.7** The cost of items included in the definition of General Conditions Costs, except for the General Conditions Costs in the amount fixed pursuant to Section 5.2.1; and
- **.8** Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

§ 9.1 Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the Contractor. The Contractor shall promptly advise Owner of any discounts or rebates that may be available for early payments. The Owner may elect to pay such amounts directly or otherwise take such actions to allow for obtaining such discounts. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be obtained.

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work (and shall not be treated as "Savings").

ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 Those portions of the Work that the Contractor does not perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall

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deliver such bids to the Owner. The Owner shall then determine, with the advice of the Contractor and the Architect, which bids will be accepted. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

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

§ 10.3 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 a fee basis, the Contractor shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11, below.

ARTICLE 11 ACCOUNTING RECORDS

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

ARTICLE 12 PAYMENTS

§ 12.1 PROGRESS PAYMENTS (The following Article 12 payment process applies only to payment for Phase II of the Work)

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

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

§ 12.1.3 No later than the 25th day of each month, the Contractor shall submit to the Architect and the Owner a draft of the (then-current) Application for Payment. Upon receipt of the draft Application for Payment, the Architect, the Owner and the Contractor shall meet to agree upon the Application for Payment and the Contractor shall proceed to finalize and submit the complete Application for Payment prior to the 30th day of the month. The Owner shall make payment of the amount set forth in an approved Application for Payment (or such portion thereof not disapproved by the Owner) within thirty (30) days following such approval. Each Application for Payment shall be based on the percentage of completion of the scheduled value of the contracted work. All progress payments shall be subject to a retainage of ten percent (10%); provided, however that the retainage applicable to General Conditions Costs shall be five percent (5%).

§ 12.1.4 With each Application for Payment, the Contractor 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 Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee. Each Application for Payment shall additionally be accompanied by such other instruments, documents, and information as may be required by the provisions of the Contract Documents or otherwise reasonably requested by Owner or any lender providing financing in connection with the Project ("Lender"), including, without limitation, lien waivers and releases from Contractor and all Subcontractors and material suppliers at every tier having lien rights and receiving payment on account of the current Application for Payment for all work performed through the period covered by the current Application for Payment, which lien waivers and

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releases shall comply with the requirements of the California Civil Code. The lien waivers and releases may be conditional, provided that, for each conditional lien waiver and release, the Contractor shall submit an unconditional lien waiver and release covering the same work with its next Application for Payment. In order to provide the City with early budget and /or schedule problems, the Contractor shall accompany each payment request with written notification that (a) the work will be completed on or before the completion date, and (b) there are no known issues that increase the General Conditions, require use of the contingency, or increase the GMP. If there are, Contractor shall identify the issues with adequate justification

§ 12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee 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 Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 12.1.6 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor 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.

§ 12.1.7 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;
- **.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 Contractor's Fee, less retainage of ten percent (10%).The Contractor's Fee shall be computed upon the Cost of the Work at the rate stated in Section 5.1.1;
- **.4** Subtract retainage of ten percent (10%) from that portion of the Work that the Contractor self-performs provided, however, that the retainage applicable to the General Conditions costs shall be five percent (5%);
- **.5** Subtract the aggregate of previous payments made by the Owner;
- **.6** Subtract the shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- **.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, or for which the Owner has withheld payment pursuant to the provisions of the Contract Documents.

§ 12.1.8 The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors. Without limitation, the Owner shall have the right to issue checks payable jointly to the Contractor and Subcontractors. Payments to Subcontractors shall be subject to retainage of not less than ten percent (10%).

§ 12.1.9 In taking action on the Contractor's Applications for Payment, a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 12.1.4 or other supporting data, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 12.2 FINAL PAYMENT

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

- **.1** the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007, and to satisfy other requirements,

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if any, which extend beyond final payment, and the Project is lien free, stop notice free and claim free;

.2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment;

.3 a final Certificate for Payment has been issued by the Architect and approved by the Owner; and

.4 the Contractor is not in default under the Contract Documents.

.5 Contractor shall have the option of bonding around such lien(s).

.6 all of the other applicable conditions in Section 9.10.2 of the General Conditions shall have been met; however,upon Substantial Completion of the Work, the Contractor will be paid all retainage, exclusive of One Hundred Fifty percent (150%) of the value attributed to "punch list" Work. As items on the punch list are completed, the Contractor will be paid One Hundred Fifty percent (150%) of their value at the next progress payment.

§ 12.2.2 The Owner's auditors will review and report in writing on the Contractor's final accounting within sixty (60) days after delivery of the final accounting to the Owner by the Contractor. The Owner shall not withhold Contractor's final payment during the audit period. The time periods stated in this Section 12.2.2 supersede those stated in Section 9.4.1 of the AIA Document A201–2007.

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

§ 12.2.4 The Owner's final payment to the Contractor shall be made when all of the conditions set forth in Section 9.10.2 of the General Conditions (in addition to satisfaction of the conditions set forth in Section 12.2.1) have been satisfied.

(Paragraph deleted)

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 INITIAL DECISION MAKER

The Owner's Representative will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007, unless the parties appoint below another individual, not a party to the Agreement, to serve as Initial Decision Maker.

(Paragraphs deleted)

§ 13.2

(Paragraphs deleted)

INTENTIONALLY OMITTED

ARTICLE 14 TERMINATION OR SUSPENSION

§ 14.1 Subject to the provisions of Section 14.2 below, the Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007.

§ 14.2 If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2007, the amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A201–2007 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

.1 Take the Cost of the Work incurred by the Contractor to the date of termination;

.2 Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

.3 Subtract the aggregate of previous payments made by the Owner.

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§ 14.3 To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 14.4 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 adjusted as provided in Section 14.3.2 of AIA Document A201–2007, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Section 5.1.1 of this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 15.2 Undisputed payments due and unpaid under the Contract shall bear interest from the date payment is due
(Paragraphs deleted)
at the rate of 10% per annum.

§ 15.3 The Owner's representative:
(Paragraphs deleted)
Project Administration Division
Department of Public Works and Transportation
City of Beverly Hills
345 Foothill Road
Beverly Hills, CA 90210
Attention: Alan Schneider, Director of Project Administration
Tel: (310) 285-1188
Fax: (310) 278-1838

§ 15.4 The Contractor's representative:
(Paragraphs deleted)
Matt Construction Corporation
9814 Norwalk Boulevard, Suite 100
Santa Fe Springs, CA 90670
Attention: James A. Muenzer
Tel: (562)-903-2277
Fax: (562) 903-2290

§ 15.5 Intentionally omitted.

§ 15.6 The key members of the Contractor's staff with respect to the Project are those persons set forth in the Schedule of Key Personnel, attached hereto and made a part hereof as **Exhibit E** ("Key Personnel"). The Contractor shall not change Key Personnel or the level of commitment of Key Personnel to the Project without the prior written consent of the Owner, which consent may not be unreasonably withheld by the Owner; provided, however, that the Contractor may replace key Personnel who are unable to perform their required duties due to death, disability or termination of employment with the Contractor. The Contractor shall notify the owner in writing of any potential change in Key Personnel with as much advance notice as reasonably possible. The Owner may direct the Contractor to replace Key Personnel for cause without any additional compensation to the Contractor. The Owner and the Contractor shall mutually agree on substitute key Personnel, if any, and neither shall be unreasonable. **Exhibit E** shall be updated by agreement between the Owner and the Contractor from time to time to provide current information.

§ 15.7 This Agreement may not be orally amended, modified or terminated. No amendment or modification of this Agreement shall be binding upon either party unless signed by both parties. This Agreement shall bind the successors and assigns of the respective parties.

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§ 15.8 All understandings heretofore and between the parties are merged in this Contract, which alone fully and completely express their agreement. This Contract shall be construed under the laws of the State of California, and any claims and causes of action arising under or in connection with this Agreement shall be brought before a court of competent jurisdiction, subject to the dispute resolution proceedings provided in the AIA Document A-201-2007.

§ 15.9 If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby, and such remaining provisions shall remain in full force and effect. The invalid, illegal or unenforceable provision shall be replaced by a mutually acceptable provision, which being valid, legal and enforceable, comes closest to the intention of the parties underlying the invalid, illegal or unenforceable provision.

§ 15.10 Neither party shall unreasonably withhold or delay its consent or approval when requested by the other party.

§ 15.11 The Contractor acknowledges that, pursuant to the terms of the Lease, prevailing wages must be paid in connection with the Work. The Contractor shall utilize an open shop method of contracting. The Owner and the Contractor acknowledge that many specialty Subcontractors may not be signatory to collective bargaining agreements.

§ 15.12 Whenever the Owner's consent is required hereunder, such consent shall not be deemed to have been granted unless in writing signed by the Owner.

§ 15.13 Intentionally omitted.

§ 15.14 The Owner shall provide parking spaces for the personnel of the Contractor and its Subcontractors within the City's Civic Center parking garage, any other parking facility within one thousand feet of the Property, and/or the Garage Project (once it is completed).

ARTICLE 16 ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 16.1.1 The Agreement is this executed AIA Document A102–2007, Standard Form of Agreement Between Owner and Contractor.

§ 16.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for Construction as amended and attached hereto as Exhibit F.

§ 16.1.3 Intentionally omitted.
(Table deleted)
§ 16.1.4 The
(Paragraphs deleted)
Specifications shall be set forth on Exhibit G. Owner shall notify Contractor in writing when Owner has approved the Specifications for Owner's purposes (so that Exhibit G hereto can be revised to reflect those final Specifications); however, such approval shall not constitute a waiver of or otherwise alter or reduce Contractor's obligations under Section 3.2 of the General Conditions attached hereto as Exhibit F.
(Table deleted)
§ 16.1.5 The
(Paragraphs deleted)
Drawings shall be set forth on Exhibit G. Owner shall notify Contractor in writing when Owner has approved the final Drawings for Owner's purposes (so that Exhibit G hereto can be revised to reflect those final Drawings); however, such approval shall not constitute a waiver of or otherwise alter or reduce Contractor's obligations under Section 3.2 of the General Conditions attached hereto as Exhibit F.
(Table deleted)
§ 16.1.6
(Paragraphs deleted)
Intentionally omitted.

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§ 16.1.7
(Paragraphs deleted)
Intentionally omitted.

§ 16.1.8 Attached hereto as Exhibits I, J and K, respectively, are (i) the soils report, (ii) the phase II report, and (iii) Mitigation Monitoring and Reporting Program dated January 19, 2009. The Contractor acknowledges receipt and review of the foregoing documents and shall ensure that the Work is performed in compliance with the same.

ARTICLE 17 INSURANCE AND BONDS

(Paragraph deleted)

§ 17.1 The Contractor shall purchase and maintain for three years following Substantial Completion the following insurance:

.1 Commercial general liability insurance including but not limited to coverage for bodily injury, personal injury, property damage, contractual liability, explosion, collapse, underground operations and products and completed operations liability coverages, written on an occurrence basis, issued to and covering the liability of Contractor for all work and operations under this Agreement with a single limit of ONE MILLION DOLLARS ($1,000,000) per occurrence, and TWO MILLION DOLLARS ($2,000,000) per project aggregate, together with excess liability coverage in the amount of FIFTY MILLION DOLLARS ($50,000,000) specifically naming the operations described in this Agreement. The foregoing policy or policies shall be broad form and shall evidence the contractual liability of Contractor to enforce the indemnity and hold harmless provisions of this Agreement.

.2 Automotive liability insurance including but not limited to coverage for bodily injury and property damage covering the use in connection with the Work of all owned, non-owned and hired vehicles with a combined single limit of not less than ONE MILLION DOLLARS ($1,000,000) each accident.

.3 Workers' compensation insurance with statutory limits and employer's liability insurance with limits of not less than ONE MILLION DOLLARS ($1,000,000) each accident, ONE MILLION DOLLARS ($1,000,000) for disease policy limit and ONE MILLION DOLLARS ($1,000,000) for disease each employee.

.4 Other kinds of insurance, including limits, which may be reasonably required by Owner, at Owner's cost and expense.

§ 17.2 The insurers issuing the policies for the foregoing coverages shall be rated A/XII or better by the most current Best's Key Rating Guide and approved by the Owner. Such insurance companies shall be authorized to do business in California. With the exception of workers' compensation insurance, the Owner and the Beverly Hills City Council and each member thereof and every officer, employee and agent of the City of Beverly Hills shall be named as additional insureds on all policies using ISO endorsement CG 20 10 11 85 or equivalent. The Contractor's insurance policies shall state that they are primary and not additional to, or contributing with, any other insurance carried by, or for the benefit of the Additional Insureds. Any such insurance maintained by the Additional Insureds shall be excess of that maintained by the Contractor. Each liability policy of Contractor shall contain a "separation of insureds" provision stating that, except for limits of liability, the policies shall operate as though separate policies had been issued to each insured. As often as any of such policies described above shall expire or terminate, renewal or additional policies shall be procured and maintained in like manner and to like extent. All policies of insurance delivered to Owner must contain a provision that the company writing said policy will give to Owner thirty (30) days' notice in writing in advance of any cancellation or nonrenewal of insurance and 10 days notice for non-payment of premium. Without limiting the foregoing, if an insurer is utilizing the Accord Certificate of Liability Insurance form, the "Cancellation" language shall be modified by deleting the following language: (i) In the second line, after the word "will," delete "endeavor to"; and (ii) in the fourth line, after the word "left," delete the remaining language.

§ 17.3 The Contractor shall cause each Subcontractor to maintain the insurance described in Section 17.1, subject to the requirements of Section 17.2, provided, however, Subcontractor limits for general liability coverage shall be a combined single limit of no less than TWO MILLION DOLLARS ($2,000,000) per occurrence, and FOUR MILLION DOLLARS ($4,000,000) per project aggregate specifically naming the operations described in this Agreement.

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§ 17.4 The cost of liability insurance shall be fixed at 0.9% of the Cost of the Work.

§ 17.4.1 The cost of builders risk insurance shall be actual cost and shall be reimbursable.

§ 17.5 The Contractor shall obtain performance and payment bonds for its Work and shall require performance and payment bonds of all Subcontractors whose subcontract amounts exceed $100,000. The Owner shall be named as co-obligee on such performance and payment bonds. The cost of bonds shall be the actual cost and be included in the Cost of the Work. At the Owner's option, Subguard® coverage may be substituted for subcontractor bonds.

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

THE PARKING AUTHORITY OF THE CITY OF BEVERLY HILLS

By:

Nancy Krasne, Chairperson

Attest:

Byron Pope, Secretary

MATT CONSTRUCTION CORPORATION

Steven F. Matt, President

Alan B. Matt, Corporate Secretary

6.26.09

Approved as to Form:

Laurence S. Wiener, General Counsel

Approved as to Content:

Roderick J. Wood, CCM, Chief Executive Officer

DSR David D. Gustavson, Director of Public Works & Transportation

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Exhibit A

Hourly Rates for the Contractor's Personnel

Project Staff	Title	Hourly Rate
Jim Muenzer	Project Executive	196.00
Jason Lin	Senior Project Manager	119.00
Mat Evans	Sr. Superintendent	124.00
Roger Fricke	VP of Estimating	174.00
Hakim Khalil	Chief Estimator	135.00
Jimmy Chao	Senior Estimator	120.00
Jeff Jarrett	Project Manager	116.00
Nathan Miller	Asst. Project Manager	78.00
Joe Gregorwich	Safety Director	78.00
TBD	Utilities relocation Superintendent	115.00
TBD	Laborers	Varies
TBD	Carpenters	Varies
TBD	Community Coordinator	TBD
TBD	Scheduler	115.00
	General Superintendent	134.48
Sergio Mayorquin	Superintendent	96.10
TBD	Project Engineer	54.00
TBD	Estimating PE	51.00
TBD	Project Accountant	48.00
TBD	Project Administration	48.00

The above rates are subject to annual labor escalation and do not include the Contractor's Fee. The above list is not a complete list of Contractor's personnel is not meant to limit who the Contractor may designate to work on the project. Only the actual Contractor's personnel that perform work on the project will be included in the billing at his or her billing rate.

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Exhibit B

Project Schedule

Contractor shall complete the Utilities Relocation Work within 176 calendar days (excluding holidays) or 125 work days from notice to proceed. Notice to proceed date is anticipated to be August 3, 2009.

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Exhibit C

Contract Cost Breakdown
(with Schedule of Values, Summary of Subcontractors and Qualifications and Assumptions to be attached after subcontractor bidding)

The Guaranteed Maximum Price shall consist of the sum of the following items:

1.	Sum of estimated subcontractor bids**	$	2,890,000.00
2.	Mutually agreed upon allowances	$	100,000.00
3.	A. Preconstruction utilities (Lump sum for Phase I)	$	50,000.00
	B. Garage Bidding (Lump sum for Phase III)	$	40,000.00
4.	Utility relocation General Conditions (Lump sum part of Phase II)	$	189,000.00
	SUBTOTAL #A		3,269,000.00
5.	Commercial liability insurance (0.9% of (Subtotal A plus items 9 and 10))	$	31,000.00
6.	Business and Occupational taxes .....(Excluded)	$	0.00
7.	Builder's Risk insurance (Actual Cost) (Reimbursable item)	$	4,000.00
8.	Contractor's bonds (Actual Cost) (Reimbursable item)	$	34,000.00
	SUBTOTAL #B		69,000.00
9.	Contractor contingency of 1.5% of SUBTOTAL #A	$	49,000.00
10.	A Fee of 2.5% of Subtotal #A and expended portion of contingency *	$	83,000.00
	TOTAL	$	3,470,000.00

* Assumed 100% for this calculation
** Estimate is to be replaced by actual bids amount (Actual costs are to be determined when subcontractor bids are received. The Costs shown are estimates.)

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Exhibit D

General Conditions Costs

(See Attached for the following:)

1. Phases I & III – Preconstruction services for 455 Crescent Garage – lump sum amount of $90,000, paid in 6 equal monthly installments commencing at the date of this agreement.
2. Phase II – General Conditions for Utility Relocation in the lump sum amount of $189,000 and the sum of the relocation subcontractor bids, insurance, bonding, etc., and Contractor's Fee calculated per section 5.1.1. Owner shall pay the Contractor its General Conditions amount for Utility Relocation in 6 equal monthly installments except when Contractor completes its work ahead of schedule. At which time, Owner shall pay Contractor all remaining sum of the General Conditions. All other costs shall be paid monthly as earned. Payment shall commence at the date of this agreement.

A GMP shall be established for Phase II at the completion of Phase II bidding.

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Exhibit E

Contractor's Key Personnel

Project Staff	Title
Jim Muenzer	Project Executive
Jason Lin (Utility Project Manager)	Senior Project Manager
Mat Evans (Utility Superintendent)	Senior Superintendent

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Exhibit F

General Conditions (AIA Document A201-2007, as amended)

(See Attached)

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Exhibit G

Plans and Specifications

Drawing Sheet No.	Description	Prepared by	Date	Date Received
Improvement Plans for Crescent Drive Sewer Relocation by Civil Works Engineers, Inc.				
1 of 5	**Title Sheet**	Civil Works Engineers, Inc.	**6/26/09**	**6/26/09**
2 of 5	**STA 23+98 TO 19+50**	Civil Works Engineers, Inc.	**6/26/09**	**6/26/09**
3 of 5	**STA 19+50 TO 14+50**	Civil Works Engineers, Inc.	**6/26/09**	**6/26/09**
4 of 5	**STA 14+50 TO 10+00**	Civil Works Engineers, Inc.	**6/26/09**	**6/26/09**
5 of 5	**Details**	Civil Works Engineers, Inc.	**6/26/09**	**6/26/09**
Edison & Time Warner Conduits by Donald F. Dickerson Associates				
	TBD			
Water Main Relocation in Santa Monica Boulevard (North) by Psomas				
1 of 4	**Title Sheet**	**Psomas**	**6/26/09**	**6/26/09**
2 of 4	General & Construction Notes, Abbreviations, & Typical Details	**Psomas**	**6/26/09**	**6/26/09**
3 of 4	Santa Monica Boulevard From STA **10+00.00 To STA 14+00.00**	**Psomas**	**6/26/09**	**6/26/09**
4 of 4	Santa Monica Boulevard From STA **14+00.00 To STA 18+86.66**	**Psomas**	**6/26/09**	**6/26/09**
Traffic Diversion				
	TBD			
(Row deleted)				
(Row deleted)				

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Exhibit H

Additional Documents

(None)

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Exhibit I

Soils Report

See attached Geotechnical Engineering Investigation Report for the Crescent Drive Parking Structure, File 19602 (111 pages).
Dated: February 21, 2008, Revised May 20, 2009
Prepared by:
Geotechnologies, Inc.
439 Western Avenue
Glendale, CA 91201-2837
(818) 240-9600

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Exhibit J

Phase II Report

(None & Not Applicable)

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Exhibit K

Mitigation Monitoring and Reporting Program

See attached Mitigation Monitoring and Reporting Program for Wallis Annenberg Center for the Performing Arts Project (SCH #2007011008) Prepared for City of Beverly Hills Department of Community Development dated January 2009.

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AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:
(Name and location or address)
Planning, preconstruction, traffic diversion, and the relocation of existing conflicting utilities for the proposed 455 Crescent Garage to be located at 455 North Crescent Drive between Santa Monica Boulevards North and South, and bidding of the 455 Crescent Garage project.
Beverly Hills, California

THE OWNER:
(Name, legal status and address)
The Parking Authority of the City of Beverly Hills
Beverly Hills City Hall
455 Rexford Drive
Beverly Hills, CA 90210

THE ARCHITECT/ENGINEER:
(Name, legal status and address)
The Architect is the following, except for the water line and the traffic diversion improvements:
International Parking Design, Inc.
14144 Ventura Blvd., Suite 100
Sherman Oaks, CA 91423
Phone No.: (818) 986-1494
Fax No.: (818) 906-8697

The Engineer for the water line and traffic diversion improvements is:
Psomas
555 South Flower Street, suite 4400
Los Angeles, CA 90071
Telephone Number: (213) 223-1400
Fax Number: (213) 223-1444

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. 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 or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties. The Contractor specifically acknowledges that the Contract Documents are sufficient for Contractor to determine the entire cost of the Work, and that the Contract Documents are sufficient for the Contractor to complete the Work in accordance with applicable laws and regulations and to fulfill its obligations.

§ 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.

§ 1.1.4.1 The Contractor has investigated and considered (i) the site in which the Project is located, (ii) weather conditions applicable to the Project location, (iii) the conditions or limitations affecting the Work or the performance thereof, (iv) all documents under the Contract, (v) all reports furnished by the Owner to the Contractor, (vi) all special conditions of any landlord or lender of which the Owner has advised the Contractor prior to the execution of the Contract and special conditions of any governmental agency applicable to the Project location or the Work including, without limitation, that certain Amended and Restated Lease dated January 22, 2009 between the Owner and the Wallis Annenberg Center for the Performing Arts, (vii) circumstances that may affect the Work and its performance in accordance with the schedule, and (viii) after such investigation, is aware of no discrepancies or omissions in the Contract Documents.

§ 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

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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 fully complete the Project. In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes and ordinances, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement. The terms and conditions of this Subparagraph 1.2.1, however, shall not relieve the Contractor of any of the obligations set forth in Subparagraphs 3.2 and 3.7.

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

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

§ 1.2.4 Whenever a product is specified or shown by describing a particular type or model, no substitutions may be made unless accepted prior to execution of the Contract or if accepted as a change in the Work in accordance with Subparagraph 3.4.2. Where two or more products are shown or specified, the Contractor has the option to use either of those shown or specified.

§ 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 Drawings, Specifications and other documents shall be Instruments of Service, and the ownership of the same shall be governed by the agreement between the Owner and the Architect. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in such 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 rights reserved in and to such Instruments of Service.

§ 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.

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§ 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. The Owner may change such designation from time to time in writing. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

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

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 The Contractor has conducted such inquiries as the Contractor deems reasonable in order to determine that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor may only request such evidence if a change in the scope of the Work from that contemplated at the time the Agreement is executed materially increases the anticipated Cost of the Work. The Owner shall furnish such evidence as a condition precedent to commencement of the portion of the Work affected by a material change that increases the anticipated Cost of the Work.

§ 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, to the extent the same are in the Owner's possession, 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 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.

§ 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

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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 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 and all of its other duties, responsibilities and obligations under this Agreement in accordance with the Contract Documents and in a manner consistent with that level of skill and care exercised by experienced contractors of first-class projects similar in size and complexity to the Project in the metropolitan area in which the Project is located ("Professional Efforts").

§ 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 and the Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect and the Owner may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.2.1 The Contractor shall satisfy itself as to the accuracy of all grades, elevations, dimensions and locations. In all cases of interconnection of its Work with existing or other work, the Contractor shall verify at the site all dimensions relating to such existing or other work.

§ 3.2.2.2 Where specific instructions are given in a Contract Document, the Contractor shall review the instructions, including those of manufacturers, and promptly notify the Architect and the Owner in writing if the specified instruction or procedure deviates from accepted construction practice, or normal procedure, or will affect warranties, or other responsibilities of the Contractor and the Contractor's notification shall include reasonable alternatives.

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

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect 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

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Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities unless the Contractor recognized or should have recognized in the reasonable exercise of Professional Efforts such error, inconsistency, omission or difference and failed to report it to the Architect and the Owner.

§ 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. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Contractor shall not be responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

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

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

§ 3.3.4 Prior to the commencement of construction, the Contractor shall prepare and obtain the Owner's approval of a construction site management plan, which will take into account requirements contained in the Specifications, and the Owner's requirements and restrictions concerning parking for construction personnel, staging areas and material delivery times, and traffic flow requirements of the Owner and local governmental authorities, among other things.

§ 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. Except to the extent covered by the Owner's insurance, the Contractor shall remain liable for loss or damage to any supplies, materials or equipment while in transit or being stored.

§ 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 written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

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

§ 3.4.4 The Contractor shall only use labor at the Project site or in connection with the Work capable of working harmoniously with all construction trades and crafts and with any entities and individuals who may be working at the Project site or otherwise associated with the Project. If the Work is to be performed by trade unions, the Contractor shall make all reasonable arrangements to reconcile, without delay, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils which regulate the work of any particular trade.

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§ 3.5 WARRANTY

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and operate in accordance with any applicable performance standards and will be free from defects. 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 or the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 The Contractor agrees to assign, and cause its Subcontractors to assign, to the Owner at the time of Substantial Completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work. In connection therewith, the Contractor further agrees to perform the Work in such manner so as to preserve any and all manufacturer's warranties. All manufacturer warranties shall be endorsed to provide that the warranty shall recommence and be reinstated in full at the time of Substantial Completion.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, employment, 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. The Contractor shall notify the Owner of all bonds required of the Owner and shall provide all bonds required of the Contractor by the municipality in which the Project is located or any other public or private body with jurisdiction over the Project. The Contractor shall also obtain and pay all charges for all approvals for street closings, parking meter removal and other similar matters as may be necessary or appropriate from time to time for the performance of the Work. The foregoing costs shall be included in the Cost of the Work.

§ 3.7.3 If the Contractor performs Work that it knows or should have known 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 and all fees, fines and other expenses attributable to such Work.

§ 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 Owner will promptly investigate such conditions and, if 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, the Owner will recommend an equitable adjustment in the Contract Sum or Contract Time, or both, it being understood that no adjustment in the Contract Time or Contract Sum shall be appropriate in the case of a concealed or unknown condition which does not differ materially from those conditions disclosed or which reasonably should have been known or disclosed by the Contractor's investigations and considerations described in Section 1.1.4.1. If the Owner determines that no change in the terms of the Contract is justified, the Owner shall promptly notify the Contractor in writing, stating the reasons. If the Contractor disputes the Owner's determination or recommendation, the Contractor may proceed as provided in Article 15.

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

§ 3.8 ALLOWANCES

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

.1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

.3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

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

§ 3.9 SUPERINTENDENT

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

§ 3.9.2 Intentionally Omitted.

§ 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 Project Schedule attached to the Contract 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. Revisions to the Project Schedule shall be subject to the Owner's approval.

§ 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 Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Project Schedule, and (2) allow the Owner 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 accordance with the most recent schedules submitted to and approved by the Owner.

§ 3.10.4 In the event any progress report or inspection of the Work indicates that the Contractor is not performing in accordance with the approved Project Schedule, the Contractor shall propose an affirmative plan to correct the

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delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any milestone dates identified in the approved Project Schedule, or the Guaranteed Maximum Price for Phase II or any other sums payable by Owner unless any such adjustment is agreed to in writing by Owner and authorized pursuant to Change Order.

§ 3.10.5 If the Owner determines from time to time that the performance of the Work has not progressed or reached the level of completion (including any milestone dates) required by the Project Schedule approved by the Owner, the Contractor shall take such corrective measures as are reasonably necessary to expedite the progress of construction, including, without limitation, (i) working additional shifts or overtime, (ii) supplying additional manpower, equipment, and facilities and (iii) other similar measures (collectively "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the Project Schedule. Contractor shall not be entitled to an adjustment in the Guaranteed Maximum Price for Phase II or any other sums payable by Owner in connection with Extraordinary Measures required by the Owner under or pursuant to this Section 3.10.5.

§ 3.10.6 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner's premises or any tenants or invitees thereof, or work being performed by Owner. The Contractor shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation.

§ 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 the Owner and shall be delivered 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.

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§ 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. 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

§ 3.13.1 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.

§ 3.13.2 Protection of construction materials and equipment stored at the Project site from weather, theft, damage or all other adversity is solely the responsibility of the Contractor. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public and private areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Contractor shall obtain Builder's Risk Insurance and incorporate the insurance premium into the cost of the work. Builder's Risk Insurance deductibles shall be paid by Owner in a loss except to the extent caused by the negligence or willful misconduct of the Contractor or any subcontractor or by the Contractor's breach of the Contract Documents, in which case the Contractor shall bear the losses so caused.

§ 3.13.3 The Contractor and any entity for whom the Contractor is responsible shall not erect a sign on the Project site without the prior written consent of the Owner, which may be withheld, conditioned or delayed in the sole discretion of the Owner.

§ 3.13.4 The Contractor shall use the Project site for Work-related activities only and shall not allow use of the Project site by the Contractor, its employees, agents, Subcontractors or Sub-subcontractors for any other purposes,

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including, without limitation, habitation, overnight stays, illegal activities, gambling, consumption of alcohol and parties.

§ 3.13.5 The Contractor shall ensure that no burning of trash or debris occurs at the Project site and that no dust or trash from Work in progress creates any nuisance. In performing the Work, the Contractor shall comply with all municipal and other governmental regulations concerning noise and environmental pollution.

§ 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, the Owner's consultants and the 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, defend (with counsel subject to approval by the Owner, which approval shall not be unreasonably withheld or delayed), reimburse and hold harmless the Owner, Architect, Architect's and Owner's consultants, Owner's Representative, the City, the Parking Authority and each of their respective affiliates, officers, directors, shareholders, successors-in-interest, partners, agents, contractors and employees (collectively, the "Indemnitees") from and against claims, liens, liabilities, penalties, fines, actions, causes of action, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from (i) performance of the Work, (ii) a breach of Contractor's obligations under the Contract Documents or (iii) any act or omission with respect to the Work, but only to the extent caused by the 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 which would otherwise exist as to a party or person described in this Section 3.18.

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

§ 3.18.3 Should any Subcontractor, supplier or other person make, record or file, or maintain any action on or respecting a claim of mechanic's lien, stop notice or lis pendens, relating to the Work, the Contractor shall immediately and at its sole expense procure, furnish and record appropriate statutory release bonds which will extinguish or expunge said claim, stop notice or lis pendens, or settle said claim, stop notice or lis pendens so as to extinguish or expunge same provided that the claim is not a result of the Owner's failure to make payment of an undisputed amount under the Contract. If the Contractor fails to make any payments required under this Paragraph 3.18, or if the Contractor fails to keep the Project free of mechanics' liens incurred by or under the Contractor or any Subcontractor, the Owner may settle or bond over such claims or take such other actions necessary to prevent a default under any other agreement affecting the Project, and Contractor shall on demand reimburse Owner any amounts necessary to satisfy Contractor's obligation to satisfy, discharge or defend against any such claim of lien.

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 whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect may provide administration of the Contract as described in the Contract Documents. 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

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.

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§ 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 At the Owner's request, 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 and the Owner 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 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 the Owner made in the Owner's sole and absolute discretion. 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 requested by the Owner 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 Owner'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.

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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 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 Owner may reply within 14 days to the Contractor in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner 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 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 has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner 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 and has used reasonably diligent efforts to ensure that the increase in the cost or the time attributable to the use of the replacement Subcontractor is as minimal as is reasonable under the circumstances.

§ 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

§ 5.3.1 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.

§ 5.3.2 Notwithstanding any provision of Section 5.3.1, any part of the Work performed for the Contractor by a Subcontractor or its Sub-subcontractor shall be pursuant to a written subcontract between the Contractor and such Subcontractor (or the Subcontractor and its Sub-subcontractor at any tier), which shall be prepared on a form of

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subcontract satisfactory to the Owner in all respects. Each such subcontract shall, where the context so requires, contain provisions that:

.1 require that such work be performed in accordance with the requirements of the Contract Documents;

.2 require the Subcontractor to carry and maintain insurance coverage in accordance with the Contract Documents, and to file certificates of such coverage with the Contractor;

.3 require the Subcontractor to submit certificates and waivers of liens for work completed by it and by its Sub-Subcontractors as a condition to the disbursement of payment; and

.4 require that, at Owner's election, each Subcontractor shall continue to perform and complete its subcontract in the event the Contract is terminated and the Owner shall take an assignment of such Subcontract and be entitled to enforce the terms of the subcontract as if the Owner were the contracting party.

§ 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 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 by reason of such assignment, 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 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.

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§ 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 and the Owner 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 in the exercise of Professional Efforts.

§ 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. Notwithstanding anything contained in the Contract Documents to the contrary, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order or Construction Change Directive. Contractor shall not receive any compensation or any adjustment in the Contract Sum or Contract Time in connection with any work, services or other activities of the Contractor pertaining to the Project unless such work, services or other activities is authorized in a Change Order or a Construction Change Directive. Pending execution of a Change Order, Contractor shall continue to perform all Work under the Contract.

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the Architect or the Owner 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.

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§ 7.2.2 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the Project Schedule.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order 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. No Change Order or Construction Change Directive shall be effective or binding on the Owner unless it is executed by the Owner.

§ 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 at the Owner's election::

- **.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 and the Owner 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 or the Owner 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 or the Owner 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.

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§ 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 or the Owner. 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 or the Owner 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 or the Owner 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 Owner 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 and the final completion date are the dates certified by the Architect and approved by Owner in accordance with Sections 9.8 and 9.10.

§ 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 (affecting the construction industry generally), fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control (without the fault or negligence of Contractor); or by delay authorized by the Owner pending mediation; or by other causes that the Architect and the Owner determine may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect and the Owner may determine.

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

§ 8.3.3 Notwithstanding anything to the contrary in the Contract Documents, the Contractor's sole and exclusive remedy for any (i) delay in the commencement, prosecution or completion of the Work, (ii) hindrance or obstruction in the performance of the Work, (iii) loss of productivity, or (iv) other similar claims (collectively referred to in this Paragraph 8.3 as "Delays"), whether or not such Delays are foreseeable, shall be an extension of time in which to complete the Work if permitted under Subparagraph 8.3.1 and, only to the extent such Delay is caused by the Owner (an "Owner-Caused Delay"), an equitable adjustment in the Contract Sum not to exceed the increase, if any, in the costs incurred by the Contractor to perform the Work as a direct result of such Owner-Caused Delay (including General Conditions Costs). In no event shall the Contractor be entitled to any other remedy, compensation or recovery of any damages in connection with any Delay, including, without limitation, lost opportunity costs, impact damages or other similar remuneration. The Contractor shall use best efforts to mitigate the effects of any Delay..

§ 8.3.4 As a condition to the submittal of a Claim for an extension of time, the Contractor must, within five (5) business days following the occurrence giving rise to such Claim, provide written notice that the event has occurred, the potential delay from such event and possible alternatives to reduce the duration of the delay.

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 Within the time periods set forth in the Agreement, the Contractor shall submit to the Architect and the Owner an itemized Application for Payment prepared in accordance with the Schedule of Values 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. Each application shall be accompanied by lien waivers and releases in the statutory form for the state of California, duly executed by the Contractor and all Subcontractors and materialmen providing labor, services and materials to the Work waiving all claims of liens for labor, services and materials rendered to the date of Application of Payment. The foregoing lien waivers and releases may be conditional, provided that, not later than the following Application of Payment, an unconditional lien waiver for each claimant submitting a conditional waiver shall be submitted to the Architect and the Owner.

§ 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; provided, however, that risk of loss shall remain with the Contractor. 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

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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 upon installation. 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 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, or the Owner may withhold portions of amounts requested or refuse to make further payments to such extent as may be necessary 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** failure to carry out the Work in accordance with, or to comply with the terms of, 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

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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.

§ 9.5.4 If the Contractor disputes any determination by the Architect or the Owner with regard to any Certificate for Payment, provided that the Owner pays all undisputed sums, the Contractor shall nevertheless expeditiously continue to prosecute the Work and shall utilize the claims procedures set forth in Article 15. The Owner shall not be deemed to be in breach of this Contract by reason of the withholding of any payment pursuant to any provision of the Contract Documents.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment which the Owner has approved, 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. Notwithstanding anything in this Section 9.6 to the contrary, the Owner may elect, in the Owner's sole discretion, in the event there is any evidence Subcontractors have not been paid, to make any payment requested by the Contractor on behalf of a Subcontractor of any tier jointly payable to the Contractor and such Subcontractor. The Contractor and such Subcontractor shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint payment be construed to create any (i) contract between the Owner and a Subcontractor of any tier, (ii) obligations from the Owner to such Subcontractor, or (iii) rights in such Subcontractor against the Owner.

§ 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

If the Owner does not pay the Contractor within seven days after the date established in the Contract Documents all undisputed amounts due to the Contractor, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the undisputed amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the

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Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof (which the Owner has agreed to accept separately in its sole discretion) is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use, all systems included in the Work are operational as designed or required, all inspections and tests required under the Contract Documents have been completed successfully, a certificate of occupancy is received, all governmental, quasi-governmental and other approvals required under the Contract Documents are obtained and all Work is fully completed except for minor incomplete items and defects that do not materially and adversely affect the use of the applicable improvements for their intended use and, with the use of reasonable diligence, can be completed and corrected within ninety (90) days ("Punch List Items").

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, in Owner's sole discretion, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of Punch List 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. The Contractor shall complete and correct all Punch List Items diligently, but not later than ninety (90) days after the applicable date of Substantial Completion.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect and the Owner will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's and the Owner'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 or the Owner. In such case, the Contractor shall then submit a request for another inspection by the Architect and the Owner 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, and upon final completion of the Work, 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.

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§ 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 and the Owner will promptly make such inspection and, when the Architect and the Owner find 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. Final payment constituting the unpaid balance of the Cost of the Work, General Conditions Cost and Contractor's Fee, if any, shall be due and payable at the time set forth in the Contract Documents and the last to occur of the following: (a) thirty (30) days have elapsed since the recordation of a valid Notice of Completion (which Contractor agrees to file as soon as the Work has reached the point when a Notice of Completion may be filed), (b) Substantial Completion (as defined in Section 9.8.1), (c) acceptance of the Work by the Owner, its Lender (if any) and all applicable governmental agencies having jurisdiction over the Work, (d) the satisfaction of all conditions set forth in clauses (1) through (5) above, (e) the completion of all Work including punch-list work acceptable to the Owner, (f) delivery to the Owner of the Architect's final Certificate for Payment approved by the Owner, (g) the Contractor's delivery to the Owner of a list of all manuals and warranties (assigned to the Owner) relating to the work, including warranties of Subcontractors and materialmen, and the originals of such warranties or, if not available, copies of such warranties and including three (3) copies of all operating and maintenance date from all manufacturers whose equipment is installed in the Work, (h) the Contractor has delivered to the Owner a red-line field marked "as-built" copy of (i) the Building permit set of Drawings, (ii) the Specifications and (iii) Shop Drawings, indicating all changes made to the Work as well as the approved Product Data, Samples and other submittals described in Section 3.11 and (i) the Contractor's delivery to the Owner of evidence of the Contractor's full payment of Subcontractors and the absence of any liens or potential liens with respect to the Work as the Owner may require and such affidavits and other materials as may be requested by the Owner's title insurance.

§ 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 and the

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Owner prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

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

.1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;

.2 failure of the Work to comply with the requirements of the Contract Documents; or

.3 terms of warranties required by the Contract Documents; or

.4 Claims arising from any indemnity obligations of the Contractor to the Owner.

§ 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 Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site or any adjoining property. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Contractor shall use best efforts to provide for the safety and protection of all persons who may come in contact with the Work within or adjacent to the Project site. Without limitation to the foregoing, the Contractor shall, at the Contractor's sole cost and expense, take precautions for the safety of, and shall provide protection to prevent damage, injury or loss to, and Owner assumes no responsibility for:

.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.

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

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

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days 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 or otherwise known by the Contractor to exist prior to execution of the Agreement, 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 and Subcontractors 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), the Owner has been made fully aware of the foregoing prior to the performance of the Work in the affected area, and the Owner has insisted upon the Contractor performing Work in the affected area, 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.

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§ 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 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.

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§ 11.1.5 In no event shall any failure of the Owner to receive certificates of policies required under Paragraph 11.1 or to demand receipt of such certificates prior to the Contractor commencing the Work be construed as a waiver by the Owner or the Architect of the Contractor's obligations to obtain insurance pursuant to this Article 11. The obligation to procure and maintain any insurance required by this Article 11 is a separate responsibility of the Contractor and independent of the duty to furnish a certificate of such insurance policies.

§ 11.1.6 If the Contractor fails to purchase and maintain, or require to be purchased and maintained, any insurance required under this Paragraph 11.1, the Owner may, but shall not be obligated to, upon seven (7) days written notice to the Contractor, purchase such insurance on behalf of the Contractor and shall be entitled to be reimbursed by the Contractor upon demand.

§ 11.1.7 When any required insurance, due to the attainment of a normal expiration date of renewal date, shall expire, the Contractor shall supply the Owner with Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protections, and scope of coverage as was provided by the previous policy. All renewal and replacement policies shall be in form and substance satisfactory to the Owner and written by carriers acceptable to the Owner.

§ 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 Owner 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 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 and the Contractor, and, to the extent of their representative interest in the portion of the Work performed by them,, 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. Property insurance provided by the Owner shall not cover any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring and other similar items commonly referred to as construction equipment, which may be on the site and the capital value of which is not included in the Work. The Contractor shall make its own arrangements for any insurance it may require on such construction equipment, and any such policy obtained by the Contractor shall include a waiver of subrogation in accordance with the requirements of Section 11.3.7.

§ 11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance that will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles; provided, however, if the cause of any loss payment under such insurance is the fault of the Contractor, or any Subcontractor, then the Contractor shall pay such deductible. Notwithstanding the foregoing, if consequential damage is caused by the negligence of the Contractor or any subcontractor or by the Contractor's breach of the Contract Documents, then the Contractor shall be liable for consequential damages up to the amount of a reasonable deductible for such insurance.

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(Paragraphs deleted)

§ 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. The Owner waives all rights of action against the Contractor for loss of use of the Owner's property, including consequential losses due to fire or other hazards except to the extent due to the gross negligence or willful misconduct of the Contractor.

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

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a certificate of 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

The Owner and Contractor waive all rights against (1) each other and any of their agents and employees, each of the other, and (2) the Architect, Architect's consultants, and any of their agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. The Owner and Contractor waive rights, if any exist, against Subcontractors and Sub-subcontractors of the Contractor for damages caused by fire or other causes of loss if and to the extent (a) such damages are covered by property insurance obtained by Owner pursuant to this Section 11.4 and (b) such damages are not covered by insurance maintained by the applicable Subcontractor or Sub-subcontractor.

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

§ 11.3.9 If required in writing by a party in interest, the Owner 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

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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 shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Contractor as the method of binding dispute resolution in the Agreement.

§ 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 or the Contract Sum.

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

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§ 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.

§ 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, an affiliate of the Owner, or the City of Beverly Hills, provided that each such assignee assumes the Owner's rights and obligations under the Contract Documents from and after the effective date of the assignment. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

All notices given under the Contract Documents shall be in writing and shall be deemed properly 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 address for the recipient of such notice set forth in the Agreement. Either party may change its address for notice by delivering written notice to the other in accordance with the foregoing terms.

§ 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.

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§ 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

Payments due and unpaid under the Contract Documents shall bear interest from the date twenty days after payment is due at the prime rate, but in no event greater than the legal rate prevailing from time to time at the place where the Project is located.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

§ 13.8 GENERAL PROVISIONS

§ 13.7.1 All personal pronouns used in this Contract, whether used in the masculine, feminine or neuter gender, shall include all other genders; and the singular shall include the plural and vice versa. Titles of articles, paragraphs and subparagraphs are for convenience only, and neither limit nor amplify the provisions of this Contract in itself. The use herein of the word "including," when following any general statement, term or matters, shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such work or to similar items or matters, whether or not non-limiting language (such words as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other times or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

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§ 13.7.2 Wherever possible, each provision of this Contract shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Contract, or portion thereof, is prohibited by law or found invalid under any law, only such provision or a portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provision of this Agreement or valid portions of such provision, which are hereby deemed severable.

§ 13.7.3 This Contract constitutes the entire understanding and agreement of the parties with respect to its subject matter. Any and all prior agreements, understandings or representations with respect to its subject matter are hereby terminated and canceled in their entirety and are of no further force or effect.

§ 13.7.4 Each of the parties and signatories to this Contract represents and warrants that he or she has the full right, power, legal capacity and authority to enter into and perform the parties' respective obligations hereunder, and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith. Each person signing this Contract on behalf of any entity represents and warrants that he or she has the full right, power, legal capacity and authority to sign this Contractor on behalf of such entity.

§ 13.7.5 Should any party hereto engage an attorney or institute any action or proceeding at law or in equity to enforce any provision of the Contract, including an action for declaratory relief, or for damages by reason of any alleged breach of any provision of this Contract or otherwise in connection with this Contract, or any provision hereof, the prevailing party shall be entitled to recover from the losing party or parties reasonable attorneys' fees and costs for services rendered to the prevailing party in such action or proceeding.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor 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

(Paragraphs deleted)

stopped (it being agreed that Owner's acts under the Contract Documents are in its proprietary capacity, not its governmental capacity); or

.3 Owner has not made an undisputed payment after the time period for payment has expired within ten (10) days after written notice from Contractor, specifying the undisputed amount and advising of its intention to terminate under this Section 14.1.1.3.

§ 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 documented out of pocket costs reasonably incurred by Contractor in connection with such termination, including costs for work required by law or reasonably necessary to secure the job site and Contractor's overhead and profit on such work only. Contractor shall not be entitled to recover its anticipated profit or overhead for the Work not completed..

§ 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

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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** refuses or fails to supply enough properly skilled workers or proper materials or equipment;
- **.2** fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- **.3** disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- **.4** otherwise is in default of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' 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 shall be 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 shall include profit. No adjustment shall be made to the extent

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

§ 14.4.2 Upon receipt of 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, provided that Contractor shall complete performance of all Work not terminated.

§ 14.4.3 Upon such termination, the Contractor shall recover as its sole remedy payment for Work properly performed prior to the effective date of termination and for items properly and timely fabricated off the Project site,

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delivered and stored in accordance with the Owner's instructions together with any out of pocket costs reasonably incurred by Contractor in connection with such termination, including costs for work required by law or reasonably necessary to secure the job site and Contractor's overhead and profit on such work only. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits. Owner shall be credited for (i) payments previously made to the Contractor for the terminated portion of the Work, (ii) claims which the Owner has against the Contractor under the Contract and (iii) the value of the materials, supplies, equipment or other items that are to be disposed of by the Contractor that are part of the Contract Sum..

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, other than warranty 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. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later; provided, however, that the claimant shall use its best efforts to furnish the Architect and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall cooperate with the Architect and the party against whom the claim is made in any effort to mitigate the alleged or potential damages, delay or other adverse consequences arising out of the condition which is the cause of such a Claim. Any notice of Claim must clearly identify the alleged cause and the nature of the Claim expected effect of the Claim and include data and information then available to the claimant that will facilitate prompt verification and evaluation of the Claim. Any notice of Claim shall also set forth the proposed resolution and proposed actions to remedy any delay or cost caused by the Claim..

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments of undisputed sums 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. No such claim shall be allowed unless the same is submitted within five business days after the commencement of the alleged weather delay.

§ 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

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.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; provided, however, that the Owner's waiver is limited as described below.

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. The foregoing waiver by the Owner shall not apply to the extent that the damages are covered by insurance carried by the Contractor unless the waiver would not affect Owner's recovery of sums from such insurance, and shall not apply to tort claims against the Contractor.

§ 15.2 INITIAL DECISION

§ 15.2.1 Intentionally omitted.

§ 15.2.2 Intentionally omitted.

§ 15.2.3 Intentionally omitted.

§ 15.2.4 Intentionally omitted.

§ 15.2.5 Intentionally omitted.

§ 15.2.6 Intentionally omitted.

§ 15.2.6.1 Intentionally omitted.

§ 15.2.7 Intentionally omitted.

§ 15.2.8 Intentionally omitted.

§ 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 shall be subject to mediation.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation.

§ 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.

(Paragraphs deleted)

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Attachment 2

Resolution of the Parking Authority

RESOLUTION NO. ___

RESOLUTION OF THE BOARD OF DIRECTORS OF THE CITY OF BEVERLY HILLS PARKING AUTHORITY DECLARING INTENTION TO REIMBURSE EXPENDITURES RELATING TO PUBLIC PARKING PROJECTS FROM THE PROCEEDS OF TAX-EXEMPT OBLIGATIONS OF THE AUTHORITY

WHEREAS, the City of Beverly Hills (the "City") and the City of Beverly Hills Parking Authority (the "Authority") intends to construct and operate a public parking structure located generally at 455 N Crescent Ave., Beverly Hills, CA 90210, and related improvements (the "Project"); and

WHEREAS, the Project involves a subterranean parking facility located underneath the 400 block of N. Crescent Dr. bounded by the Annenberg Center for the Performing Arts on the west, City Hall on the east, Santa Monica Boulevard-North on the north and Santa Monica Boulevard-South on the south and will provide public parking opportunities for tenants of the Beverly/Canon retail/office facility and creating additional public parking capacity in the business triangle during peak parking periods; and

WHEREAS, in order to provide funds to finance the Project, the Authority and the City propose to enter into an installment sale arrangement or lease financing arrangement; and

WHEREAS, for the purpose of obtaining funds to finance the Project, the Authority intends to authorize the issuance and sale of its revenue bonds in an aggregate principal amount of approximately $30,000,000 (the "Bonds"); and

WHEREAS, in order to use the proceeds of the Bonds to reimburse advances made by the City or the Authority for the Project before the date of issuance of the Bonds, but not more than 60 days before the date of adoption of this Resolution, Section 1.150-2 of the United States Income Tax Regulations requires that Board of Directors of the Authority declare its intention to reimburse such advances from the proceeds of the Bonds; and

WHEREAS, it is in the public interest and for the public benefit that the Authority declare its official intent to reimburse the expenditures referenced herein to implement the financing plan for the Project;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the City of Beverly Hills Parking Authority as follows:

Section 1. Declaration of Intent. The Board of Directors hereby declares that it reasonably expects to issue the Bonds and to use a portion of the proceeds thereof to reimburse expenditures made by the Authority or the City for the Project before the date of issuance of the Bonds, and not more than 60 days before the date of adoption of this Resolution. The Authority anticipates that the Bonds will be issued in an aggregate principal amount which is sufficient to raise funds for the Project in the approximate amount of $30,000,000.

Section 2. Effective Date. This Resolution shall take effect from and after the date of its passage and adoption. Adopted and approved this 7 day of July, 2009.

Nancy Krasne, Chairperson

ATTEST:

Byron Pope, Secretary

Approved as to form:

Stephen Melikian
Jones Hall, APLC
Bond Counsel

Approved as to content:

Roderick J. Wood,
Executive Director

Scott G. Miller,
Chief Financial Officer

Attachment 3

Grant Deed

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

The Parking Authority of the City of Beverly Hills
Beverly Hills City Hall
455 North Rexford Drive
Beverly Hills, California 90210
Attention: City Clerk

Space Above For Recorder's Use

Grantor declares that this Grant Deed is exempt from recording fees pursuant to California Government Code Section 27383 and is exempt from documentary transfer tax pursuant to California Revenue and Taxation Code Section 11922 (conveyance to a public entity).

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the CITY OF BEVERLY HILLS ("Grantor"), hereby GRANTS to THE PARKING AUTHORITY OF THE CITY OF BEVERLY HILLS ("Grantee"), the land in the City of Beverly Hills, County of Los Angeles, State of California described on Exhibit "A" attached hereto as the "Parking Structure Limit of Work" and all improvements thereon EXCEPT for the street improvements for North Crescent Drive and the first two (2) feet below the surface of North Crescent Drive (the "Excepted Street Area"). Grantor hereby gives Grantee a license to enter and excavate the Excepted Street Area in connection with Grantee's construction of an underground parking garage.

Dated: _____, 2009

CITY OF BEVERLY HILLS,
a municipal corporation

By:_____
Nancy Krasne, Mayor

APPROVED AS TO FORM:

_____
Laurence S. Wiener,
City Attorney

ACKNOWLEDGMENT

State of California)
)
County of Los Angeles)

On _____, 2009 before me, _____
(insert name and title of the officer)

personally appeared _____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____ (Seal)
Signature of Notary Public

EXHIBIT "A" TO QUITCLAIM DEED

DESCRIPTION OF LAND

Attachment 4

Certificate of Acceptance

CERTIFICATE OF ACCEPTANCE

(California Government Code Section 27281)

This is to certify that the interests in real property conveyed to or created in favor of The Parking Authority of the City of Beverly Hills (the "Parking Authority") by that certain Grant Deed dated _____, 2009, executed by the City of Beverly Hills is hereby accepted by the undersigned officer on behalf of the Parking Authority pursuant to the authority conferred by action of the Parking Authority on _____, 2009, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____ ___, 2009

By: _____
Print Name: _____
Title: _____

ACKNOWLEDGMENT

State of California)
)
County of Los Angeles)

On _____, 2009 before me, _____
(insert name and title of the officer)

personally appeared _____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____ (Seal)
Signature of Notary Public

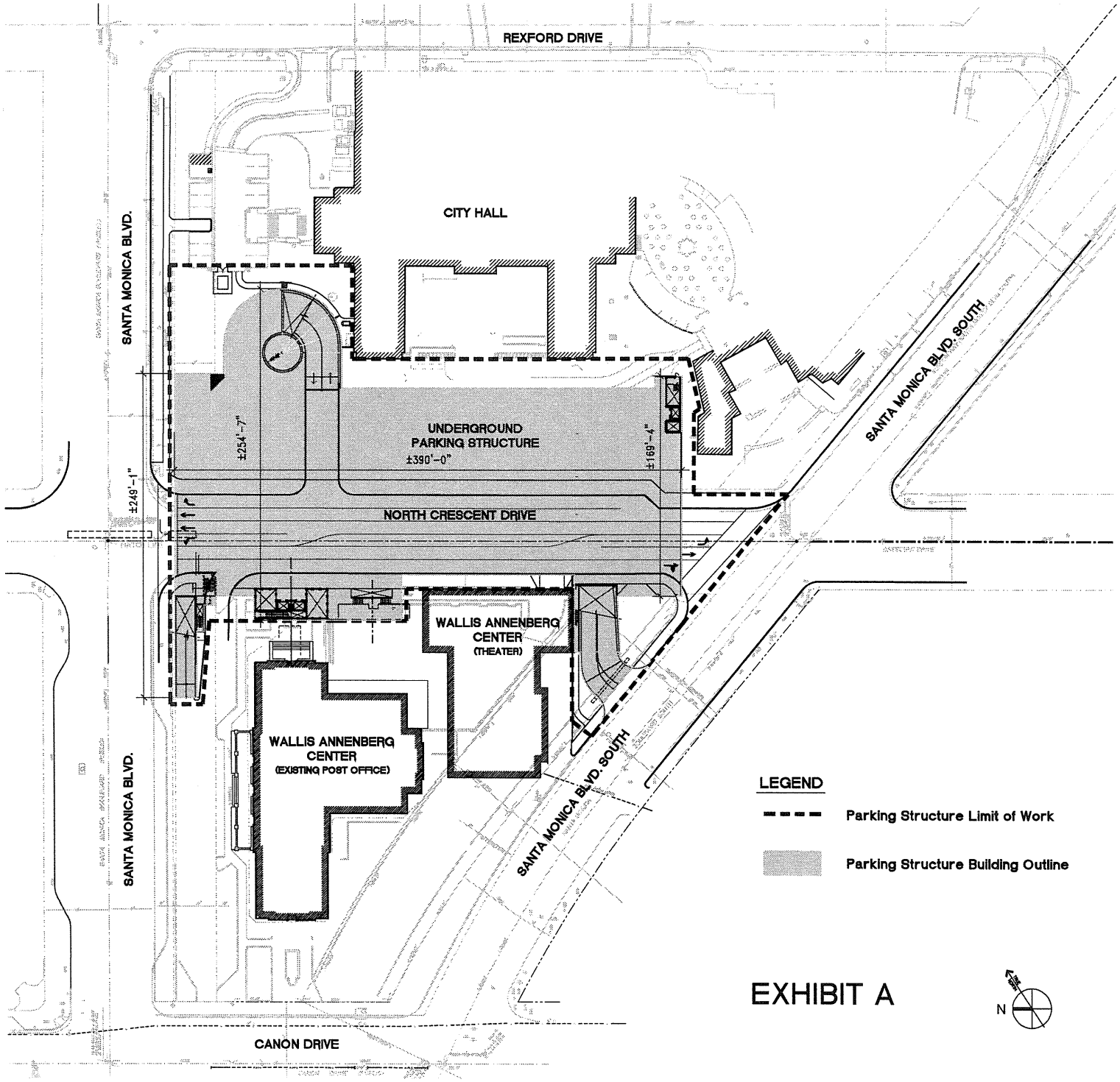
REXFORD DRIVE
CITY HALL
SANTA MONICA BLVD.
SANTA MONICA BLVD. SOUTH
UNDERGROUND
PARKING STRUCTURE
±390'-0"
±254'-7"
±191'-4"
±249'-1"
NORTH CRESCENT DRIVE
WALLIS ANNENBERG
CENTER
(THEATER)
WALLIS ANNENBERG
CENTER
(EXISTING POST OFFICE)
SANTA MONICA BLVD. SOUTH
SANTA MONICA BLVD.
CANON DRIVE
LEGEND
Parking Structure Limit of Work
Parking Structure Building Outline
N

EXHIBIT A