



# AIA® Document A232® – 2019

## General Conditions of the Contract for Construction, Construction Manager as Adviser Edition

**for the following PROJECT:**

*(Name, and location or address)*

November 3<sup>rd</sup>, 2026, Referendum: \$108,889,000.00

**THE CONSTRUCTION MANAGER:**

*(Name, legal status, and address)*

Nexus Solutions, LLC  
6885 Sycamore Lane N, Suite 200  
Maple Grove, Minnesota 55369

**THE OWNER:**

*(Name, legal status, and address)*

Centennial School District  
4707 North Road  
Circle Pines, Minnesota 55014

**PROGRAM MANAGER:**

*(Name, legal status, and address)*

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**ADDITIONS AND DELETIONS:**

The author of this document may have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes 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 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 intended to be used in conjunction with AIA Documents A132™–2019, Standard Form of Agreement Between Owner and Contractor, Construction Manager as Adviser Edition; B132™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Adviser Edition; and C132™–2019, Standard Form of Agreement Between Owner and Construction Manager as Adviser.

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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, required Performance and Payment Bonds, the Contractor's bid, 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 Nexus. The Contract Documents include all Documents which are part of and all forms required or specified in, this Project Manual. Including but not limited to: all Introductory Information, Bidding Requirements, Contract Forms, Conditions of the Contract, Addenda (as defined in the Instructions to Bidders), and all divisions comprising the Specification.

**§ 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 Nexus or Nexus' consultants, (2) between the Owner and Nexus' consultants, (3) between the Contractor and Nexus or Nexus' consultants, (4) between the Owner and a Subcontractor or Sub-subcontractor, or (5) between any persons or entities other than the Owner and Contractor. Nexus and Nexus' Consultants shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of their duties.

**§ 1.1.3 The Work.** The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project. Use of the words "produce", "provide", "furnish" or "install" where appropriate shall, also include "furnish and install".

**§ 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 other Contractors, and by the Owner's own forces and Separate Contractors.

**§ 1.1.5 Contractors.** Contractors are persons or entities, other than the Contractor or Separate Contractors, who perform Work under contracts with the Owner that are administered by Nexus.

**§ 1.1.6 Separate Contractors.** Separate Contractors are persons or entities who perform construction under separate contracts with the Owner not administered by Nexus.

**§ 1.1.7 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.

**§ 1.1.8 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.

**§ 1.1.9 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 Nexus and Nexus' consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials. The Project Manual includes all Addenda (as defined in the Instructions to Bidders)

properly issued by Nexus and Nexus' Consultants.

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

**§ 1.2 Correlation and Intent of the Contract Documents**

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

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

**§ 1.2.2** Execution of the Contract by the Contractor is a representation that the contractor has;

- (a) visited the site and investigated the nature and location of the Work, and the general and location conditions which can affect the Work or its cost.
- (b) examined the Bidding Documents in relation to each other and to the Project site, the structure and condition of the ground, the obstacles which may be encountered, and all other conditions having bearing upon the performance of the Work, supervision of the Work, existing conditions, time of completion, cost and all other relevant matters.
- (c) carefully studied and compared the Bidding Documents with each other and has obtained clarification for all inconsistencies, errors, omissions or other conditions having a bearing upon the performance of the Work, supervision of the Work, time of completion, costs and all other relevant matters.

**§ 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. In the event of conflicts or discrepancies among the Contract Document, interpretations will be based on the following priorities;

- (a) the Agreement,
- (b) Change Order and supplementary instructions,
- (c) Addenda, with those of later date having precedence over those of earlier date,
- (d) General Conditions of the Contract for Construction,
- (e) Drawings and Specifications.

In the case of an inconsistency between Drawings and Specification or within either Document not clarified by addendum or supplementary instruction, the better quality or greater quantity of Work shall be provided in accordance with the Design Professionals interpretation.

**§ 1.2.4** Wherever a provision of a Section of the Specifications conflicts with any agreements or regulations in force among members of a Trade Association, Union, or Council, which regulates or distinguishes what work shall or shall not be included in the work of any particular trade, the contractor shall make necessary arrangements to reconcile such conflicts without cost to the owner and without recourse to Nexus, or the Owner. Where the Specification has been divided into sections, it is for convenience in use. Nexus assumes no responsibility for proper placement of phases of the Work into the proper division or section or the arrangement of Work shown on the Drawings. Nexus shall not be obligated to enter into jurisdictional or other disputes as a result of the organization, arrangement or location of parts of the Work in Specifications or on Drawings, nor to serve as arbiter to establish

subcontract limits. Unless otherwise specified, the scope of work of each section shall be to furnish labor, materials, equipment, skill, erection, installation, services and related items for the phase of work of that section, as required by the Drawings, as specified or as otherwise required to provide and complete the entire work of the section. Wherever a provision of a Section of the Specifications conflicts with any agreements or regulations in force among members of Trade Association, Union or Council, which regulates or distinguishes what work shall or shall not be included in the work of any particular trade, the Contractor shall make necessary arrangements to reconcile such conflicts without delay, damage or cost to the Owner and without recourse to Nexus or the Owner.

§ 1.2.5 The general character and scope of the Work is called for by the Contract Documents. Where a portion of the Work is fully drawn and the remainder is merely indicated, the portion fully drawn shall apply to all similar parts of the Work. Drawings intended primarily as information for one trade may not necessarily show the work of other trades, which shall not be construed as there being no related materials or adjacent work.

§ 1.2.6 Figured dimensions shall be followed in preference to measurement by scale. In the event of discrepancies between Drawings, between Drawings and Specifications or between Specifications, the intent shall be interpreted by Nexus, which shall be binding on the Contractor. Where a dimension may be missing, the Work shall be accomplished in accordance with the directions and dimensions provided by the Design Professional. Dimensions on Drawings, as well as detail Drawings themselves, are subject in every case to measurements of existing, adjacent, incorporated and completed work which shall be taken by the Contractor before undertaking any work dependent upon such data. Dimensions pertaining to the Work shall be verified at site by Contractor.

§ 1.2.7 The Contract Documents generally do not set forth the basis for or the analysis of design. The Contractor is obligated to obtain or ascertain the intent where it is necessary for proper execution and satisfactory completion of the Work.

§ 1.2.8 Where Specifications are of the abbreviated or "streamlined" type, they shall be construed as complete sentences, as shall notes on the drawings. Omission of words such as "the", "the Contractor shall", and "as shown on the drawings" is intentional. The words "shall" or "shall be" are to be supplied by inference. Imperative or directive instructions, directions or specifications apply and refer to the Contractor. The words "symmetrical" and "similar" are used in the general sense and need not mean "identical".

§ 1.2.9 Where a number is specified (as for gauges, weights, temperatures, an amount of time, and similar references) and the specified number cannot be obtained, the number shall be interpreted as the next better, as available.

§ 1.2.10 Standard Specifications rules, codes, instructions, recommendations and references referred to in the Project Specifications shall be the latest edition unless a specific edition is specified. If standard specifications are revised prior to completion of any part of the work to which such revisions would pertain, the Contractor may, if approved by Nexus, perform such work in accordance with the revised specifications. Standard specifications, except as modified in the Project Specifications, shall have full force and effect as though included in the Project Specifications.

§ 1.2.11 Sections of Division 1 General Requirements govern the execution of all sections of the specifications.

§ 1.2.12 In case of conflict in or between drawings and specifications, the contractor will be deemed to have estimated on, and agreed to provide, the greater quantity or better quality of materials and work unless they shall have, before submission of bid, asked for and obtained written decision through addendum of the Design Professional as to which method or materials will be required.

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

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

#### **§ 1.6 Notice**

**§ 1.6.1** Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

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

#### **§ 1.7 Digital Data Use and Transmission**

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 term “Owner” or “School District” Means:

Independent School District No. 12  
4707 North Rd  
Circle Pines, MN 55014

This includes designated representatives, successors and assigns. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner’s approval or authorization. Except as otherwise provided in Section 4.2.1, Nexus does not have such authority. The term “Owner” means the Owner or the Owner’s authorized representative.

**§ 2.1.2** The Owner acts through the office of the Superintendent or authorized representative. Unless otherwise indicated, all papers and formal written notice required to be delivered to the Owner, shall be delivered to the Owners Construction Program Manager, Nexus Solutions, LLC.

§ 2.1.3 The Term “Construction Program Manager (CPM)” or “Construction Manager (CM) or “Nexus” means:

Nexus Solutions, LLC.  
6885 Sycamore Lane North, Suite 200  
Maple Grove, MN 55369

§ 2.1.4 The Term “Design Professional” means:

Architect

Structural Engineer

Civil Engineer

Mechanical Engineer

Nexus Solutions, LLC.  
6885 Sycamore Lane North, Suite 200  
Maple Grove, MN 55369

Electrical Engineer

Food Service Consultant

Technology Consultant

§ 2.1.5 At the Commencement of the Work, Additional representatives of the School District will be identified to the Contractor by name, function, and authority with respect to the Project.

## § 2.2 [intentionally omitted]

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

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

### § 2.3.2-2.3.4 [intentionally omitted]

§ 2.3.5 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. Within 20 days of receipt, the Contractor is required to review any materials (such as surveys, soil borings, existing structures and conditions, locations of utilities, etc.) furnished by the Owner and notify the Owner of the discovery or any inaccuracy. The furnishing of this material by the Owner shall not relieve the Contractor of its responsibilities under the Contract Documents.

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

§ 2.3.7 Unless otherwise provided in the Contract Documents, the Contractor shall be furnished one copy of the Drawings and Project Manual. Additional sets will be furnished at the cost of reproduction, postage and handling to be paid by the Contractor.

**§ 2.3.8** The Owner shall forward all communications to the Contractor through Nexus. Other communication shall be made as set forth in Section 4.2.6.

**§ 2.3.8** The Plans and Specifications are subject to the approval of certain state agencies (eg. State Department of Education, State and/or Municipal Building Codes Division, etc.) Contractor is advised that approvals may occur after receipt of bids. Approval and Notice of Contract Award may be subject to final approval of state agencies.

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

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

**§ 2.5 Owner's Right to Carry Out the Work**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a three-day period after receipt of notice from the Owner or Nexus to the Contractor and its surety, if any, to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect or require the Contractor's surety, if any, to assume the obligations of the Contractor. Such action by the Owner and amounts charged to the Contractor or its surety, if any, are both subject to review by and prior approval of Nexus, and Nexus' Consultants may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for Nexus and Nexus' respective consultants' additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor or its surety, if any, shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or Nexus, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

**ARTICLE 3 CONTRACTOR**

**§ 3.1 General**

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

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents and shall comply with all applicable laws, codes, ordinances, rules, regulations, and industry standards.

**§ 3.1.3** The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents and all applicable laws, codes, ordinances, rules, regulations, and industry standards either by activities or duties of Nexus or Nexus' Consultants in their 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** The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner, and shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Construction Documents before commencing activities. The Contractor shall at once report to Nexus and Owner any errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner or Nexus for damages resulting from errors, inconsistencies or



omissions in the Contract Documents unless the Contractor recognized, or should have recognized such error, inconsistency or omission and failed to report it to Nexus and the Owner. If the Contractor performs any construction activity involving such error, inconsistency, or omission in the Contract Documents without notice to Nexus and Owner, the Contractor shall assume responsibility for such performance and shall be liable for all costs for correction and any other resulting damages.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.5, 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 immediately report to Nexus any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information submitted to Nexus in such form as Nexus may require.

**§ 3.2.3** The Contractor shall perform the Work in accordance with 2, the general design intent reasonably inferable from the Contract Documents, and all applicable laws, codes, ordinances, rules, regulations and industry standards.

**§ 3.2.3.1** The Contractor shall review specified construction and installation procedures (including those recommended by manufacturers) prior to implementation and shall advise Nexus in writing (1) if the specified procedures deviate from good construction practice, (2) if following the procedures will affect warranties and (3) of any objections the Contractor may have to the procedures.

**§ 3.2.3.2** If the Contractor is uncertain as to the interpretation or the design intent or the Construction Documents, the Contractor shall be responsible to request in writing an interpretation from Nexus, in accordance with Subparagraphs 4.2.11 and 4.2.12.

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

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

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures, complying with all applicable laws, codes, ordinances, rules, regulations, and industry standards. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Nexus, and shall propose alternative means, methods, techniques, sequences, or procedures, complying with applicable laws, codes, ordinances, rules and regulations and industry standards. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Nexus shall review the proposed alternative for sequencing, constructability, and coordination impacts on the other Contractors. Unless Nexus objects to the Contractor's proposed alternative, the Contractor

shall perform the Work using its alternative means, methods, techniques, sequences, or procedures, complying with all applicable laws, codes, ordinances, rules, regulations, and industry standards.

§ 3.3.1.1 Safety is solely the responsibility of the Contractor to possess/implement/monitor a safety program in accordance to public contract law along with OSHA rules and regulations. Although Nexus advises the Owner, the Owner reserves the right to stop the work due to safety concerns.

§ 3.3.1.2 The Contractor and authorized representatives shall attend all meetings as requested and scheduled by Nexus or the Owner.

§ 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 not be relieved of its obligations to perform the Work in accordance with the Contract Documents and all applicable laws, codes, ordinances, rules, regulations and industry standards, either by activities or duties of Nexus in administration of the contract, or by test, shop drawing reviews, inspections or approvals required or performed by persons other than the Contractor..

§ 3.3.4 In the event the scope of the Contractor's work involves installation of materials furnished by the Owner, the responsibilities of the parties shall be as follows; Contractor shall:

- (a) Inspect the materials upon delivery for damage, defect, quantity and conformance with the Contract Documents
- (b) Provide all labor, equipment and services, including hoisting and other material handling necessary to properly unload, handle, store and install all Owner furnished material
- (c) Provide Nexus with signed inventory sheets certifying that all products shipped were received. Contractor accepts liability for missing or damaged product should they fail to inventory shipment.

§ 3.3.5 Subject to the Contractor's inspection obligations under Clause 3.3.4, Owner shall be responsible for inherent defects in the materials, shall be solely responsible for pursuing the seller of the materials supplied by the Owner for replacement, damages, or other remedies.

#### **§ 3.4 Labor and Materials**

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

§ 3.4.2 Except in the case of minor changes in the Work approved by Nexus in accordance with Section 3.12.8 or ordered by Nexus in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by Nexus, in consultation with Nexus' Consultants, 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.

§ 3.4.3.1 Nexus shall have authority to direct a Contractor to remove a worker from site if any worker or employee of Contractor is found to be unsatisfactory.

§ 3.4.4 Local custom and trade-union jurisdictional settlements do not control the scope of work included in each prime contract. When a potential jurisdictional dispute or similar interruption of construction activities is first identified or threatened, the affected contracts shall promptly negotiate a reasonable settlement to avoid or minimize the pending interruptions and its delay. The trade contractor

shall be bound by the agreement establishing the impartial jurisdictional disputes board and/or its successors. The trade contractor agrees not to cause a work stoppage due to the jurisdictional assignment of work. The trade contractor agrees to maintain an adequate work force of experienced workers and the necessary materials, supplies, and equipment to meet the requirements of Nexus and other trades in order to maintain the construction schedule, In the event that their forces are, in the judgment of Nexus, inadequate to meet the established schedules during regular working hours, the trade contractor agrees to work sufficient overtime hours or increase their workforce to meet such schedules at no extra costs to Nexus or Owner.

**§ 3.4.5** After the Contract has been executed; the Owner and Nexus will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in the General Requirements (Division 1 of the Specifications). By making requests for substitutions based on this subparagraph, the Contractor:

- (a) Represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified;
- (b) Represents that the Contractor will provide the same warranty for the substitution that the Contractor would for that specified;
- (c) Certifies that the cost data presented is complete and includes all related costs under this Contract but excludes costs under separate contracts and excludes Design Professional's redesign costs, and waives all claims for additional costs related to the substitution which subsequently become apparent; and
- (d) Will coordinate the installation of the accepted substitute, making such changes as may be required for the work to be complete in all respects.

**§ 3.4.6** All work shall be performed in the best and most workmanlike manner to the highest standards for the work. Incompetent or careless workmanship shall not be permitted by the Contractor and will not be accepted.

**§ 3.4.7** The Contractor, and all those working under its jurisdiction, shall conform to labor laws of the state and all other laws, ordinances and legal requirements affecting the Work. Prior to starting work, the Contractor shall become familiar with local labor and trade conditions, skilled and unskilled, and shall conform to local conditions. The Contractor shall consider the availability of labor in the area and import labor as may be required to meet the schedule for the Work.

**§ 3.4.8** Unless otherwise provided in Contract Documents, all materials, equipment and other products shall be one of the brands, manufacturers or types specified. All like products for the Work shall be by the same manufacturer.

**§ 3.4.9 Workmanship and Materials**

- (a) No trade shall commence Work until conditions are right for carrying out the work properly and surfaces to be covered are suitable.
- (b) Manufacturer's printed instructions covering details of installation shall be followed where not in conflict with these specifications. If there is a conflict, notify Nexus for clarification before proceeding.
- (c) Completed work shall be left plumb, level, true to line or plane, anchored securely in place free from damage.
- (d) Unless otherwise called for, all pieces of material shall be a stock size as is in conformity with standard good practice of the trade.
- (e) Except where in conflict with these specifications, current manufacturer's printed specifications of herein specified proprietary products are made part of these specifications.

### **§ 3.5 Warranty**

**§ 3.5.1** The Contractor warrants to the Owner and Nexus 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 all applicable laws, codes, ordinances, rules, regulations, and industry standards and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner or Nexus, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. "Good quality", as that term is used in this section, means the Work meets or exceeds all industry standards and laws, and also meets or exceeds all requirements of form, function, durability, performance, type, strength, efficiency, service, appearance, or other criteria established by the requirements of the Contract Documents.

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

**§ 3.5.3** Manufacturer product warranty shall not relieve the Contractor of general warranty obligations imposed by applicable laws, codes, ordinances, rules, regulations, and industry standards, or otherwise assumed or agreed upon by the Contractor. Where a product is specified by manufacturer or brand name, such specification is used to establish minimum standards of quality required, and the published data, including manufacturer extended warranties, pertinent to the specified product shall be a requirement of the Contract Documents.

### **§ 3.6 Taxes**

The Contractor shall be liable for and pay all federal, state and local sales, consumer, use and similar taxes for the Work or portions thereof 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. Applicable tax amounts shall be included in the Contract sum.

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

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Owner, assisted by Nexus, shall secure and pay for the building permit. The Contractor shall secure and pay 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.

**§ 3.7.1.1** The Contractor shall provide and pay for all bonds that may be required to accomplish the work, including any bonds required by local municipalities.

**§ 3.7.1.2** The Owner will pay SAC / WAC (Sewer and Water access charge) directly.

**§ 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 or inspection of the Work. In any instance where requirements of the Contract Documents are in excess of, but not in conflict with or violation of, requirements of a public authority having jurisdiction, the provisions of the Contract Documents shall govern.

**§ 3.7.3** If the Contractor performs Work that it knows, or reasonably should know 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 for damages incurred as a result of and shall bear the costs attributable to correction, and shall indemnify the Owner for all such

actions.

**§ 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 Nexus before conditions are disturbed and in no event later than 14 days after first observance of the conditions. Nexus will promptly investigate such conditions and, if Nexus, in consultation with Nexus' Consultants, determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If Nexus, in consultation with Nexus' Consultants, determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, Nexus shall promptly notify the Owner and Contractor, stating the reasons. If the Owner or Contractor disputes Nexus' determination or recommendation, either party may submit a Claim as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Nexus. 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, except where installation is specified as part of the allowance in the General Requirements (Division 01 of the Specifications); 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.
- .4 The Supplier or Subcontractor for an allowance item is subject to acceptance of the Owner and Nexus. The Contractors Purchase Order or Subcontractor Agreements shall bind the Supplier or Subcontractor to the requirements of the Contract Documents.

**§ 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. Nexus has the authority to remove from the Project Site any employee (including superintendent) of the Contractor or any of its subcontractors. Upon oral or written direction of Nexus, Contractor shall replace designated personnel and maintain contract completion date.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Nexus, of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, Nexus may notify the Contractor, stating whether the Owner, or Nexus (1) has reasonable objection to the proposed superintendent or (2) require additional time for review. Failure of Nexus to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 3.9.3** The Contractor shall not employ a proposed superintendent to whom the Owner or Nexus 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. Unless the Superintendent proves to be unsatisfactory to the Contractor and as a result ceases to be in the Contractor's employ.

### **§ 3.10 Contractor's Construction and Submittal Schedules**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Nexus' information, and Nexus use in developing the Project schedule, a Contractor's construction schedule for the Work. The schedule shall be of Microsoft Project format and contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work (no work activity shall take longer than two calendar weeks). Procurement activities are permitted to take longer as all activities associated (submittals, etc.) are separate activities. Procurement ends the day the product arrives at the job site; and (4) include all successor and predecessor activities and resources. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project (no greater than twice a month). The Contractor shall cooperate with Nexus in scheduling and performing the Contractor's Work to avoid conflict with, and as to cause no delay in, the work or activities of other Contractors, or the construction or operations of the Owner's own forces or Separate Contractors.

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

**§ 3.10.3** The Contractor shall participate with other contractors, Nexus, and the Owner in reviewing and coordinating all schedules for incorporation into the Project schedule that is prepared by Nexus. The Contractor shall make revisions to the construction schedule and submittal schedule as deemed necessary by Nexus to conform to the Project schedule.

**§ 3.10.4** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Nexus and incorporated into the approved Project schedule.

**§ 3.10.5** The Contractors shall furnish to Nexus, upon request, substantiating documentation to confirm the status of all material deliveries. Such documentation could include, but is not limited to the following:

- .1 Copies of subcontractors or purchase orders.

- .2 Factory acknowledgements or orders, with scheduled dates of shipment.
- .3 Shipping tickets, pro numbers, etc. identifying actual dates of shipment.

**§ 3.11 Documents and Samples at the Site**

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

**§ 3.12 Shop Drawings, Product Data, and Samples**

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

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

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

**§ 3.12.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Design Professional and Nexus is subject to the limitations of Sections 4.2.10 through 4.2.12. Informational submittals upon which Nexus and Design Professional are 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 Nexus or Design Professional without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, stamp approved, and submit to Nexus within seven days after the contract date, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the Project submittal schedule approved by Nexus or, in the absence of an approved Project submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of other Contractors, Separate Contractors, or the Owner's own forces. The Contractor shall cooperate with Nexus in the coordination of the Contractor's Shop Drawings, Product Data, Samples, and similar submittals with related documents submitted by other Contractors.

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

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

**§ 3.12.8** The Work shall be in accordance with accepted submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Design Professionals acceptance of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified Nexus and Design Professional of such deviation at the time of

submittal and (1) the Design Professional 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 Design Professionals review 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 Nexus and the Design Professional on previous submittals. In the absence of such notice, the Design Professionals review of a resubmission shall not apply to such revisions.

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

**§ 3.12.10.1** If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Design Professional will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Nexus. The Owner,, and Nexus shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Nexus have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, Nexus will review and 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. Nexus shall review submittals for sequencing, constructability, and coordination impacts on other Contractors.

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

**§ 3.12.11** Submit to Nexus one electronic copy, in PDF format, of each shop drawing, including fabrication, erection, layout and setting drawings and such other drawings as required under various sections of the specifications, until final acceptance is obtained. If printed copies of shop drawings and/or submittals are determined to be necessary, the costs for the reproduction will be the responsibility of the Contractor. Nexus is responsible for obtaining and distributing required prints of shop drawings to the Separate Contractors. Where printed materials describe more than one product or model, clearly identify which is to be furnished.

**§ 3.12.12** Manufacturer's Instructions: Where any item of Work is required by specifications to be furnished, installed, or performed in accordance with a specified product manufacturer's instructions, contractor shall procure and distribute the necessary copies of such instructions to all concerned parties through Nexus.

### **§ 3.13 Use of Site**

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



**§ 3.13.2** The Contractor shall coordinate the Contractor's operations with, and secure the approval of, Nexus before using any portion of the site.

**§ 3.13.3** Site will be in use during the school term. Work must be coordinated with the School District for each individual school through Nexus. Care, custody and control of the site shall be vested in the Contractor, subject to the rights of the Owner. Schedule phasing of the work must not interfere with the program of each school. Shift work will be necessary. Delivery and storage of materials will be coordinated through Nexus.

**§ 3.13.4** Before making a shipment of materials to the Project site, Contractors shall ascertain that the project site is in a condition to receive the shipment. If materials are delivered to the Project site and project is not in condition to receive the materials, the materials shall be removed from the site and properly stored off-site at the expense of the Contractor or his Subcontractor. Deliveries must be coordinated through Nexus.

**§ 3.13.5** The Contractor shall return all improvements on or about the site, streets and adjacent property which are not shown to be altered, removed or otherwise changed, to the conditions which existed previously. The Contractor shall protect existing structures or other features from damage by any operation in connection with this Contract.

**§ 3.13.6** Utilities or other services which are shown, or not shown but encountered or otherwise found, shall be protected by the Contractor from any damage from excavation or other work and operations of this Contract, unless or until they are abandoned. If the utilities or services are not abandoned, or to be abandoned, the Contractor shall immediately restore any damage from its work or operations to place the utilities and service in an equal or better condition to that which existed. Where utilities or services are shown to be abandoned or moved, they shall remain in service, and be protected by the Contractor, until new utilities and services have been provided, tested and ready for use.

**§ 3.13.7** If the Contractors cannot control noise, odors, water, dust, security, access, safety egress, etc. in a manner acceptable to the building occupants, then this Contractor will be required to perform his work at times of very low or no occupancy.

**§ 3.14 Cutting and Patching**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner, Separate Contractors, or of other Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner, Separate Contractors, or by other Contractors except with written consent of Nexus, Owner, and such other Contractors or Separate Contractors. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Separate Contractors, other Contractors, or the Owner, its consent to cutting or otherwise altering the Work.

**§ 3.14.3** Altering or cutting of structural members will not be allowed without the written approval of Nexus.

**§ 3.14.4** Any contractor requiring cutting into the work of another contractor shall do such cutting and shall properly repair such work to the satisfaction of Nexus. Such cutting, fitting, and patching shall not endanger any work or otherwise alter the work or any part of it, and it shall be done by craftsmen skilled and experienced in the trade or craft that installed or furnished the original work. Repairs shall be equal in quality and appearance to similar adjacent work and shall not be obviously apparent as a patch or repair. Work that cannot be satisfactorily repaired shall be removed and replaced.

### **§ 3.15 Cleaning Up**

**§ 3.15.1** The Contractor and its Subcontractors, Sub-subcontractors, Separate Contractors, or other Contractors shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract and keep the premises clean and free from fire hazards, and maintain its work neat and orderly throughout the construction period, including broom cleaning and vacuum of the floors. All packing/crating materials from goods installed will be removed from the site by the contractor responsible for the packaged materials. The contractor responsible for taking delivery of Owner furnished materials will be responsible for packing/crating of goods delivered. 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 or its subcontractors fail to clean up, or if a dispute arises between Separate Contractors as to their responsibility for clean up as required by section 3.15 or as provided in the Contract Documents, the Owner, or Nexus with the Owner's approval, may do so and equitably charge the cost thereof to the several responsible Contractors as determined by Nexus.

**§ 3.15.3** All matter (snow, water, dirt, dust or other debris) accumulated in a designated work area are the responsibility of the contractor to remove.

**§ 3.15.5** If a Contractor fails to maintain the premises or clean up as specified, Nexus may do so after 2 days' notice, with the cost paid for by the Contractor.

**§ 3.15.5** All Contractors and their Subcontractors/Material Suppliers are responsible for clean-up of debris created by Work of their contract, including but not limited to, broom cleaning and a final cleaning of working areas. Nexus may elect to have all Contractors on site participate, at no additional compensation to the Contractor, in weekly jobsite clean-up services. Participation will be required by all Contractors working onsite during that during that time.

### **§ 3.16 Access to Work**

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

### **§ 3.17 Royalties, Patents and Copyrights**

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

### **§ 3.18 Indemnification**

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the Owner, Nexus, and Nexus' consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work or failure to meet the requirements of the Contract Documents, but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18. The Contractor's obligations set forth in this Paragraph shall apply to any claim by the Owner against the Contractor, a Subcontractor, or anyone else directly or indirectly employed by the

Contractor or a Subcontractor, or against anyone for whose acts the Contractor, Subcontractor may be liable.

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

### **§ 3.19 Equal Opportunity in Employment**

**§ 3.19.1** Contractor shall not discriminate against any employee or applicant for employment because of sex, creed, color, religion, national origin, marital status, status with respect to public assistance, disability, age, or sexual preference. Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to the following: employment, upgrading, demotion or transfer, recruitment, recruitment advertising, layoff or termination, rates of pay or other form of compensation and selection for training, including apprenticeship. Contractor shall incorporate these same equal opportunity, antidiscrimination and affirmative action requirements into all agreements between Contractor and its Subcontractors. Contractor agrees to comply with the Americans with Disabilities Act, as amended, ("ADA"), Section 504 of the Rehabilitation Act of 1973, and the Minnesota Human Rights Act, Minnesota Statutes, Chapter 363A. Contractor agrees to hold harmless and indemnify Owner from costs, including but not limited to damages, attorney's fees and staff time, in any action or proceeding brought alleging a violation of these laws by the Contractor or its guests, invitees, members, officers, agents, employees, volunteers, representatives, or subcontractors. Upon request, the Contractor shall provide accommodation to allow individuals with disabilities to participate in all services under this Agreement. Contractor agrees to utilize their own auxiliary aid or service in order to comply with ADA requirements for effective communication with people with disabilities. Violation of any part of this provision may lead to immediate termination of this Agreement.

### **§ 3.20 Field Conditions**

**§ 3.20.1** Each Contractor shall take field measurements of materials supplied under their Contract, and verify field conditions with the Contract Documents and final Shop Drawings before commencing any Work. Report errors, inconsistencies, or omissions to Nexus at once.

**§ 3.20.2** No change to the Contract Sum will be allowed on account of minor differences between actual field conditions and the Contract Documents.

**§ 3.20.3** The need to obtain accurate field dimensions in ample time to permit fabrication of long lead materials and equipment, for delivery and installation in accordance with the schedule, shall be recognized. Each Contractor and all sub-contractors shall cooperate in completing work phases to accommodate the schedule for obtaining dimensions and to prevent fabrication delay. In the event it is impractical to have work in place to permit field dimensions, the responsible Contractor shall guarantee necessary dimensions, before construction, to the various fabricators and be responsible to insure the dimensions.

**§ 3.21 Miscellaneous Contractor Responsibilities**  
**§ 3.21.1** Any and all data provided to the Contractor, received from the Contractor, created, collected, received, stored, used, maintained, or disseminated by the Contractor pursuant to this Agreement shall be administered in accordance with, and is subject to the requirements of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13. Contractor agrees to abide by these statutes. Contractor further agrees to notify the Owner within three (3) business days if it receives a data request from a third party. This paragraph does not create a duty on the part of the Contractor to provide access to public data to the public if the public data are available from the Owner, except as required by the terms of this Agreement. These obligations survive the termination of this Agreement.

## **ARTICLE 4 NEXUS**

### **§ 4.1 General**

**§ 4.1.1** The Owner has retained Nexus and its consultants who are lawfully licensed to practice architecture or engineering in the jurisdiction where the Project is located.

**§ 4.1.2** The Owner has retained Nexus as a Construction Manager. That person or entity is identified as Nexus in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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

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

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

**§ 4.2.2** The Design Professionals will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with Nexus, 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 Design Professional will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, Nexus will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner known deviations from the Contract Documents and defects and deficiencies observed in the Work.

**§ 4.2.3** Nexus shall provide one or more representatives who shall be in attendance at the Project site whenever the Work is being performed. Nexus will determine in general if the Work observed is being performed in accordance with the Contract Documents, will keep the Owner and Architect reasonably informed of the progress of the Work, and will promptly report to the Owner and Architect known deviations from the Contract Documents and the most recent Project schedule, and defects and deficiencies observed in the Work.

**§ 4.2.4** Nexus will schedule and coordinate the activities of the Contractor and other Contractors in accordance with the latest approved Project schedule.

**§ 4.2.5** Nexus, except to the extent required by Section 4.2.4, and Design Professional 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, and neither will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither Nexus nor the Design Professional will have control over or charge of, or be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or of any other persons or entities performing portions of the Work.

**§ 4.2.6 Communications.** The Owner shall communicate with the Contractor and Nexus' consultants through Nexus about matters arising out of or relating to the Contract Documents. The Owner and Nexus shall include Nexus' Consultants in all communications that relate to or affect their services or professional responsibilities. The Owner shall promptly notify Nexus of the substance of any direct communications between the Owner and Nexus otherwise relating to the Project. Communications by and with Nexus' consultants shall be through Nexus. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with other Contractors and Separate Contractors shall be through Nexus. Communications by and with the Owner's own forces shall be

through the Owner. Direct communications between Nexus and the Contractor that affect the performance or administration of the Work shall be made or confirmed in writing. The Contract Documents may specify other communication protocols.

**§ 4.2.7** Nexus will review all Applications for Payment by the Contractor, in accordance with the provisions of Article 9.

**§ 4.2.8** Nexus has the authority to reject Work that does not conform to the Contract Documents. Whenever Nexus considers it necessary or advisable, Nexus will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, upon written authorization of the Owner, whether or not the Work is fabricated, installed or completed. The foregoing authority of Nexus will be subject to the provisions of Sections 4.2.18 through 4.2.20 inclusive, with respect to interpretations and decisions of Nexus' Consultants. However, neither Nexus' Consultants nor Nexus' authority to act under this Section 4.2.8 nor a decision made by either of them in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of Nexus' Consultants or Nexus to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons performing any of the Work.

**§ 4.2.9** Utilizing the submittal schedule provided by the Contractor, Nexus shall prepare, and revise as necessary, a Project submittal schedule incorporating information from other Contractors, the Owner, Nexus' Consultants, Owner's Separate Contractors and vendors, governmental agencies, and participants in the Project under the management of Nexus. The Project submittal schedule and any revisions shall be submitted to Nexus for approval.

**§ 4.2.10** Nexus will receive and promptly review for conformance with the submittal requirements of the Contract Documents, all submittals from the Contractor such as Shop Drawings, Product Data, and Samples. Where there are other Contractors, Nexus will also check and coordinate the information contained within each submittal received from the Contractor and other Contractors, and transmit to Nexus' Consultants those recommended for review. By submitting Shop Drawings, Product Data, Samples, and similar submittals, Nexus represents to the Owner and Nexus' Consultants that Nexus has reviewed and recommended them for review. Nexus' actions will be taken in accordance with the Project submittal schedule with reasonable promptness while allowing sufficient time to permit adequate review by Nexus' Consultants.

**§ 4.2.11** Nexus' Consultants will review 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 Consultants action will be taken in accordance with the submittal schedule with reasonable promptness while allowing sufficient time in the Consultants professional judgment to permit adequate review. Upon the Consultants completed review, the Consultant shall transmit its submittal review to Nexus.

**§ 4.2.12** Review of the Contractor's submittals by Nexus and Nexus' Consultant 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. Nexus and Nexus' Consultants review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. Nexus and Nexus' Consultants review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Consultants review of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 4.2.13** Nexus will prepare Change Orders and Construction Change Directives.

§ 4.2.14 Nexus will take appropriate action on Change Orders or Construction Change Directives in accordance with Article 7, and Nexus will have authority to order minor changes in the Work as provided in Section 7.4. Nexus, in consultation with the Owner, will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.15 Utilizing the documents provided by the Contractor, Nexus will maintain at the site for the Owner one copy of all Contract Documents, approved Shop Drawings, Product Data, Samples, and similar required submittals, in good order and marked currently to record all changes and selections made during construction. These will be available to the Contractor, and will be delivered to the Owner upon completion of the Project.

§ 4.2.16 Nexus will assist Nexus' Consultants in conducting 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; and receive and forward to the Owner written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10. Nexus will forward to the Owner a final Application and Certificate for Payment or final Project Application and Project Certificate for Payment upon the Contractor's compliance with the requirements of the Contract Documents.

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

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

§ 4.2.19 Interpretations and decisions of Nexus 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, Nexus 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 so rendered in good faith.

§ 4.2.20 Nexus decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.21 Nexus will receive and review requests for information from the Contractor, and forward each request for information to Nexus' Consultants. Nexus' Consultant will review and respond in writing, through Nexus, to requests for information about the Contract Documents. Nexus recommendation and Nexus' Consultants response to each request will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, Nexus' Consultant will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## **ARTICLE 5 SUBCONTRACTORS**

### **§ 5.1 Definitions**

§ 5.1.1 A Subcontractor is a person, firm, or entity who has a direct contract or purchase order with the Contractor to perform a portion of the Work at the site or provide materials, equipment, facilities, or labor on the Project. 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 other Contractors or Separate Contractors or the subcontractors of other Contractors or Separate Contractors.

**§ 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 or provide materials, equipment, facilities or labor on the Project. The term “Sub-subcontractor” is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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

**§ 5.2.1** Unless otherwise stated in the Contract Documents, the Contractor, within 14 days after the award of the Contract, the Letter of Intent to Award has been issued, Notice to Proceed has been issued or execution of the Contract (whichever occurs first), The Contractor, shall notify Nexus, for review by the Owner, and Nexus, of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, Nexus may notify the Contractor whether the Owner, (1) has reasonable objection to any such proposed person or entity or, (2) requires additional time for review. Failure of Nexus to provide notice within the 14-day period shall constitute notice of no reasonable objection. If the Owner or Nexus objects to a proposed Subcontractor or sub-Subcontractor, such objection shall be deemed reasonable if in the opinion of the Owner or Nexus the objectionable Subcontractor or sub-Subcontractor:

- .1 cannot provide (or proposes unacceptable deviations in) materials, equipment, systems, methods, facilities, or other work as required by the Contract Documents;
- .2 cannot provide labor and skill necessary to accomplish the part of the Work for which it is proposed, including but not limited to quality of workmanship;
- .3 lacks experience appropriate to the proper execution and completion for that part of the Work for which the Subcontractor is proposed;
- .4 has previously failed to perform satisfactorily with respect to other projects, including cooperation and necessary services after project completion;
- .5 cannot satisfactorily perform the part of the Work for which the Subcontractor is proposed within the time schedule, due to financial status, size of organization, existing work load, or other considerations;
- .6 cannot demonstrate the ability, through examples of representative work, to perform the part of the Work for which the Subcontractor is being considered;
- .7 is of questionable integrity;
- .8 exhibits other factors bearing on the probability of unsatisfactory performance; or
- .9 is otherwise not qualified or is reasonably objectionable.

If adequate data on a proposed manufacturer or an installer is not available, Nexus may state that action will be deferred until the Contractor provides further data.

Failure to object to a manufacturer shall not constitute a waiver of any of the requirements of the Contract Documents, and all products furnished by the listed manufactures must conform to such requirements.

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

**§ 5.2.3** If the Owner, or Nexus has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner, or Nexus 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. No increase in the Contract Sum shall be allowed should a substitution be required as a result of the Owner's or Nexus's reasonable objection based on specified criteria on which a proposed subcontractor will be evaluated.

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

### **§ 5.3 Subcontractual Relations**

**§ 5.3.1** By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, that the Contractor, by these Contract Documents, assumes toward the Owner, and Nexus. Each subcontract agreement shall preserve and protect the rights of the Owner, and Nexus 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** The Contractor shall supply copies of each subcontract agreement to the Owner and Nexus before the Subcontractor is permitted to commence Work.

### **§ 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 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

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

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

## **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

### **§ 6.1 Owner's Right to Perform Construction with Own Forces and to Award Other 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 with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation. .



**§ 6.1.2** When the Owner performs construction or operations with the Owner's own forces or Separate Contractors, the Owner shall provide for coordination of such forces and Separate Contractors with the Work of the Contractor, who shall cooperate with them.

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

**§ 6.2 Mutual Responsibility**

**§ 6.2.1** The Contractor and Subcontractors shall cooperate with and coordinate their work with all other contractors and the Owner to facilitate the general progress of the Project and to prevent delaying the progress of other contractors. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and equipment and the execution of their work, and shall connect and coordinate Contractor's Work with theirs as required by the Contract Documents. Each contractor and subcontractors shall obtain layout drawings, roughing-in detail sheets and other pertinent information directly from each other (not from Nexus) to coordinate all phases of the Work. For coordination with the Owner's equipment or materials, information shall be requested from Nexus. After timely notification by the Contractor of the need to accomplish a particular phase or element of the Work, the other contractors shall, within a reasonable time, perform their work so as not to delay or impede the Contractor.

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

**§ 6.2.3** The Contractor shall indemnify and reimburse the Owner for costs, losses, damages, and consultant fees the Owner incurs, including costs that are payable to a Separate Contractors or to other Contractors, because of the Contractor's delays, improperly timed activities, lack of coordination with other Contractors, or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of delays, improperly timed activities, damage to the Work or defective construction by the Owner's own forces, Separate Contractors, or other Contractors.

**§ 6.2.3.1** Time being an essential element of the contract, it is hereby agreed that the Owner shall be entitled to damages for failure on the part of the Contractor to complete the work within the contract period, as amended by an extension. Such actual damages shall include, but not be limited to the following:

- .1 Additional fees incurred by the Design Consultants.
- .2 Additional fees incurred by Nexus
- .3 Increased cost of relocating, including moving from existing building to temporary location(s).
- .4 Increased cost of extended and additional rental space.
- .5 Lost revenue from operations of the building.

**§ 6.2.4** The Contractor shall promptly remedy damage that the Contractor causes to completed or partially completed construction, or to property of the Owner, Separate Contractors, or other Contractors.

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

§ 6.2.6 If a Contractor has a claim for additional cost due to the action or inaction of separate Contractors, the Contractors shall resolve the claim directly with the responsible party or parties. If resolution cannot be obtained directly, and Contractor sues, or initiates arbitration against the Owner or Nexus on account of any damage alleged to have been so sustained, the Owner shall notify the separate Contractor, who shall defend such proceeding at the Contractor's expense, and if any judgment or award against the Owner or Nexus arises there from, the separate Contractor shall pay or satisfy it.

#### § 6.3 Owner's Right to Clean Up

If a dispute arises among the Contractor, Separate Contractors, other 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 Nexus, with notice to the Owner, will allocate the cost among those responsible.

#### § 6.4 Cutting and Patching Under Separate Contracts

The Contractor shall be responsible for any cutting, fitting, and patching that may be required to complete its work except as otherwise specifically provided in the Contract Documents. The Contractor shall not endanger any work of any other contractors or Subcontractors by cutting, excavating, or otherwise altering any work, and shall not cut or alter the work of any other contractor except with the written consent of Nexus, after timely notice, and upon appropriate consultation with the other parties whose work is affected or involved.

### 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, Nexus and Contractor. A Construction Change Directive requires agreement by the Owner, and Nexus and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by Nexus alone.

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

§ 7.1.4 The Owner and Nexus are not responsible to give Notice of Changes Orders to the Surety (if any).

#### § 7.2 Change Orders

A Change Order is a written instrument prepared by Nexus and signed by the Owner, Nexus, Design Professional, and Contractor, stating their agreement upon all, or a combination of the following:

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

#### § 7.3 Construction Change Directives

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

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

**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.4.

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

- .1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by Nexus;
- .2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- .5 Costs of supervision and field office personnel directly attributable to the change.

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

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

**§ 7.3.7** In order to obtain a Contract Sum Adjustment for any Change Directive, Contractor must first submit a written notice to Nexus stating its proposed Contract Sum adjustment and basis for adjustment. This notice must be submitted within seventy-two (72) hours of receipt of the written Change Directive and prior to commencement of the changed work. If Contractor fails to comply with these notice requirements Contractor shall be deemed to have waived its rights to dispute or contest Nexus' determination as to the Change Adjustment, Nexus shall include overhead, bond, insurance, field supervision and profit in accordance with the limits established by paragraph 7.3.10.. Such agreement shall be effective immediately and shall be recorded as a Change Order.

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by Nexus. 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. Nexus will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that Nexus determines to be

reasonably justified. The 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 Nexus concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and Nexus shall prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive. For proposed changes in the work on the lump sum or time and material methods under Clause 7.3.3.1 and 7.3.3.4 above, the costs shall be determined by taking the Contractor's actual cost to perform the additional work plus a markup by the Contractor of no more than 15%.

**§ 7.4 Minor Changes in the Work**

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

**§ 7.5 Owners Right to Perform Changes in the Work**

If the Owner does not agree to a proposal of the Contractor for additional Work or changes in the Work, or if the Owner does not deem it advisable or expedient to proceed on the basis of the Contractor's proposal, the Owner reserves the right to perform additional work or changes in the Work with its own personnel or to employ others for changes in the Work.

**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 Contract Time is the date of the Owners Notice to Proceed or is the date established in the Agreement, whichever is the earliest date.

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

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

**§ 8.2 Progress and Completion**

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

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

**§ 8.2.2.1** If a Contract is awarded, construction at the site may commence upon, but not before, (1) Contractor's receipt of a Notice to Proceed from the Owner, and (2) Owner's receipt of Contractor's insurance certificates and Subcontractors list.

**§ 8.2.3** After award of the Contract it shall be the responsibility of the Contractor upon notification by Nexus to begin the Work immediately and to thereafter proceed expeditiously with adequate qualified forces and shall achieve Substantial Completion at the earliest possible date, but in no case later than

within the Contract Time identified in the Contract Documents.

**§ 8.2.4** Progress and supervision of the Work shall be the responsibility of the Contractor to supervise the operations of subcontractors responsible to the Contractor so as not to delay the Work.

**§ 8.2.5** The progress of the Work shall conform to the Project Construction Schedule prepared by Nexus. The Contractors shall be responsible for damages incurred by the Owner and other separate Contractors for delay resulting from the Contractor's failure to complete the Work within the Contract Time or resulting from the progress of the Work failing to conform to the Project Construction Schedule.

### **§ 8.3 Delays and Extensions of Time**

**§ 8.3.1** If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner, Nexus, or an employee of any of them, or of the Owner's own forces, Separate Contractors, or other Contractors; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor's control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts and Nexus determines justify delay, then the Contract Time shall be extended for such reasonable time as Nexus may determine.

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

**§ 8.3.3** This Section 8.3 does not exclude the Owner's recovery of damages for delay under other provisions of the Contract Documents.

**§ 8.3.4** Contractor shall anticipate a reasonable amount of delays due to minor changes in the work, concealed and other field conditions, whether or not specifically identified in the Contract Documents. No extension of time will be allowed for work performed under change orders up to an additional 10 percent of labor hours included in the contract.

**§ 8.3.5** Upon request of Nexus, the Contractor shall submit and implement a written plan to recover the overall contract schedule.

**§ 8.3.6** Upon receipt of Notice to Proceed, the Contractor shall begin construction operations and continuously and effectively prosecute the work with the least possible delay, so as to complete all contract work and all clean up within the Contract Time, taking into consideration all restrictions or limitations to construction procedures hereinafter specified.

**§ 8.3.7** The Contractor shall be responsible for damages incurred by the Owner and separate Contractors for delay resulting from the Contractor's failure to complete the work within the Contract time indicated in the Agreement. Losses may include additional administrative costs, rental costs for required off-site classroom space, additional custodial costs and professional fees.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 Contract Sum**

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

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

### **§ 9.2 Schedule of Values**

**§ 9.2.1** Where the Contract is based on a Stipulated Sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to Nexus, at least 10 days before the first Application for Payment, or in conjunction with the Contractors submission of its construction schedule, whichever is earlier,

allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by Nexus. This schedule, unless objected to by Nexus or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment. Nexus shall forward to the Owner the Contractor's schedule of values. Any changes to the schedule of values shall be submitted to Nexus and supported by such data to substantiate its accuracy as Nexus and the Owner may require, and unless objected to, shall be used as a basis for reviewing the Contractor's subsequent Applications for Payment.

**§ 9.2.2** Update and resubmit the Schedule of Values when Change Orders result in a change in the contract sum. List Change Orders separately on the Schedule of Values.

**§ 9.2.3** The Schedule of Values shall include separate mandatory line items titled "housekeeping", "bonds", "insurance", and "shop drawings" for any contractor who provides labor and/or materials as part of their contract. The value of the "housekeeping" line item shall be at least 2% of the contract, but not less than \$500. The value of "shop drawings" shall be at least 1/2% of the contract, but not less than \$500. The actual costs of bonds and insurance shall be used as cost items on the Schedule of Values. These shall serve as a form of retainage to ensure that each contractor cleans up properly and provides the required documents. Monthly billings can be made to "housekeeping" and will be approved based on contractor performance in this area of responsibility. This provision shall not limit the Owner's right to clean-up and recover associated costs, as specified in other sections of this specification. The Owner reserves the right to withhold payment for individual line items until the contractor's work on site is complete or within conformance.

**§ 9.2.4** Upon request of the Owner or Nexus, the Contractor shall furnish a schedule of estimated periodic requests for payment for the Owner's financial planning guidance. The schedule shall indicate the anticipated amount that will be requested each month, taking into consideration the work schedule, expected deliveries, and the retained amount. The Contractor will not be bound to the estimated amounts, but should the actual requested amounts tend to vary substantially from the estimates, the Contractor shall revise the schedule at the request of the Owner.

### **§ 9.3 Applications for Payment**

**§ 9.3.1** At least fifteen days before the date established for each progress payment, the Contractor shall submit to Nexus an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner, or Nexus require, such as copies of requisitions, and releases of waivers of lien from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents. The Contractor shall indicate the percentage of completion of each portion of the Work (as defined by the schedule of values) as of the end of the period covered by the Application for Payment. Application for Payment shall be made on AIA Document G732 2019 CMA Edition and G703 1992 and shall not be made more frequently than once per month.

**§ 9.3.1.1** Applications shall submit a maximum of one (1) request for payment per month to Nexus by the date noted in the Construction Documents with costs forecasted through the end of the month. Application will include all items incorporated into the project or stored (in a secure manner) on-site. This also includes updating of record drawings on a monthly basis. Applications will not be process for the month until record documents are updated.

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

**§ 9.3.1.3** Applications for Payment will delineate retention in the amount of five (5) percent for each line item and in total for the project through completion.

§ 9.3.1.4 Until substantial completion, the Owner shall pay ninety five (95) percent of the amount of progress payments. The Owner, in making partial payment, will retain five (5) percent of the duly approved value of the work performed under the contract as of the date of the Application for Payment until substantial completion. Within 60 days after Substantial Completion, the Owner will pay to the Contractor all the retainage less two hundred fifty (250) percent of the cost to complete the punchlist and/or repair any defective work and less one (1) percent of the final contract value which shall be released upon receipt of all final paperwork required under the specifications. The Contractor will not be paid interest on retainage amounts.

§ 9.3.1.5 An Application for Payment shall not be considered acceptance or approval of any work or waiver of any defect therein.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner and Nexus, 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 and Nexus to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site. Proof of delivery and certificate of insurance covering materials and equipment stored off site shall be required to be submitted with the Application for Payment. Any application for payment not including such documentation will be rejected and resubmitted the following month upon receipt of proof of deliver and certificate of insurance.

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

§ 9.3.4 Nexus shall have the right to require signed material lien waivers from all contractors' major suppliers. Names of major suppliers and the amounts due to them shall be provided at pre-award interview by all contractors.

§ 9.3.5 The contractor shall be required to submit certified wages to the Owner through Nexus with each progress pay application. Failure to submit certification will deem the application incomplete and the application will be returned to the contractor without further processing.

#### § 9.4 Certificates for Payment

§ 9.4.1 Where there is only one Contractor, Nexus will, within seven days after receipt of the Contractor's Application for Payment, review the Application and the amount determined is due the Contractor, and forward the Contractor's Application and Certificate for Payment to the Owner. Within seven days after Nexus receives the Contractor's Application for Payment, Nexus will either (1) issue to the Owner a Certificate for Payment, in the full amount of the Application for Payment; or (2) issue to the Owner a Certificate for Payment for such amount as Nexus determines is properly due, and notify the Owner of Nexus' reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Owner of Nexus' reason for withholding certification in whole as provided in Section 9.5.1. Nexus will promptly forward to the Contractor Nexus' notice of withholding certification.

§ 9.4.2 Where there is more than one Contractor performing portions of the Project, Nexus will, within seven days after Nexus receives all of the Contractors' Applications for Payment: (1) review the

Applications and review the amount Nexus determines is due each of the Contractors; (2) prepare a Summary of Contractors' Applications for Payment by combining information from each Contractor's application with information from similar applications for progress payments from the other Contractors; (3) prepare a Project Application and Certificate for Payment; (4) review the amount Nexus determines is due all Contractors; and (5) forward the Summary of Contractors' Applications for Payment and Project Application and Certificate for Payment to the Owner.

**§ 9.4.2.1** Within seven days after Nexus compiles the Project Application and Project Certificate for Payment and the Summary of Contractors' Applications for Payment Nexus will either (1) issue to the Owner a Project Certificate for Payment; or (2) issue to the Owner a Project Certificate for Payment for such amount as Nexus determines is properly due, and notify the Owner of Nexus' reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Project Application for Payment, and notify the Owner of Nexus' reason for withholding certification in whole as provided in Section 9.5.1. Nexus will promptly forward notice of withholding certification to the Contractors.

**§ 9.4.3** Nexus' review of an Application for Payment or, in the case of more than one Contractor, a Project Application and Certificate for Payment, shall be based upon Nexus' evaluation of the Work and the data in the Application or Applications for Payment. Nexus' review will constitute a representation that, to the best of Nexus' knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

**§ 9.4.4** Nexus' issuance of a Certificate for Payment or, in the case of more than one Contractor, Project Application and Certificate for Payment, shall be based upon Nexus' evaluation of the Work, and data in the Application for Payment or Project Application for Payment. Nexus' review will constitute a representation that, to the best of Nexus' knowledge, information, and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is, or Contractors are, entitled to payment in the amount certified.

**§ 9.4.5** The representations made pursuant to Sections 9.4.3 and 9.4.4 are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion, and to specific qualifications expressed by Nexus.

**§ 9.4.6** The issuance of a Certificate for Payment or a Project Certificate for Payment will not be a representation that Nexus has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work; (2) reviewed construction means, methods, techniques, sequences, or procedures; (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment; or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

#### **§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** Nexus may withhold a Certificate for Payment or Project Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in Nexus' opinion the representations to the Owner required by Section 9.4.3 and 9.4.4 cannot be made. If Nexus is unable to issue a Certificate of Payment in the amount of the Application, Nexus will notify the Contractor and Owner as provided in Section 9.4.1 and 9.4.2. If the Contractor and Nexus cannot agree on a revised amount, Nexus will promptly issue a Certificate for Payment or a Project Certificate for Payment for the amount for which Nexus is able to make such representations to the Owner. Nexus 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 or Project Certificate for Payment previously issued, to such extent as may be necessary in Nexus' opinion to protect the Owner from loss for which the Contractor is responsible,



including loss resulting from the acts and omissions described in Section 3.3.2 because of

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

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

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

**§ 9.5.4** If Nexus withholds certification for payment under Section 9.5.1, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify Nexus, and both will reflect such payment on the next Certificate for Payment.

**§ 9.5.5** If contractor defaults or neglects to carry out the work in accordance with the contract documents or fails to perform any provision thereof, Nexus may, after three (3) calendar days written notice to the contractor and without prejudice to any other remedy it may have, make good such deficiencies. Nexus shall adjust the total contract price by reducing the amount thereof by the cost of making good such deficiencies.

#### **§ 9.6 Progress Payments**

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

**§ 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. The Contractor shall comply with Minnesota Statutes Section 471.425, subd. 4a, the prompt payment to subcontractor statute.

**§ 9.6.3** Nexus 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 Owner, and Nexus on account of portions of the Work done by such Subcontractor.

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

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

**§ 9.6.6** Issuance of 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. The Contractor and its Surety agree any issuance of a Contractor's Application and Certificate for Payment by the Owner, payment on the Contract Sum or in reducing any retained amount, or any use or occupancy of the Work will in no way relieve them of the obligation to completely fulfill or accomplish all obligations of the Contract, including warranty of the Work, and that they waive any actual or alleged rights of subrogation or action against the Owner or Nexus as a result of any such issuance of a Contractor's Application and Certificate for Payment, payment, or use or occupancy. At any time, the Surety, shall have the right to examine the status of the Work, as well as any payments, and may request the Owner to withhold additional sums as it considers appropriate to protect its interests.

**§ 9.6.7** Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision. Where there is limited storage area on the Project Site, the Owner will consider making payment for certain materials and equipment which are stored off the site if such action will improve or benefit the progress of the Work. The Owner shall be the sole judge as to the types of materials and equipment it will pay for while in off-site storage and the conditions for the payment. Notwithstanding anything herein to the contrary, the Owner will not pay for items in off-site storage which are:

- .1 damaged or otherwise defective;
- .2 off-the-shelf type materials;
- .3 held at the producer's plant; or
- .4 produced over a period of time and normally would be installed to a schedule over a period of time as they are delivered, unless the Owner has caused a significant change in the schedule.

For consideration of payment for items stored off-site, at the start of the Work the Contractor shall submit a proposed list to Nexus for review and concurrence, state the reasons for each, the proposed storage locations and the anticipated delivery time. The list shall include:

- .1 The item;
- .2 proposed storage location; and
- .3 anticipated delivery time to the off-site storage.

To qualify for consideration, the material or equipment shall be:

- .1 a major item;
- .2 specially fabricated or produced for the Work of this Contract and shall be in accordance with the Contract Documents;
- .3 a critical material which is in short supply or which has an uncertain long lead time delivery schedule;
- .4 properly stored and protected, as required by 9.3.3, and approved by the Owner, including marking with the Project name;
- .5 certified by the contractor, Subcontractor or supplier to be in storage and immediately available (when required);
- .6 examined by Nexus at the place of storage;
- .7 furnished at no additional cost or expense to the Owner except the time required to examine the items, unless otherwise authorized by the Owner; and

.8 insured to the satisfaction of the Owner.

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

**§ 9.7 Failure of Payment**

If Nexus does not issue a Certificate for Payment or a Project Certificate for Payment, through no fault of the Contractor, within fourteen (14) days after Nexus' receipt of the Contractor's Application for Payment, provided it has been properly submitted as specified, or if the Owner does not pay the Contractor within fourteen (14) days after the date established in the Contract Documents, the amount certified by Nexus or awarded by binding dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner, and Nexus, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, excluding interest as provided for in the Contract Documents.

**§ 9.8 Substantial Completion**

**§ 9.8.1** The date of substantial completion of the work of designated portion thereof is the date when construction is sufficiently complete, in accordance with the contract documents, so the Owner can occupy or utilize the work or designated portion thereof for the use for which it is intended. Minor corrective work will not delay the determination that the Contract is substantially complete.

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

**§ 9.8.2.1** All warranties and closeout documentation as noted in the Contract Documents must be complete, submitted and approved by Nexus prior to the Certificate of Substantial Completion being released.

**§ 9.8.3** Upon receipt of the list, Nexus, will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If Nexus' inspection discloses any item, whether or not included on the 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 Nexus. In such case, the Contractor shall then submit a request for another inspection by Nexus, to determine Substantial Completion. Contractor shall be responsible for all costs of reinspection, including Nexus's services.

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

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

and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be made no more than 60 days after Substantial Completion. Owner may retain either 1% of the contract value or 250% of the cost of the remaining punch list work, whichever is greater to assure completion of the punch list.

**§ 9.8.6** After Substantial Completion, the Contractor shall coordinate their activities with the Owner's use of the substantially completed Work and shall diligently complete the remaining Work, without delay or interruption, within the remaining Contract Time.

#### **§ 9.9 Partial Occupancy or Use**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor and Nexus shall jointly prepare a list 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 Nexus.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor, and Nexus 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 and all applicable laws, codes, ordinances, rules, regulations, and industry standards.

**§ 9.9.3** The Owner reserves the right to enter into the Project at all times and make installations of equipment as work progresses and to install furnishings as space becomes substantially complete. The Contractor shall cooperate and coordinate work with the Owners own forces.

#### **§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** Upon completion of the Work, the Contractor shall forward to Nexus a notice that the Work is ready for final inspection and acceptance, and shall also forward to Nexus a final Contractor's Application for Payment. Upon receipt, Nexus shall perform an inspection to confirm the completion of Work of the Contractor. When Nexus finds the Work acceptable under the Contract Documents and the Contract fully performed, Nexus will promptly issue a final Certificate for Payment or Project Certificate for Payment stating that to the best of their knowledge, information and belief, and on the basis of their on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. Nexus' final Certificate for Payment or Project 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 Nexus such substantiation of the Contractor's right to payment as the Owner may require, such as and including: (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the

insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

- .1 Contractor's Affidavit of Payment of Debts and Claims, AIA Document G706;
- .2 Contractor's lien waiver in the full amount of the Contract Sum AIA Document G706a;
- .3 Lien waivers from all Subcontractors, Sub-subcontractors, and major material suppliers who have furnished material for the Work under Contract with the Contractor or a Subcontractor. The lien waivers shall be in the full amount of the contract involved;
- .4 Consent of Surety Company to Final Payment on AIA Document G707;
- .5 IC134, Withholding Affidavit for Contractor and Subcontractors and Sub-subcontractors who have Work under Contract with the Contractor.

**§ 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 Nexus so confirms, the Owner shall, upon application by the Contractor and recommendation by Nexus, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Owner through Nexus 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 not constitute a waiver of Claims by the Owner, Legal or equitable rights, remedies or redress, except those arising from;

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

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

**§ 9.10.6** Contractor shall, at its own cost, defend, indemnify, and hold harmless Nexus and the Owner, its officers, agents, employees, assigns, and successors in interest, from and against any and all liability, damages, losses, claims, demands, actions, causes of action, and costs including attorney's fees and expenses, or any of them, arising from or attributable to a lien or stop notice filed and/or served in connection with the work.

**§ 9.10.7** The Contractor and any of its Subcontractors and Sub-Subcontractors, upon completion of the project, shall fill out the Form IC-134 and send it to the Minnesota Department of Revenue for certification. The Department of Revenue will verify that the contractor has complied with all the applicable withholding laws, and if compliant, will certify the form with an official stamp, and return the form to the contractor. The contractor must submit this certified form along with the Contractors

final Application for Payment to Nexus for final approval.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 Safety Precautions and Programs**

**§ 10.1.1** The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract. The Contractor shall submit the Contractor's safety program to Nexus for review and coordination with the safety programs of other Contractors. Nexus' responsibilities for review and coordination of safety programs shall not extend to direct control over or charge of the acts or omissions of the Contractors, Subcontractors, agents or employees of the Contractors or Subcontractors, or any other persons performing portions of the Work and not directly employed by Nexus.

**§ 10.1.2** Each Contractor is responsible to provide an overview of its safety program, including a policy statement, description of its methods of implementing and enforcing safety measures, and its procedures for identifying/controlling hazards. Prior to first application for payment, Contractor shall provide:

- .1 A written inventory of all hazardous materials it will have on the Project Site;
- .2 A material Safety Data Sheet (MSDS) for each of the hazardous materials;
- .3 A statement on its letterhead confirming that its workers have received proper training in the handling of those hazardous materials.

**§ 10.1.3** Nexus and its Design Consultants shall have no duty to discover, detect or investigate the presence of any Hazardous Materials at or near the site of the Project at any time prior to, during or after design or construction of the Project, except for mold caused, created, or negligently expanded by Nexus, or any Hazardous Materials Nexus uses in providing any work ("Nexus Hazardous Materials"). Should the Contractor know, detect, or suspect the presence of Hazardous Materials at or near the site that are not Nexus Hazardous Materials, ("Non-Nexus Hazardous Material"), the Contractor shall immediately disclose such information to the Owner and Nexus for appropriate action by the Owner, including, but not limited to, verification of the presence of hazardous materials and proper measure to deal with the Non-Nexus Hazardous Materials.

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

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

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor;
- .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; and
- .4 construction or operations by the Owner, Separate Contractors, or other Contractors.
- .5 all of Owner's existing real and personal property at the site.

**§ 10.2.2** The Contractor shall comply with, and give notices in all respects to the Contract Documents, applicable laws, statutes, ordinances, codes, rules and regulations, industry standards, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss. The Contractor shall be directly responsible to and shall reimburse and compensate any person or entity, including the Owner, for any damage, injury or loss caused by any actions or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable in failing to comply with 10.2.

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

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

**§ 10.2.5** The Contractor shall promptly remedy damage and loss to property referred to in Paragraph 10.2 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 Paragraph 10.2. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Nexus or anyone directly or indirectly employed by either of them, or by anyone for whose acts any of them may be liable, and not attributable to the fault, acts, operations, methods, or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

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

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

**§ 10.2.8 Injury or Damage to Person or Property**

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

**§ 10.2.9** The Contractors shall send written notices, make necessary arrangements, and provide services required for the care of gas mains, water pipes, steam pipes, sewer pipes, telephone and telegraph conduits, cables and other equipment or property, assuming responsibility and paying costs for which the Owner may be liable. The Contractor shall consult the Public Service Companies' records to determine the locations and extent of utilities. Existing services shall be maintained without interruption unless new services are provided.

**§ 10.2.10** Contractor shall, at all times, protect the excavation trenches, and the building from damage from rainwater, spring water, ground water, backing up of drains and sewers, and all other sources of water. The Contractor shall provide all pumps and other equipment and bail out all water and all enclosures to provide this protection. Contractor shall construct and maintain all necessary temporary drainage and do all pumping necessary to keep the excavation and basement free of water. Pumping of other than the building excavations shall be the responsibility of the Contractor doing the Work.

**§ 10.2.9** The Contractor shall indemnify and hold harmless the Owner and Nexus from and against any and all liability, fines, penalties, costs, and expenses, including but not limited to reasonable attorneys' fees, caused by or resulting from the Contractor's breach of any of its obligations under Sections 10.1 and 10.2 herein.

**§ 10.3 Hazardous Materials**

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

**§ 10.3.2** Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Nexus the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately, and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

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

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

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

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

#### **§ 10.4 Emergencies**

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

#### **§ 10.5 Miscellaneous General Provisions**

**§ 10.5.1** The requirements under 10.5, Miscellaneous General Provisions, shall be considered as minimum requirements and shall not be construed to limit the amount of protection required to safeguard all persons and property, nor construed as directing or establishing the Contractor's methods or responsibilities.

**§ 10.5.2** Each Contractor shall provide and maintain adequate fire extinguishers in and around the construction area, available to all workers, but shall not use extinguishers that are to be installed in the Work.

**§ 10.5.3** The Contractor shall provide visual barrier at installed glass which conceivably could be walked into or otherwise damaged. After removal of the visual barrier the Contractor shall clean all glass and replace any glass that has been scratched or otherwise damaged.



**§ 10.5.4** The Contractor shall provide and maintain guard lights at barricades, railings, obstructions in streets, roads or sidewalks and at trenches or pits, including at those adjacent to existing buildings, public roads, walks, and similar locations where a hazard may exist. The Contractor shall provide and maintain suitable barricades or fences around excavations, including trench excavations, excavated by contractor or subcontractors.

**§ 10.5.5** As may be applicable to the Project and to the Work, the Contractor shall provide and be responsible for:

- .1 protection of equipment, materials, supplies and Work to prevent any damage, including from freezing, thermal shock, heat, water and other damaging elements;
- .2 providing proper and adequate drainage (temporary and permanent) of the site in connection with work of this Contract; damage to property as a result of work or operations under this Contract, including but not restricted to:
  - a. damage from water, excavation, underpinning, removal or changing of structural supports; collapse or other failure to the Project resulting from the Contractor's acts, operations or work, including water undermining or creating pressure on the construction;
  - b. pumping of water from work areas and excavations of this Contract, and spaces built, constructed or opened up under the Contract.
- .3 If necessary, installing temporary heat or dehumidification to keep the spaces dry;
- .4 Providing protection and planking on finished floors and other finished surfaces where work is being done by the Contractor or subcontractors;
- .5 Closing and protecting all holes or openings through walls, floors and roofs that are cut or built by the Contractor or its subcontractors, and which will admit water to interior spaces during the construction period or will create a potential safety hazard;
- .6 Removal of snow to accomplish the Work;
- .7 Keeping premises in neat and orderly condition;
- .8 Eliminating fire hazards.

**§ 10.5.6** As may be applicable to the Project and to the Work, the Contractor shall be responsible for the following;

- .1 providing safe and adequate stairways (temporary and permanent) for the use of all trades;
- .2 maintaining access to the site;
- .3 proper protection by heating of an enclosed building during cold weather;
- .4 ventilation of an enclosed building to remove humidity;
- .5 protection for trees and other similar features, which are to remain, from damage from operations in connection with Project, by boxing tree trunks and setting up barricades at sufficient distance to prevent damage to branches;
- .6 complete water integrity of the Project and particularly roof areas, including watching operations of others to insure no damage to the water integrity;
- .7 after the roof deck is placed, the removal of accumulated snow and ice within a building, which generally shall be hauled out (not melted), unless it is a minor amount, as approved by Nexus.

**§ 10.5.7** Any work on the roof, after roofing has been installed, shall be done over planking, plywood or other suitable protection, to spread loads under roof walkways and at all work areas, including around ventilating bases with protection provided by the Contractor.

**§ 10.5.8** The Contractor and each subcontractor shall provide storage and enclosures to protect and preserve the materials stored at and off the site. Materials such as wood, metal, cement, masonry materials, equipment of any type, conduit and similar materials, shall not be set directly on ground. Coverings shall be durable, watertight, fully cover sides as well as top, substantial and well anchored to prevent blowing away. Shed type of enclosures shall be provided for easily damaged and small items. Any protection which becomes damaged shall be replaced immediately.

§ 10.5.9 Without exception, fan units and all other equipment with bearings or similar working parts shall be set on supports above the ground and snow and shall be enclosed with substantial well secured waterproof protection.

## ARTICLE 11 INSURANCE AND BONDS

### § 11.1 Contractor's Insurance and Bonds

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located and rated not less than A- VII by A.M. Best or equivalent rating service. The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) Nexus, Nexus' Design Consultants, and the Owner, 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. Such additional insured coverage shall be provided by endorsement using ISO forms CG 20 10 and CG 20 37, or their equivalents, and shall be primary and non-contributory with respect to insurance maintained by the additional insureds.

§ 11.1.1.1 The Contractor shall purchase 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 which 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; and
- .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.
- .9 **Liability Insurance shall include all major divisions of coverage and be on a comprehensive basis including:**
  - a. General Liability Insurance for Bodily Injury and Property Damage.
  - b. Products and Completed Operations
  - c. Personal Injury and Employee Benefits Injury.
  - d. Owner, non-owned and hire motor vehicles.
  - e. Umbrella/Excess Liability.
  - f. Pollution Liability.

§ 11.1.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the 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 and for a minimum of three (3) years after Substantial Completion, or for such other period for maintenance of completed operations coverage as

specified in the Contract Documents. The insurance required by Subparagraph 11.1.1 shall be written for not less than the following, or greater if required by law:

<b>WORKMANS COMPENSATION:</b>	
State	Statutory
Applicable Federal (ie. Longshoreman's)	Statutory
<b>EMPLOYERS LIABILITY</b>	
Bodily Injury by Accident	\$ 1,000,000.00
Bodily Injury by Disease Policy Limit	\$ 1,000,000.00
Bodily Injury by Disease - Each Employee	\$ 500,000.00

Comprehensive General Liability written on an occurrence basis (including Premises-Operations; Independent Contractor's protective; Products and Completed Operations; Broad Form Property Damage):

<b>COMPREHENSIVE GENERAL LIABILITY</b>	
General Aggregate	\$ 2,000,000.00
Products/Completed Operations Aggregate	\$ 2,000,000.00
Personal Injury & Advertising Injury	\$ 1,000,000.00
Each Occurrence	\$ 1,000,000.00
Fire Damage Limit	\$ 50,000.00
Medical Payment	\$ 5,000.00

Property Damage Liability insurance will provide explosion, collapse and underground coverage's where applicable.

<b>CONTRACTUAL LIABILITY</b>	
General Aggregate	\$ 1,000,000.00
Products/Completed Operations Aggregate	\$ 1,000,000.00
Personal Injury & Advertising Injury	\$ 1,000,000.00
Each Occurrence	\$ 1,000,000.00
Fire Damage Limit	\$ 50,000.00
Medical Payment	\$ 5,000.00
<b>PERSONAL INJURY</b>	
Each occurrence	\$ 1,000,000.00
<b>COMPREHENSIVE AUTOMOBILE LIABILITY</b>	
Combined Single Limit	\$ 2,000,000.00
<b>COMMERCIAL UMBRELLA</b>	
Minimum Limit	\$ 5,000,000.00
<b>PROFESSIONAL LIABILITY</b>	
Per Occurrence	\$ 3,000,000.00
Aggregate	\$ 3,000,000.00
<b>CONTRACTORS POLLUTION LIABILITY</b>	
Per Occurrence	\$ 1,000,000.00
Aggregate	\$ 2,000,000.00

§ 11.1.1.3 Certificates of insurance acceptable to the Owner shall be submitted to Nexus for transmittal to 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 11.1.1.2. Information concerning reduction of coverage shall be furnished by the Contractor with reasonable promptness. The form of the Certificate shall be ACORD Form - current edition. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits. 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 and Nexus, except ten (10) days' notice for cancellation due to non-payment of premium. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits including additional insured and primary/non-contributory endorsements.

§ 11.1.1.4 The insurance set forth in these documents is the minimum insurance required. Any additional coverages that may be necessary to further protect the contractor are the sole responsibility of the contractor.

#### § 11.1.2 Performance Bond and Payment Bond

§ 11.1.2.1 The Contractor shall furnish bonds covering faithful performance of the Contract and payment of obligations arising hereunder. Bonds must be obtained through a corporate surety authorized in the state of Minnesota and listed on the U.S. Treasury Department Circular 570, and the cost thereof shall be included in the Contract Sum. The amount of each bond shall be equal to 100% of the Contract Sum. The form of the bond shall be AIA document A312. The standard language of this document shall be altered to be consistent with the notification requirements in regards to termination of contract or correction of work. Surety shall agree that the bond shall remain in full force and effect throughout any warranty or correction period required by the Contract Documents.

§ 11.1.2.2 For contracts exceeding \$10,000 in value (including materials only suppliers) the Contractor shall furnish the specified bonds. Separate performance and labor and material payment bonds shall be provided.

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

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

#### § 11.2 Owner's Insurance

§ 11.2.1 The Owner shall purchase and maintain the Owners usual liability insurance. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

## **§ 11.2.2 Property Insurance**

**§ 11.2.2.1** 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, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. The deductible on the policy shall be \$25,000 and the Contractor shall pay all cost not covered because of such deductible. Owner will carry All-Risk Builder's Risk Insurance. If "All-Risk" Builders Risk Policy and endorsements carry deductible features, such deductions shall be guaranteed by the Owner to the Co-Insured's. "Integral" shall be interpreted to mean that which is necessary to complete. Policies shall carry "permission to occupy" endorsements. Owner's All-Risk Builder's Risk insurance will allow for payment of materials stored off-site up to, but not exceeding, \$25,000. The Contractor shall be responsible for deductibles only to the extent a loss is caused by the negligent acts or omissions of the Contractor or those for whom the Contractor is responsible.

**§ 11.2.2.2** 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 Nexus' services and expenses required as a result of such insured loss. Nexus shall be included as an additional insured or loss payee as its interests may appear.

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

**§ 11.2.2.4** The Owner and all contractors agree to waive all rights of subrogation against each other for all losses covered by the Builders Risk coverage.

**§ 11.2.2.5** 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.

**§ 11.2.2.6** The insurance set forth in these documents is the minimum insurance required. Any additional coverages that may be necessary to further protect the Contractor are the sole responsibility of the contractor.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice directly to the Contractor, and separately to Nexus, of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the

Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

### **§ 11.3 Waivers of Subrogation**

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and the Subcontractors, agents and employees each of the other, and (2) the Design Professionals, its consultants and separate contractors, and (3) Nexus, its consultants and separate contractors if any, and any of their sub-contractors, sub-subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by insurance obtained pursuant to this Paragraph 11.3 or any other property insurance applicable to the Work, except such rights as they may have to the proceeds of such insurance held by the Owner as trustees. The Owner or the Contractor, as appropriate, shall require of separate contractors, Sub-contractors and Sub-subcontractors by appropriate agreements, written where legally required for validity, similar waivers, each in favor of all other parties enumerated in this Subparagraph 11.3.1. Such waiver shall be obtained by endorsement to applicable policies where required.

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

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

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

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

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

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 7 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

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

§ 11.5.4 The Owner as fiduciary 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. If the Owner and Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or distribution of insurance proceeds in accordance with the direction of the arbitrators.

## **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 Nexus' request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by either, be uncovered for their examination and be replaced at the Contractor's expense without change in the Contract Time.

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

### **§ 12.2 Correction of Work**

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

The Contractor shall promptly correct Work rejected by Nexus or Nexus' Consultants or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion, and whether or not fabricated, installed or completed, unless the Owner elects to accept the work as provided in section 12.3. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for Nexus and Nexus's Consultants services and expenses made necessary thereby, shall be at the Contractor's expense. The corrective work shall conform in the aspects with the original intent of the Contract Documents

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

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, or Nexus, the Owner may correct it in accordance with Section 2.5. The expiration of the above one year or any other specified time period, or any other period prescribed by law, shall not relieve the Contractor of the obligation for the expense to correct any latent

defect in the Work, or deficiencies which are not readily ascertained, including but not limited to defective materials and workmanship, defects attributable to material substitutions for specified materials, substandard performance or otherwise not in compliance with the Contract Documents. Such latent defects or deficiencies shall be corrected as provided in this Subsection 12.2. Following the correction or replacement of any of the Work, as above specified, the Contractor shall correct any defects or deficiencies in corrected or replaced materials and workmanship, which is found within one year after the date of correction or replacement.

§ 12.2.2 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.

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

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

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

#### § 12.3 Acceptance of Nonconforming Work

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

### ARTICLE 13 MISCELLANEOUS PROVISIONS

#### § 13.1 Governing Law

This Agreement shall be governed by the laws of the State of Minnesota without reference to the conflicts of law provisions thereof. Any disputes arising out of or relating to this Agreement shall be heard in either the state or federal courts located in the state courts of Anoka County, Minnesota, or the federal courts of the state of Minnesota, and the parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise.

#### § 13.2 Successors and Assigns

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

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

#### § 13.3 Rights and Remedies

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



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

#### § 13.4 Tests and Inspections

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

§ 13.4.2 If Nexus, Design Professional, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, Nexus 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 Nexus of when and where tests and inspections are to be made so that Nexus may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense. The Contractor shall immediately provide copies of all results and reports of such tests and inspections and approvals to both the Architect and the Owner.

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

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

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

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

#### § 13.5 Written Notice

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

#### § 13.6 Time Limits on Claims

The Owner and the 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,. The Owner and the Contractor waive all claims and causes of action not commenced in accordance with this Section 13.6.

### **§ 13.7 Equal Opportunity**

Pursuant to Executive Order 11246, as amended, the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, you are advised that under the provisions of government contracting and in accordance with these laws, contractors and subcontractors are obliged to take affirmative action to provide equal employment opportunity without regard to race, color, religion, national origin, age, sex, physical or mental disability, or status as a special disabled veteran or veteran of the Vietnam era.

### **§ 13.8 Out of State Contractor**

Out-of-State Contractor with contract greater than \$100,000 shall file a Form SD-E (Exemption from Surety Deposits for Out-of-State Contractors with the Minnesota Department of Revenue). If no exemption is given eight (8) percent of each application for payment will be withheld as surety and deposited with the Department of Revenue.

### **§ 13.9 Owner Use or Occupancy of the Premises**

**§ 13.9.1** The Owner reserves the right to jointly use the premises with the Contractor in the performance of its duties and functions as set forth in the Contract Documents. The Owner reserves the right reasonably to:

- .1 enter into the Project and premises at all times;
- .2 make installations of materials and equipment at appropriate times as the Work progresses;
- .3 store property in essentially completed areas;
- .4 install furniture and furnishings when spaces are at appropriate stages of completion; and
- .5 use the premises for other similar activities.

The Contractor and Owner shall coordinate the Work with the work of the Owner and other contractors and shall cooperate so as not to unduly interfere with one another. Such activities shall not be construed as occupancy.

**§ 13.9.2** If any part, unit, or the entire Work or Project is Substantially Complete or ready for occupancy, the Owner may, upon reasonable notice to the Contractor, enter into and make use of the Work that is Substantially Complete or otherwise suitable for the Owner's purposes.

**§ 13.9.3** If the Work is not complete at the time required by the Contract, but the Work is to a state of readiness to permit partial or full use or occupancy by the Owner, the Owner reserves the right, upon reasonable notice to the Contractor, to enter into and make use of those parts that are suitable for its needs. The Contractor shall cooperate with and coordinate its operations in completing the Work with the Owner to minimize disturbance of the Owner's programs and functions.

**§ 13.9.4** The Owner's beneficial use or occupancy, as provided for in 9.8.1 through 9.9.1, shall not be construed as acceptance of the Work or of any of its materials or equipment. Such use and occupancy shall be subject to any corrections, deficiencies, damage, or omissions noted. Damage occurring after occupancy, not caused by the Contractor, will be the responsibility of the Owner or other contractor causing the damage.

**§ 13.9.5** Upon substantial completion and occupancy by the Owner, complete and usable facilities of light, power, exits, heat, ventilation, air conditioning, utilities, toilets, and similar facilities necessary for safety, comfort, and Owner's functions shall be available at all times, so the Work can be used without hazard, discomfort, or inconvenience. After such occupancy by the Owner, its programs, functions, or normal use shall not be unnecessarily interrupted or interfered with, and unnecessary inconvenience will not be permitted. The Contractor shall schedule and arrange the Work with the Owner to accomplish this objective.

**§ 13.9.6** If the Work is not completed within the Contract Time and the Owner does occupy as permitted by subparagraph 13.8.3, that work which would interfere with occupancy shall be scheduled

on weekends, or other times when the Work is not in use without additional cost to the Owner. The Contractor will be allowed reasonable access to the areas as necessary to complete the Work. All operations and activities relating to electrical, heating, air conditioning, ventilation, plumbing services, and phases shall be accomplished in accordance with a sequence schedule planned with the Owner so that complete facilities are maintained.

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because Nexus has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon fourteen (14) days' notice to the Owner and Nexus, terminate the Contract and recover from the Owner payment for Work executed.

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

### § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.
- .5 **fails to make satisfactory progress in performing all of the Work for a period of three (3) business days**
- .6 Becomes insolvent, files a petition in Bankruptcy, shall be adjudicated bankrupt, shall make a general assignment to the benefit of its creditors, or shall be unable to pay its debts as they generally become due.
- .7 suspends its business operations or otherwise fails to operate its business in the ordinary course.
- .8 files a bankruptcy petition or has a bankruptcy action commenced against it that is not discharged within 30 days of commencement of same, makes an assignment for the benefit of its creditors, has a receiver appointed to manage the Contractor's assets or otherwise is or becomes insolvent.

- .9 fails to maintain schedules as required by the Contract Documents, or fails to comply in a material way with design requirements of the Contract Documents, or persistently fails to perform the work in accordance with the Contract Documents.
- .10 Subcontractors or Sub-subcontractor fails to perform or to maintain the progress schedule. Owner reserves the right to remove any and all Contractors, Subcontractors or Sub-subcontractors for failure to perform work the requirements of the construction schedule. Contractor will be provided one (1) three-day notice to correct Subcontractor performance, after such time the Contractor must either terminate the non-performing Subcontractor or Sub-subcontractor and replace with another Subcontractor or Sub-subcontractor or the Contractor will be considered in default. Owner reserves the right, through Nexus, to terminate and/or supplement not performing Contractors, Subcontractors, and Sub-Subcontractors at the expense of the Contractor, after proper notice has been served.

**§ 14.2.2** When any of the reasons described in Section 14.2.1 exist, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, three days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon 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 and/or the Contractor's surety, if any, shall not be entitled to receive further payment until the Work is finished.

**§ 14.2.4** If the Owner completes the Work and the unpaid balance of the Contract Sum exceeds the cost of completing the Work, including the Owner's additional costs, attorney's fees and compensation and Nexus's additional services (including but not limited to fees and charges of Nexus, Nexus' Consultants, attorneys and other professionals and court and arbitration costs) and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages for the Owner to complete the Work exceeds such unpaid balance, the Contractor shall pay the difference to the Owner. When exercising any rights or remedies under this paragraph, the Owner shall not be required to obtain the lowest price for the Work performed. 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 the Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of this 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. Termination by Owner under the Paragraph shall be by written notice given to Contractor, specifying the extent of termination and the effective date.

§ 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 Place no further orders and enter into no further subcontracts for materials, labor, services or facilities to the extent that they relate to terminated Work;
- .3 Unless otherwise specified, terminate all subcontracts and orders to the extent that they relate to Work so terminated;
- .4 Complete the performance of Work not terminated; and
- .5 Take such other actions as may be necessary or requested by Owner for the protection and preservation of the terminated Work.

§ 14.4.3 In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; for proven out of pocket cost incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement, but excluding any fee or profit on any unperformed Work.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

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

### § 15.1.2 Time Limits on Claims

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

### § 15.1.3 Notice of Claims

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

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

### § 15.1.4 Continuing Contract Performance

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

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

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

**§ 15.1.6 Claims for Additional Time**

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

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

**§ 15.1.7 Waiver of Claims for Consequential Damages.** The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

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

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

**§ 15.2 Initial Decision**

**§ 15.2.1** Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. Nexus will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation and binding dispute resolution without a decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

**§ 15.2.2** The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

**§ 15.2.3** In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

**§ 15.2.4** If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or

in part.

**§ 15.2.5** The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties, and Nexus, , if Nexus is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

**§ 15.2.6** Either party may file for mediation of an initial decision at any time.

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

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

## **ARTICLE 16 ADDITIONAL DEFINITION**

### **§ 16.1 Additional Definitions**

**§ 16.1.1** Reviewed, accepted, approved, satisfactory, equal to, proper, as directed and similar terms: These shall mean the decision rests with Design Professional, whose decision shall be final and binding upon the Contractor and Subcontractors.

**§ 16.1.1** Project, Work, Job: In the technical sections or on the drawings, these terms may be used interchangeably and are synonymous. They shall mean the facility, construction and/or improvement within the intent and scope of the Contract Documents. The terms shall mean the entire facility, or separable parts as appropriate to the use of the term, including that under subcontract where applicable, and includes labor, materials, equipment, services and skill.

**§ 16.1.1** Notice to Proceed: This shall mean verbal or written notice by the Owner or Nexus to the Contractor to commence Work of the Contract, issued either before or after execution of the Contract. If verbally given, and the Contractor requests, the notice shall be confirmed in writing. In issuing the Notice, stipulations may be included as to time and other requirements that may condition commencement of the Work.

### **§ 16.2 Use of Drawings and Specifications**

**§ 16.2.1** During construction, the Contractor shall examine and use all Specifications and Drawings for the Project, including those that may primarily pertain to other work the Contractor normally does not perform with his own forces. The Contractor shall use all of the Project Drawings and Specifications: for a complete understanding of the Project and the Work; to determine the type of construction and systems; for coordination; to determine what other work may be involved in various parts or phases; to anticipate and notify others when work will be required; and all other relevant matters related to the Project. The Contractor shall also be bound by all the requirements to complete his Work, that are applicable to, pertain to, or affect the Work, as may be shown or inferred by the entire set of Drawings and Specifications.

### **§ 16.3 Periodic Payment Estimate**

**§ 16.3.1** When required by the Owner to establish a schedule of money available to make payment of periodic Applications for Payment, the Contractor shall provide an estimate, by months, of the anticipated amounts for each periodic payment. The retained percentage shall be considered in the estimate schedule, as well as anticipated job progress and materials delivery. The schedule will be

deemed an estimate only, for financial planning purposes, and the Contractor shall not be bound to conform to the schedule. The schedule may be required by the Contract Documents or requested by the Owner after Contract execution.

#### **§ 16.4 Layout of the Work**

**§ 16.4.1** The Contractor shall employ a qualified engineer or registered surveyor to stake out and locate the construction, locate property markers and other points as needed to properly locate the Work under this Contract, locate all significant corners of each unit, roads and parking areas, locate pertinent features of the site and establish necessary references and bench marks, all of which the Contractor shall preserve.

**§ 16.4.2** The Contractor shall recognize that the drawings necessarily are diagrammatic, in many instances. All work and in particular, exposed piping, ducts, conduit and similar items shall be neatly and carefully laid out to provide the most useful space utilization and the most orderly appearance. Except as otherwise indicated or directed, piping and similar work shall be installed as close to ceilings and walls as conditions permit, located to prevent interference with other work or with the use of the spaces in the manner required by the functions of the room and the Owner. Valves shall be located in inconspicuous but accessible places. Before proceeding with any work, particularly where exposed, the Contractor shall carefully plan the layout and review it with Nexus for acceptability of location

**§ 16.4.3** The Contractor shall verify grades, lines, levels and dimensions shown on drawings and report any errors or inconsistencies to Nexus for decision before commencing work. The Contractor and Subcontractor shall be responsible for the correct location, dimensions and elevations of his Work. As the Work progresses, the Contractor shall be responsible for the layout of the exact location of all partitions and similar features, as guide to all trades.

#### **§ 16.5 General Quality of Work, Installation and Operation**

**§ 16.5.1** All of the Work shall be strictly first quality, in materials, erection, installation and workmanship.

**§ 16.5.2** The Contractor shall request interpretations from The Design Professionals through Nexus for the following: Work indicated on the Drawings or specified in such a manner as to make it impossible to produce Work of the highest quality within the space shown; possibilities of damaging effects of expansion and contraction; discrepancies found between Drawings or between Drawings and Specifications. If the Contractor does not request such interpretation, no excuse will be entertained thereafter for failure to carry out and guarantee the Work in a satisfactory manner. Elements of the Work intended to protect against the weather shall be guaranteed weatherproof and watertight.

**§ 16.5.3** Proper performance of the Contract shall imply correct and proper placement, proper or published results for products and equipment, fitting and operation of fixed or movable and operating parts of the Work, including doors, windows, hardware and all systems and equipment. Materials and equipment shall be complete in every respect, with parts, connections, anchors, devices, backing, fittings and other necessary items, and shall be completely installed, anchored, fitted and placed in operating condition. Before buying, constructing or installing work, the Contractor shall notify Nexus of conditions which exist in the Contract Documents which will adversely affect proper operation or first quality installation.

**§ 16.5.4** Throughout Project, accommodate various materials and pieces of equipment that are fitted to other materials and equipment and various materials that are applied to which other materials attach. Take all reasonable precautions to ensure materials, devices, items, equipment or other products can be satisfactorily applied or installed to each other or work of others and make necessary adjustments during preparation of shop drawings or in advance of field or shop work to accommodate other work.

**§ 16.5.5** Materials or equipment shall be installed or applied according to directions of the manufacturer or recommendations of an association dealing primarily with materials, unless specifically designated



otherwise. In no case shall installation, including any temporary work necessary (e.g. shoring), be below standard recommended by manufacturer. Where specified requirements exceed the manufacturer's standards, the specification shall govern. Fabrication (including reinforcing and accessories) and installation shall be provided to ensure proper placement and use of the item or material under the location, use, condition and available space to serve intended function and to meet code requirements. Equipment and devices shall be provided and installed to "fail safe" under normal operating conditions and it shall be Contractor's obligation to provide and install work in such manner.

#### **§ 16.6 General Fire Safety**

**§ 16.6.1** The Contractor shall exercise extreme care to maintain and exercise adequate fire safety precautions throughout construction. This shall include providing sufficient devices, watchmen, standby helpers or other precautions during construction, in use of temporary heat, welding, brazing, sweating, testing or other phases or work. Welding, brazing, cutting and sweating operations performed in vicinity of, or accessible to, combustible materials shall be adequately protected to make certain that sparks or hot slag do not reach the combustible materials and start a fire. Glass and glazed material shall be masked from splatter. When necessary to do cutting, welding, brazing, sweating, in vicinity of wood, or combustible material (and the combustible material cannot be removed), the materials shall be adequately protected with fireproof coverings. In addition, a helper shall be stationed nearby with proper fire extinguishers to guard against sparks and fire.

**§ 16.6.2** Whenever combustible materials have been exposed to sparks, molten metal, hot slag or splatter, a person shall be kept at the place of work for at least two hours after completion to make sure that smoldering fires have not been started. Whenever cutting or welding operations are carried on in a vertical pipe shaft, a man to act as a fire guard shall be employed to examine floors below the point of cutting or welding. This fire guard shall be kept on duty at least two hours after completion or work to guard against fires and he shall examine each level after this time, prior to leaving.