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# State of New Hampshire

DEPARTMENT OF ADMINISTRATIVE SERVICES  
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April 5, 2024

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

## REQUESTED ACTION

- 1) Authorize the Department of Administrative Services (Department), acting on behalf of the Governor pursuant to RSA 4:29, to purchase the land, buildings, and other improvements comprising the South Building Parcel at Granite Place off of Rumford Street in Concord (the "Property") from 2GRANITE PLACE LLC, a New Hampshire limited liability company with an address at 81 North Main Street, Concord, New Hampshire 03301 (the "Seller"), for up to Twenty-One Million Dollars (\$21,000,000.00), inclusive of anticipated closing costs, pursuant to the terms of a certain Purchase and Sale Agreement submitted herewith to be effective upon authorization by the Governor and Executive Council, and to pay certain additional customary and negotiated closing costs associated therewith. **100% General Funds.**
- 2) Contingent upon approval of Requested Action #1 above, further authorize the Department to assume from the Seller upon the closing of the foregoing purchase of real estate all of the Seller's rights and unmet obligations under the pending and partially performed construction contract by and between the Seller and CAPITAL CONSTRUCTION LLC (Vendor # 325761), a New Hampshire limited liability company with an address at 50 Ridge Road, Concord, New Hampshire 03301, pursuant to the terms of a certain Assignment and Assumption Agreement submitted herewith to be effective upon the closing of the foregoing purchase of real estate, subject to prior authorization by the Governor and Executive Council, but only if both phases of the construction project under said pending construction contract have not reached final completion to the reasonable satisfaction of the State prior to said closing. **100% General Funds.**

Funding is available from Account #01-014-014-141510-21490000, Granite Place, as follows:

	<u>FY2024</u>
033-500150, Land Acquisitions & Easements	\$21,000,000

## EXPLANATION

The Property consists of a newly subdivided parcel of land approximately 6.41 acres in size and the south four-story portion of an office building and other improvements situated thereon, together with all necessary easements and other appurtenances. It is located at Granite Place off of Rumford Street in Concord and is known generally as Granite Place South. A portion of the office building situated on the Property is currently occupied by the New Hampshire Department of Justice pursuant to an existing lease agreement with the Seller. Said existing lease agreement includes a purchase option, following the exercise of which in September 2023 the State now seeks to purchase the Property pursuant to the terms of the Purchase and Sale Agreement submitted herewith. Said

existing lease agreement also includes provisions for substantial fit-up and renovation construction within the office building on the Property, much of the cost of which was budgeted for inclusion in the \$21 million amount appropriated for the contemplated real estate purchase by 2023 N.H. Laws 79:54. The purchase price formula set forth in the purchase option in the lease includes as a component of said purchase price the total budgeted cost of such construction (to the extent fully complete before the closing) less a previous cash contribution by the State toward construction costs in the amount of Two Million Fifty Thousand Dollars (\$2,050,000.00). Such construction is not yet complete, and the State currently believes that it will not be fully complete prior to the closing, likely resulting in a minor downward adjustment to the purchase price at the closing. Any such downward adjustment to the purchase price seems likely at this time to be less than Nine Hundred Thousand Dollars (\$900,000), and the resulting unspent portion of funds appropriated for the real estate purchase would be used to fulfill the State's remaining payment obligations under the assumed construction contract after the closing.

The construction is the responsibility of the landlord (Seller) under the lease agreement. To fulfill such obligation, the Seller contracted with CAPITAL CONSTRUCTION LLC to perform the work and is obliged under the lease to manage and oversee such work to the reasonable satisfaction of the State. If the construction is not fully complete before the closing of the State's anticipated purchase of the Property, then upon said closing the State desires to remove the Seller from its current intermediate position as a de facto construction manager under the lease by directly assuming Seller's contract with CAPITAL CONSTRUCTION LLC in order to be able to directly supervise any remaining construction as the owner of the Property after the closing. The lease will terminate as of the closing.

The lease agreement was initially authorized by the Governor and Executive Council as Agenda Item # 177 on November 22, 2022, and an amendment primarily to the construction provisions of the lease agreement was authorized by the Governor and Executive Council as Agenda Item # 205 on December 20, 2023. The partially performed construction contract to be assumed is sole source, because the contractor has satisfactorily completed most of the work contemplated thereunder and is therefore uniquely qualified to finish the rest of it.

Based on the foregoing and on the terms and conditions of the Purchase and Sale Agreement and the Assignment and Assumption Agreement submitted herewith, we respectfully recommend the purchase of the Property and the assumption of the Seller's rights and unmet obligations under the pending and partially performed construction contract.

Respectfully submitted,



Charles M. Arlinghaus  
Commissioner

## PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this "Agreement") is dated this 4 day of April, 2024, by and between 2Granite Place, LLC, a New Hampshire limited liability company, having an address of 81 North Main Street, Concord, New Hampshire 03301 ("Seller"), and the State of New Hampshire, by and through its Department of Administrative Services, having an address of 25 Capitol Street, Concord, New Hampshire 03301 ("Buyer").

Reference is made to the following facts:

A. Buyer and Seller are parties to that certain Lease Agreement having an Effective Date defined therein as November 22, 2022 and a Commencement Date defined therein as July 1, 2022, as amended by that certain Lease Amendment dated December 13, 2023 and having an effective date of December 20, 2023 (collectively, the "Lease"), pursuant to which Seller, as landlord, leases to Buyer, as tenant, certain land and buildings located at 1 Granite Place, Concord, New Hampshire more commonly known as the South Tower at Granite Place, together with the underlying and surrounding land, adjacent parking lots and driveways, and other improvements situated thereon, said leased premises being defined in the Lease and for all purposes herein as the "Premises."

B. On September 7, 2023, Buyer exercised its option to purchase that portion of the Premises defined herein as the Subdivided Lot, together with all improvements situated thereon and appurtenances thereto, pursuant to Article 28 of the Lease (the "Option").

C. Seller has obtained conditional subdivision approval to establish a new legal tax parcel of land, comprising a portion of the Premises, to be conveyed to Buyer pursuant to the terms of the Option and this Agreement, said proposed subdivided parcel being shown as "Proposed Lot 1" on that certain plan entitled "Subdivision Plat on land of 2Granite Place, LLC prepared for the State of New Hampshire" dated May 16, 2023 with revisions through August 31, 2023 drawn by Richard D. Bartlett & Associates, LLC (the "Subdivision Plan") a copy of which is attached hereto as Exhibit A (the "Subdivided Lot").

D. Seller desires to sell, and Buyer desires to buy, the Subdivided Lot, together with all buildings and other improvements situated thereon, and all rights of way, beneficial easements and other appurtenances and rights pertaining thereto, specifically including, without limitation, a perpetual vehicular access easement over the existing paved driveways situated on Seller's abutting parcel to the north and utility easements to accommodate the existing private utility service and supply lines serving the Subdivided Lot that cross abutting lands of Seller (collectively, the "Property"), subject to the terms and conditions set forth herein.

NOW, THEREFORE, for good and valuable consideration hereinafter specified, the sufficiency of which is hereby acknowledged, Seller and Buyer agree as follows:

1. Sale and Purchase. Seller shall sell and Buyer shall purchase, subject to the terms and conditions herein, the Property upon the terms and conditions set forth herein.

2. Purchase Price. The purchase price (the "Purchase Price") for the Property shall be the sum of: (i) Fifteen Million Dollars and no/cents (\$15,000,00.00), (ii) the unpaid portion of amortized Financed Costs (as that term is defined in the Lease, subject to the Tenant's Contribution Limit, also as defined in the Lease), and (iii) any prepayment penalties due to Seller's lender in connection with the full payoff at Closing of Seller's construction loan and the resulting discharge/partial release of the mortgage(s) encumbering the Property. The Purchase Price shall be paid to the Seller on the date of the closing of this sale (the "Closing") by Federal wire transfer, subject to adjustments and prorations in accordance with this Agreement.

3. Time of Closing. The Closing shall occur within twenty (20) days after final authorization of Buyer's purchase by the Governor and Executive Council of the State of New Hampshire pursuant to RSA 4:29 (the "Closing Date"), but in no event later than April 30, 2024, TIME BEING OF THE ESSENCE. The Closing shall occur through an escrow closing with counsel for Buyer serving as the closing agent.

4. Warranties and Representations. To induce the Buyer to enter into this Agreement and to purchase the Property, the Seller hereby warrants and represents to Buyer as follows:

(a) Seller is a limited liability company, duly organized and in good standing under the laws of New Hampshire and has the legal and limited liability company power and authority to enter into and perform its obligations under this Agreement.

(b) The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary action on the part of Seller.

(c) Seller has not filed any petition seeking or acquiescing in any reorganization, rearrangement, composition, readjustment, liquidation, dissolution, or similar relief under any law relating to bankruptcy or insolvency, nor has any such petition been filed against Seller. Seller is not insolvent, and the consummation of the transaction contemplated by this Agreement shall not render Seller insolvent.

(e) There are no actions (legal or administrative), suits or other proceedings with respect to the Property pending with respect to which legal process has been served on Seller or threatened against Seller.

(f) Seller is not a "foreign person" within the meaning of Section 1445, et seq., of the Internal Revenue Code of 1986, as amended, or any regulations promulgated thereunder.

The truth, accuracy, and completeness of each of the representations and warranties of Seller as of the date hereof, and as of the Closing Date, will constitute a condition

precedent to the obligations of Buyer hereunder. Each such representation and warranty will survive the Closing Date for a period of three (3) months.

Except as expressly provided in this Section 4, and subject to final subdivision approval and establishment of the Subdivided Lot, (i) the Property is being sold and conveyed strictly on an "AS IS" basis; (ii) no warranties or representations, express, implied or statutory, have been made by Seller or any agent, employee or representative of Seller as to the Property's condition, development or investment potential, compliance with law, merchantability or fitness or suitability for any purpose, all of which are expressly disclaimed; and (iii) Buyer has not been induced or persuaded by, nor has Buyer relied upon, any statement, promise or representation made by Seller or any agent, employee or representative of Seller, oral or in writing, as an inducement to entering into this Agreement.

5. Title and Deed. At the Closing, marketable fee simple title to the Property shall be conveyed by Seller to Buyer by Quitclaim Deed, free of all encumbrances except (i) all matters shown on the Subdivision Plan, (ii) any title encumbrances to which Buyer does not object in accordance with this Section 5 (collectively the "Permitted Encumbrances").

During the Contingency Period, Buyer may perform a title search and/or survey for the Property and shall identify all objections to title or survey (the "Objections") which Buyer is unwilling to accept. Seller shall have the right, but not the obligation, to use commercially reasonable efforts to cure the Objections. If Seller does not provide any notice to Buyer within five (5) days after receipt of Buyer's notice of the Objections, then Seller shall be deemed to have elected not to cure any Objections (except for the Mandatory Cure Items below). If Seller elects (or is deemed to have elected) not to cure any Objections, then Buyer shall have the right, by providing Seller notice within five (5) days following the expiration of such initial five (5) day period, to elect to accept the title to the Property "as-is" or terminate the Agreement. If Buyer does not timely provide such notice, then Buyer shall be deemed to have elected to accept title to the Property "as is" and proceed to Closing as provided in this Agreement.

Notwithstanding anything to the contrary contained herein, in no event shall Buyer be required to take title the Property subject to, and in no event shall Seller elect or be deemed to have elected not to cure, any mortgages (and any ancillary encumbrances thereto) or monetary liens created or assumed by Seller (the "Mandatory Cure Items"). Seller shall be obligated to remove and cure all such Mandatory Cure Items prior to, and as a condition of, Closing.

Buyer shall have the right to object to any new title or survey matter first arising after the later of the end of the Contingency Period or the date of Buyer's title commitment, or after the survey (each a "New Encumbrance"), that will materially and adversely affect Buyer's intended use of the Property, by giving written notice of the New Encumbrance to which Buyer is objecting before the sooner of (a) five (5) Business Days after Buyer's becoming aware thereof or (b) Closing. If Buyer does not object to any New Encumbrance as aforesaid, such New Encumbrance shall be a Permitted Encumbrance. In the event Buyer gives timely written notice of objection to any New Encumbrance as

herein provided, Seller may provide evidence that Seller will cure the objection prior to Closing and the Closing Date will be extended, at Seller's option, for up to thirty (30) days to allow Seller to do so. If, within said thirty (30) day period, Seller is unable to reasonably cure such objection, Buyer shall have the right, as its sole remedy, to terminate this Agreement. Seller covenants and agrees that it shall not grant or consent to any New Encumbrance before the Closing.

To enable Seller to make conveyance as herein provided, Seller may, at Closing, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that such encumbrances shall be discharged out of the closing funds, or, in the case of any mortgage or other security instrument held by an institutional lender, shall be paid off pursuant to written payoff letters or instructions from the holders of such encumbrances setting forth the amount due as of the Closing Date with a per diem interest amount.

6. Inspection/Investigations.

(a) For a period of time beginning on the Effective Date of this Agreement and expiring at 5:00 p.m. fifteen (15) days later (the "Contingency Period"), Buyer shall have the right to perform its due diligence review, in such a manner as Buyer determines, of the condition of the Property, specifically including title, and physical characteristics relating to the Property, at Buyer's sole expense, to determine the suitability of the Property for Buyer's intended use.

If Buyer determines, within its reasonable discretion, that the condition of the Property is not acceptable, then Buyer shall have the right to terminate this Agreement by giving written notice of termination to Seller prior to the expiration of the Contingency Period. Buyer shall be solely responsible for the cost and expense of the Inspections. Buyer shall bear all risks and liabilities arising from its Inspections, and if Buyer does not acquire the Property, Buyer shall promptly restore the Property to as close to the condition existing immediately prior to the Inspections. Buyer shall provide Seller with copies of any inspection or other reports contemporaneously with and as a condition of terminating this Agreement.

(b) In the event this Agreement is terminated pursuant to subsection (a) above during the Contingency Period, this Agreement shall become null and void, and the parties shall have no further rights or obligations hereunder, except those which expressly survive termination.

7. Subdivision Approval. Seller shall be responsible at Seller's sole cost and expense for seeking final, non-appealable subdivision approval from the City of Concord to establish a separate legal lot of record, as generally shown on the Subdivision Plan (the "Subdivision Approval"). Buyer and Seller shall cooperate to obtain the Subdivision Approval. If Seller has not obtained the Subdivision Approval by the end of the Contingency Period, or if Buyer is not satisfied with the nature of said Subdivision Approval, then Buyer shall have the right to terminate this Agreement by providing written notice to Seller within five (5) days following the expiration of said Contingency Period. Pursuant to Article 28 of the Lease, following such notice of termination, Buyer shall have

the obligation to reimburse Seller for all commercially reasonable costs and expenses incurred in connection with obtaining said Subdivision Approval. At Closing, Buyer shall reimburse Seller for one half (1/2) of Seller's expenses incurred in the preparation of adequate plans, surveys, or other papers necessary to obtain final subdivision approval, as previously agreed pursuant to the provisions of Article 28 of the Lease.

8. Buyer's Lease and Construction Defined as "Landlord's Work" Thereunder. Buyer's existing Lease agreement with Seller (defined hereinabove as the Lease) to use and occupy certain portions of the Property shall terminate as of the Closing, and neither party shall have any further obligation thereunder, except as expressly set forth under this Agreement. To the extent that any of the construction work defined as "Landlord's Work" under the Lease has not been completed to Buyer's reasonable satisfaction prior to the Closing, such that all final payments for Landlord's Work under the Lease have been made by Buyer prior to the Closing or will be made by Buyer at the Closing, Seller hereby agrees to assign and Buyer hereby agrees to assume at the Closing all of Seller's rights and obligations under that certain Standard Form of Agreement Between Owner and Contractor (AIA Document A102-2017), dated November 23, 2022, by and between 2GRANITE PLACE LLC as Owner and CAPITAL CONSTRUCTION LLC as Contractor, as supplemented by the other Contract Documents (as that term is defined in the foregoing referenced Agreement) and as subsequently amended (collectively hereinafter, the "South Granite Place Construction Contract"), subject to the express written consent of CAPITAL CONSTRUCTION LLC at or prior to the Closing, pursuant to the form attached hereto as Exhibit B. As of April 1, 2024, CAPITAL CONSTRUCTION LLC has indicated its verbal consent to such assignment and assumption, which the parties intend will result after the Closing in the performance of all previously unmet obligations under said pending South Granite Place Construction Contract by the STATE OF NEW HAMPSHIRE as the new (substitute) Owner and CAPITAL CONSTRUCTION LLC as the existing Contractor thereunder. In the event that said South Granite Place Construction Contract is assigned and assumed at the Closing as set forth in this paragraph, the Purchase Price defined in this Agreement shall be reduced by an amount equal to that portion of the total budgeted aggregate cost of Landlord's Work to be reimbursed by Buyer pursuant to the Lease that remains unpaid by Seller as of the Closing, and Buyer shall be solely responsible for paying all costs to complete such work directly to CAPITAL CONSTRUCTION LLC.

Any and all outstanding payments due and payable or accrued under said Lease shall be paid in full to the appropriate party thereto at Closing. To the extent that the Closing occurs on a date other than the last day of a calendar month, any unpaid rent (or other amount) that has accrued under said Lease shall be adjusted pro rata for any partial month (or other partial rent period) and paid at Closing.

9. Buyer's Authority. Buyer's authority to purchase the Property is subject to RSA 4:29, which requires final authorization of said purchase prior to Closing by the Governor and Executive Council of the State of New Hampshire ("G&C"). Buyer provided the requisite prior notice to the Central New Hampshire Regional Planning Commission at least sixty (60) days before the Closing pursuant to RSA 4:29 by email and letter dated December 21, 2023. Seller acknowledges that as part of Buyer's formal request to G&C to authorize the purchase of the Property, Buyer will be required to include certain current

documentation from Seller evidencing that Seller has all requisite authority to complete the sale of the Property to Buyer as contemplated hereby. Seller agrees to provide to Buyer within five (5) days of the Buyer's reasonable request therefor all such required documentation of authority for inclusion with Buyer's G&C request for authority to purchase the Property, such documentation to minimally include a current certificate of good standing for the Seller issued by the New Hampshire Secretary of State and a current certificate of authority issued by a duly authorized manager or member of the Seller indicating Seller's specific corporate and signatory authority to sell the Property to Buyer as set forth herein. If Buyer has not obtained G&C authorization on or before April 10, 2024, then the parties agree to negotiate in good faith a reasonable extension of the Closing date that is intended to accommodate the Buyer's resulting need to obtain G&C authorization as soon as reasonably possible after April 30, 2024.

10. Conditional Obligation of the State. Notwithstanding any provisions of this Agreement to the contrary, it is hereby expressly understood and agreed by the Seller that all obligations of the Buyer hereunder, including without limitation, the continuance of any payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the Buyer be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the Buyer shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement in whole or in part immediately upon giving the Seller notice of such termination. The Buyer shall not be required to transfer funds from any other account in the event funding for an account from which a payment is to be made hereunder is terminated or reduced. In the event that the Buyer lacks sufficient available appropriated funds to pay the Purchase Price and any other monetary obligations hereunder at Closing, then Seller shall have the right, but not the obligation, to delay its delivery of title to the Property, and thus the Closing, until such time as sufficient additional funds are made available to the Buyer.

11. No Waiver of Sovereign Immunity. No provision of this Agreement is intended to be, nor shall it be, interpreted by either party to be a waiver of the sovereign immunity of the Buyer.

12. Assignment of Certain Vendor Maintenance Contracts. Buyer may desire to assume certain existing building system warranties and vendor maintenance contracts from Seller to the extent that they are specifically concerned with maintaining the Property or some component thereof in good condition and repair, and especially to the extent that the continuation of such contracts would be necessary or desirable to remain in compliance with, and to prevent the voiding of, any active building system warranties that are transferable to the Buyer along with title to the Property. Seller agrees to cooperate with the Buyer in this endeavor by assigning such assignable warranties and/or contracts to the Buyer as of the Closing and by using good faith efforts to obtain (or by assisting the Buyer in obtaining) any requisite vendor consent to, or acknowledgement of, such assignment and assumption.

13. Condemnation. If any proceeding shall be commenced for the taking of all or any material part of the Property for public or quasi-public use pursuant to the power

of eminent domain, condemnation or otherwise, before Closing, then Buyer shall have the option (i) to terminate this Agreement by giving written notice thereof to Seller, or (ii) to proceed to Closing and to receive a credit against the Purchase Price at Closing in the amount of any award or compensation received or awarded to Seller applicable to the Property prior to Closing, and Seller shall assign to Buyer any and all such awards and other compensation not yet received prior to Closing.

14. Taxes and Rent. Real estate taxes, rent under the Lease, special assessment, and betterment assessments, if any, shall be prorated and adjusted as of the date of Closing to the extent any taxes for the period of time preceding Closing are unpaid, and Seller shall receive a credit for any real estate taxes paid in advance and covering periods after the Closing. The parties acknowledge that the Buyer is not subject to real estate taxes. To the extent any real estate tax refund is issued for any taxes paid by Seller for a period of time after the Closing, such refund shall be paid to Seller.

15. Transfer Tax. The sale of the Property is exempt from transfer tax pursuant to RSA 78-B:2, I. Both parties agree to execute any tax returns, inventories, conveyance forms or questionnaires required to be filed in connection therewith.

16. Default by Buyer. If Buyer shall default in the performance of any of its obligations under this Agreement, then Seller shall have the right to terminate this Agreement upon thirty (30) days' prior written notice to Buyer. Upon such termination, this Agreement shall become null and void and the parties shall have no further rights or obligations hereunder.

17. Default by Seller. If Seller shall default in the performance of any of its obligations hereunder, Buyer shall have the right as its exclusive remedy to either: (i) terminate this Agreement without further liability hereunder; (ii) accept such default as non-material, propose to Seller an acceptable cure or compromise of such defaulted obligation, and, provided that Seller fulfills, effects, or agrees to such cure or compromise, close the contemplated purchase as otherwise set forth herein, subject to such agreed cure or compromise; or (iii) pursue a suit for specific performance.

18. Brokerage. Buyer and Seller each represent to the other that they have dealt with no broker, agent, or representative in connection with this transaction. Buyer and Seller each agree that neither party shall have any responsibility, or liability to the other, for any demand, claim, or suit by any person claiming a brokerage fee or commission through either party. The provisions of this Section 18 shall survive the Closing Date, the delivery of the deed, or the earlier termination of this Agreement.

19. Conditions Precedent to Buyer's Obligation to Purchase the Property. The obligation of the Buyer to purchase the Property under this Agreement is expressly conditional and contingent upon all of the following:

(a) receipt of title to and possession of the Property simultaneously with the Closing in the condition required by this Agreement;

(b) all of Seller's warranties and representations set forth in Section 4 hereof being true as of the Closing;

(c) receipt of such documents as Buyer's title insurance company may reasonably require in order to issue a title insurance policy insuring the Property in the condition required by the provisions of this Agreement;

(d) final subdivision approval and establishment of the Subdivided Lot;  
and

(e) either final completion to the Buyer's reasonable satisfaction of all construction defined under the Lease as "Landlord's Work"; or Seller's acknowledgement of the total budgeted cost of the unfinished portion of Landlord's Work as of the Closing, and Seller's assignment and Buyer's assumption of the partially complete pending South Granite Place Construction Contract defined in section 8 of this Agreement.

These conditions are for the benefit of the Buyer and any one or more of such conditions may be waived by the Buyer in its sole discretion. If any one of the above conditions are not met at the time of closing, subject to the Seller's right to cure within thirty (30) days (or such additional time as may be permitted under the Lease with respect to (d)), Buyer may terminate this Agreement by giving written notice to Seller, and the Agreement shall terminate, and neither party shall have any further claims upon the other.

20. Conditions Precedent to Seller's Obligation to Sell the Property. The obligation of the Seller to sell the Real Estate under this Agreement is expressly conditional and contingent upon: (i) receipt of the full Purchase Price from the Buyer for the Property at the Closing, as adjusted pursuant to this Agreement; and (ii) no Buyer default existing under the Lease, or any circumstances which would constitute a Buyer default given any notice and passage of time.

21. Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be deemed received when deposited when (i) mailed by certified or registered mail, postage prepaid, or (ii) sent overnight mail by a recognized national delivery service, or (iii) emailed (with confirming hard copy mailed by first class mail) addressed as follows or to such other addresses as the parties may designate in writing from time to time:

If to Seller: The address in the introduction hereof

With a copy to: John L. Arnold  
Orr & Reno, P.A.  
45 S. Main St.  
Concord, NH 03301  
[jarnold@orr-reno.com](mailto:jarnold@orr-reno.com)

If to Buyer: State of New Hampshire  
Department of Administrative Services  
25 Capitol Street

Concord, NH 03301  
Attn: Jared Nylund, Real Property Asset Manager  
[jared.j.nylund@das.nh.gov](mailto:jared.j.nylund@das.nh.gov)

22. Closing Costs. Notwithstanding anything to the contrary contained herein, Closing costs shall be allocated and paid as follows:

By Buyer:

- (a) Buyer's legal fees;
- (b) title examination and title insurance premium;
- (c) one half of the costs to prepare and record the plans and documents necessary to obtain the Subdivision Approval; and
- (d) cost of recording the deed and other recording fees (other than any title clearing documents).

By Seller:

- (a) Seller's legal fees;
- (b) cost of preparing the deed;
- (c) one half of the costs to prepare and record the plans and documents necessary to obtain the Subdivision Approval; and
- (d) cost of obtaining and recording all title clearing documents.

23. Documents to be Delivered at Closing. At the Closing, the parties shall execute, acknowledge, and deliver all documents required to effectuate the transaction contemplated by this Agreement including, without limitation, the following:

Seller shall provide:

- (a) Quitclaim Deed of the Property duly executed, conveying good, marketable, and insurable title to the Property in fee simple absolute to Buyer, free of all encumbrances except as set forth herein.
- (b) Evidence satisfactory to Buyer that the conveyance is properly authorized and that the Seller is authorized to consummate the Closing.
- (c) Evidence satisfactory to Buyer, current as of the Closing, that all real estate taxes, water, sewer use charges, and any other municipal charges and municipal taxes affecting the Property, which are due and payable at or before the Closing Date, have been paid.
- (d) A certificate of non-foreign status.
- (e) Completed and executed conveyance tax forms, together with payment in full of any conveyance taxes imposed on the transfer of the Property, if any are due.

(f) Such customary affidavits and other documents reasonably acceptable to Seller which Buyer's title insurance company may require in order to insure title without exception for parties in possession and mechanics liens.

24. Existing Easements & Agreements. To the extent the existing easements and party wall agreement between the Property and Seller's adjacent lot to the north have lapsed due to merger of title, such easements shall be reinstated as part of Seller's deed or otherwise at Closing. The utility systems, heating, cooling, electric, sprinkler, and alarm systems that service the common atrium are provided out of the Property. To the extent reasonably necessary to reflect the changed conditions of the Property since said existing easements were originally established in 1984, which occurred prior to the construction of the building on the Property and its adjacent atrium lobby, or to otherwise reflect any mutually agreed changes or additions to the language of said existing easements, the parties may jointly determine to adjust or supplement the provisions of said existing easements upon their reestablishment.

25. Time of Essence. Time is expressly declared to be of the essence of this Agreement.

26. Headings. The headings to the Sections hereof have been inserted for convenience of reference only and shall in no way modify or restrict any provisions hereof or be used to construe any such provisions.

27. Modifications. The terms of this Agreement may not be amended, waived, or terminated orally, but only by an instrument in writing signed by both Seller and Buyer.

28. Successors. This Agreement shall inure to the benefit of and bind the parties hereto and their respective successors and assigns. Buyer shall not have the right to assign this Agreement without Seller's prior written consent, which may be granted or withheld in Seller's sole discretion.

29. Entire Agreement. This Agreement contains entire agreement between Seller and Buyer, and there are no other terms, conditions, promises, undertakings, statements, or representations, express or implied, concerning the sale and other undertakings contemplated by this Agreement.

30. Governing Law. This Agreement is made pursuant to, and shall be governed by, and construed in accordance with, the laws of the State of New Hampshire.

31. Counterparts. This Agreement may be executed in separate counterparts or using counterpart signature pages, each of which shall be an original and all of which shall be deemed to be one and the same instrument. Each of the parties also agree that the delivery of an executed copy of this Agreement by facsimile, email or via another method of exchanging electronic signatures (e.g. DocuSign, Adobe Sign, etc.) shall be legal and binding and shall have the same full force and effect as if an original executed copy of this Agreement had been delivered, and neither party will have the right to object to the manner (i.e., electronic signatures, fax, or scanned images of signature pages) in which the Agreement was executed as a defense to the enforcement of this Agreement.

32. 1031 Exchange. At the request of either party, Buyer and Seller agree to reasonably cooperate with the other and Escrow Agent in structuring and documenting the sale of the Property to effect a tax deferred exchange in accordance with the provisions of Section 1031 of the Internal Revenue Code and its corresponding regulations. Such cooperation shall be at no cost to the other party. In no event shall such cooperation require a delay of the Closing. Notwithstanding anything to the contrary contained herein, Seller's obligations hereunder shall not be contingent upon the identification of a Section 1031 exchange replacement property acceptable to Seller prior to Closing.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first stated above.

SELLER:

2GRANITE PLACE, LLC

By: Kate Young, agent  
Kate Young, Authorized Signatory

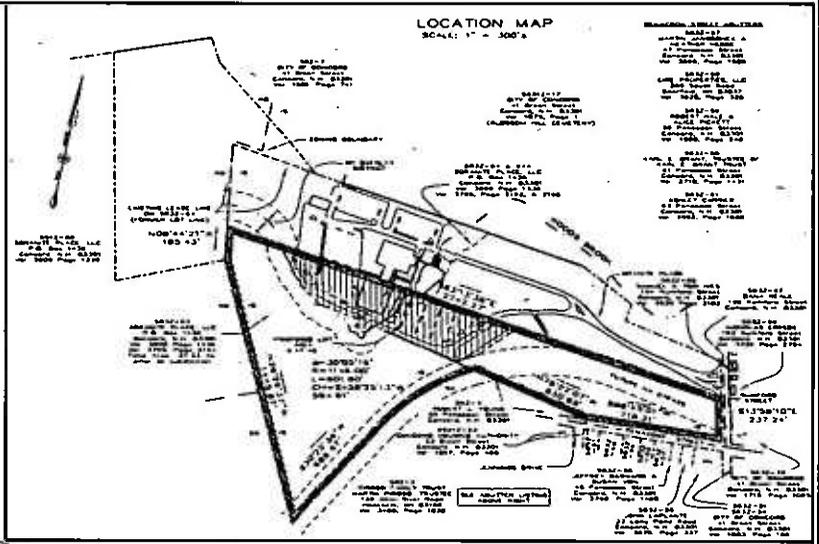
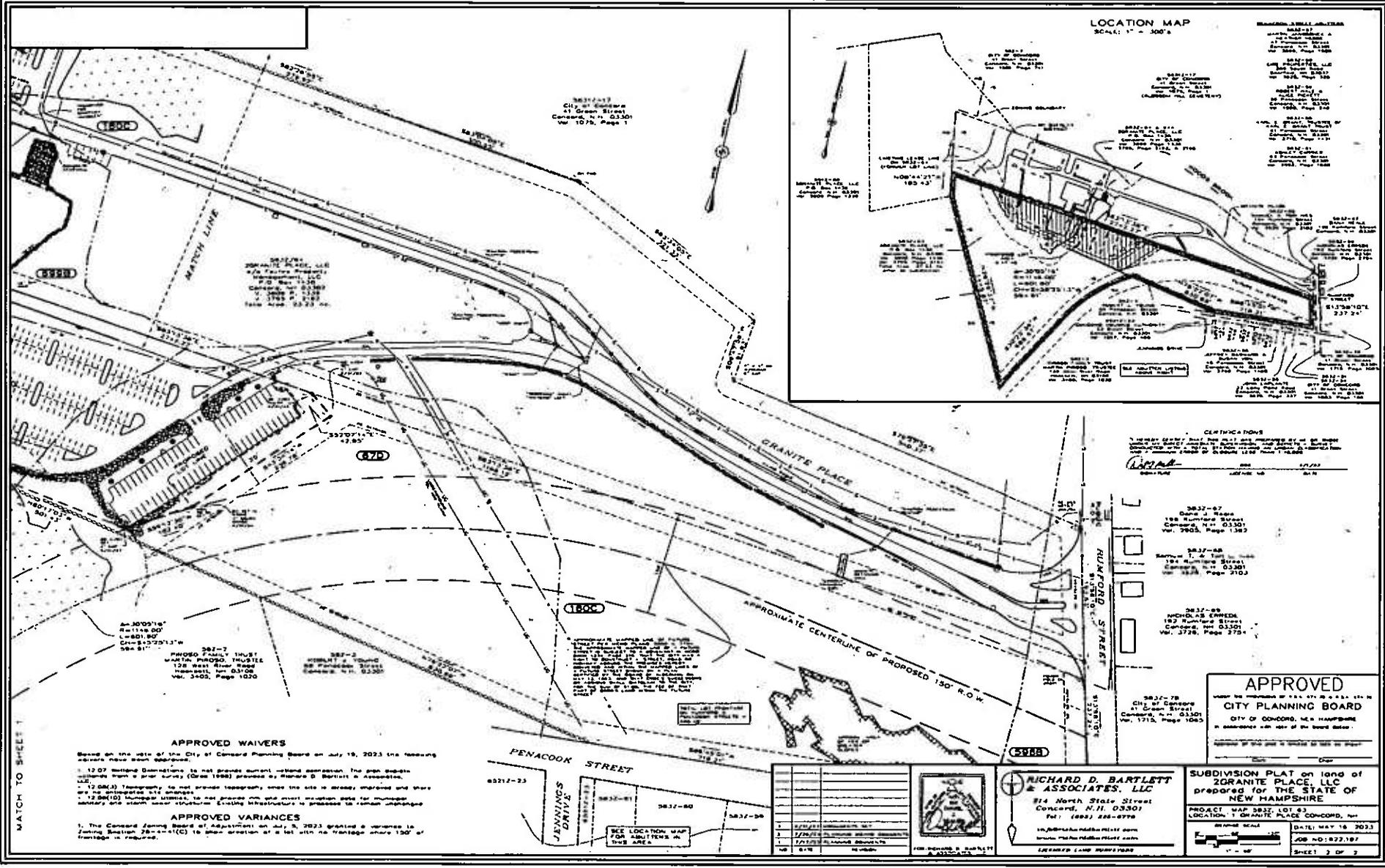
BUYER:

STATE OF NEW HAMPSHIRE  
By and through its  
Department of Administrative Services

By: Charles M. Arlinghaus  
Charles M. Arlinghaus, Commissioner

Exhibit A  
Subdivision Plan





- CERTIFICATES**
- 3837-67  
Dore J. Wade  
188 Humphreys Street  
Concord, N.H. 03301  
Ver. 2905, Page 1382
  - 3837-68  
Bernard J. & Tamara J. Wade  
184 Humphreys Street  
Concord, N.H. 03301  
Ver. 1828, Page 2103
  - 3837-69  
ANDREAS ERWEDA  
182 Humphreys Street  
Concord, N.H. 03301  
Ver. 3728, Page 2754
  - 3837-70  
City of Concord  
41 Green Street  
Concord, N.H. 03301  
Ver. 1715, Page 1065

**APPROVED**  
 MAP NO. 2023-18  
 CITY PLANNING BOARD  
 CITY OF CONCORD, NEW HAMPSHIRE  
 IN ACCORDANCE WITH PART OF THE BOARD ORDER

**APPROVED WAIVERS**

Based on the vote of the City of Concord Planning Board on July 18, 2023 the following waivers have been approved:

- 12.07 Noted Deviations to not proceed current -stand application. The plan depicts setbacks from a prior survey (Cross 1998) prepared by Barbara D. Bartlett & Associates, LLC.
- 12.08(1) Topography to not proceed topography, since the site is already improved and there are no anticipated site changes.
- 12.08(10) Subgrade Utilities to not proceed site and utility location plans for municipal utility and storm sewer structure. Existing infrastructure to proceed to remain unchanged.

**APPROVED VARIANCES**

1. The Concord Zoning Board of Adjustment on July 5, 2023 granted a variance to zoning Section 28-44-1(C) to allow creation of a lot with no frontage where 150' of frontage is required.

NO.	DATE	DESCRIPTION
1	3/27/23	PRELIMINARY MAP
2	7/25/23	CONCEPT DESIGN SUBMITTAL
3	12/15/23	FINAL SUBMITTAL
NO.	018	REVISION



**RICHARD D. BARTLETT & ASSOCIATES, LLC**  
 814 North State Street  
 Concord, N.H. 03301  
 Tel: (603) 888-8778  
 www.rdbartlettandassociates.com  
 www.rdbartlettandassociates.com  
 LICENSED LAND SURVEYORS

**SUBDIVISION PLAT on land of ZORANITE PLACE, LLC prepared for the STATE OF NEW HAMPSHIRE**

PROJECT: MAP 2023-18 LOT 63  
 LOCATION: 1 GRANITE PLACE CONCORD, NH

DATE: MAY 16 2023  
 JOB NO: 223-187  
 SHEET 2 OF 2

**Exhibit B**  
**Assignment of Construction Contract**

## ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (this "Agreement") is dated April \_\_\_\_\_, 2024, by and among 2GRANITE PLACE LLC, a New Hampshire limited liability company having an address of 81 North Main Street, Concord, New Hampshire 03301 ("Assignor"), the STATE OF NEW HAMPSHIRE, by and through its Department of Administrative Services, having an address of 25 Capitol Street, Concord, New Hampshire 03301 (the "Assignee"), and CAPITAL CONSTRUCTION LLC, a New Hampshire limited liability company having an address of 50 Ridge Road, Concord, New Hampshire 03301 (the "Contractor").

Assignor and Assignee are the parties to a certain Purchase and Sale Agreement dated April \_\_\_\_\_, 2024 (the "Purchase and Sale Agreement"), which provides for the sale by Assignor and the purchase by Assignee of real estate known as the South Parcel at Granite Place located off of Rumford Street in Concord, New Hampshire, consisting of land, buildings, and other improvements, together with all beneficial easements and other appurtenances thereto (the "Property").

Assignor and Assignee are also the parties to a certain Lease Agreement having an Effective Date defined therein as November 22, 2022 and a Commencement Date defined therein as July 1, 2022, as amended by that certain Lease Amendment dated December 13, 2023 and having an effective date of December 20, 2023 (collectively, the "Lease"), pursuant to which Assignor is obliged to contract with and supervise the Contractor to complete certain construction within the Property for the benefit of, and subject to reimbursement by, the Assignee on the terms and conditions pertaining to "Landlord's Work" as are set forth in the Lease. The Lease also includes an option to purchase the Property, pursuant to which the parties thereto have negotiated the Purchase and Sale Agreement.

Assignor and the Contractor are the parties to a certain Standard Form of Agreement Between Owner and Contractor (AIA Document A102-2017) dated November 23, 2022, as supplemented by the other Contract Documents (as that term is defined in the foregoing referenced Agreement) and as subsequently amended (collectively hereinafter, the "South Granite Place Construction Contract"), pursuant to which Assignor contracted with and supervised the Contractor to complete the construction work defined as "Landlord's Work" in the Lease. The work to be performed by the Contractor pursuant to the South Granite Place Construction Contract is understood by all parties hereto to be not yet fully complete as of the date of this Agreement.

The Purchase and Sale Agreement provides that in the event that the "Landlord's Work" as defined in the Lease has not reached final completion to the Assignee's reasonable satisfaction prior to or as of the closing of the sale of the Property by Assignor to Assignee (the "Closing"), Assignor shall assign and Assignee shall assume at such Closing all of Assignor's rights and outstanding obligations under the South Granite Place Construction Contract, subject to the express written consent of the Contractor, further subject to any allocation pursuant to the "Landlord's Work" provisions of the Lease between Assignor and Assignee of ultimate responsibility for payments to be made under said South Granite Place Construction Contract, and further subject to any satisfaction by the Assignor or the Contractor of additional respective obligations under the South Granite Place Construction Contract prior to the Closing.

NOW, THEREFORE, for good and valuable consideration hereinafter specified, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Assignor hereby assigns to Assignee, and Assignee hereby assumes, all of Assignor's rights and remaining or unmet obligations under the South Granite Place Construction Contract. Assignor shall have no further responsibility or liability for or to, and no further obligation to, the Contractor under said

Contract from and after the Closing. The Contractor hereby consents to the foregoing assignment and assumption of the South Granite Place Construction Contract and the resulting substitution of the Assignee for the Assignor as the "Owner" thereunder. A true and correct copy of all of the documents comprising the South Granite Place Construction Contract, including the scope of work documents for each of the two phases of construction contemplated thereunder, is attached hereto as **EXHIBIT A** and incorporated herein by reference.

2. This Agreement shall take effect upon the Closing of the purchase and sale of real property pursuant to the Purchase and Sale Agreement, but only in the event that both phases of the construction project contemplated by the South Granite Place Construction Contract have not reached final completion to the reasonable satisfaction of the Assignee prior to the Closing.

3. The effectiveness of this Agreement shall be subject to final authorization by the Governor and Executive Council. Assignee shall submit a late request for such authorization upon full execution of this Agreement.

4. Assignee and the Contractor hereby agree to further amend the South Granite Place Construction Contract as follows (all capitalized terms not defined herein are as defined in the South Granite Place Construction Contract):

- A. Any Change Orders pursuant to Section 3.8.2.3 of the AIA Document A201-2017 portion of the South Granite Place Construction Contract that result in an increase in the Contract Sum shall be contingent upon the availability and continued appropriation of funds, and in no event shall the Assignee be liable for any payments hereunder in excess of such available appropriated funds. The parties acknowledge and agree that the Contract Sum, defined in the South Granite Place Construction Contract as the Guaranteed Maximum Price to be paid to the Contractor thereunder, is Seven Million Six Hundred Eight Thousand Dollars (\$7,608,000.00), as specified in said Contract.
- B. Section 10.3.3 of the AIA Document A201-2017 portion of the South Granite Place Construction Contract (general indemnity) is hereby deleted in its entirety.
- C. To the extent that Section 11.2.1 of the AIA Document A201-2017 portion of the South Granite Place Construction Contract, or any other provision in said Contract, requires Assignee to obtain any commercial insurance policies, said requirement is hereby deleted. The parties acknowledge and agree that Assignee generally self-insures.
- D. Section 15.2.5 of the AIA Document A201-2017 portion of the South Granite Place Construction Contract is hereby amended so that if mediation of a claim dispute fails to resolve it, then the next step shall be to seek resolution in the Merrimack County Superior Court.
- E. Section 15.4 of the AIA Document A201-2017 portion of the South Granite Place Construction Contract (arbitration) is hereby deleted in its entirety, as are any other provisions in said Contract requiring or addressing arbitration.
- F. No provision of this Agreement or of the South Granite Place Construction Contract assigned hereby is intended to be, nor shall it be, interpreted by any party hereto to be a waiver of the sovereign immunity of the Assignee.

- G. Any and all expenditures in excess of the Project Budget as set forth in the Scope of Work dated October 27, 2022, a true and correct copy of which is included among the documents comprising the South Granite Place Construction Contract attached hereto as Exhibit A, shall be contingent upon the availability and continued appropriation of funds, and in no event shall the Assignee be liable for any payments hereunder in excess of such available appropriated funds. The parties acknowledge and agree that the Project Budget amount set forth in the Phase 2 Scope of Work included in Exhibit A hereto is part of and included within, and not in addition to, the Project Budget amount set forth in the initial Scope of Work dated October 27, 2022, also included in Exhibit A hereto. The parties further acknowledge and agree that the Contract Sum amount referenced in Section 4A of this Agreement is equal to the Project Budget amount set forth in the initial Scope of Work dated October 27, 2022.
  - H. Section 7.6.9 of the AIA Document A102-2017 portion of the South Granite Place Construction Contract (reimbursement of Contractor's legal costs) is hereby deleted in its entirety.
  - I. Section 13.2 of the AIA Document A102-2017 portion of the South Granite Place Construction Contract is hereby amended to select "Litigation in a court of competent jurisdiction" instead of arbitration.
  - J. Upon the effectiveness of this Agreement at the Closing, Contractor shall substitute the Assignee for the Assignor as the "Owner" insured under all insurance policies that Contractor is required to procure and maintain pursuant to the South Granite Place Construction Contract. The addition of the Assignee as the insured "Owner" thereunder and the continuing effectiveness of such required insurance policies shall be evidenced by certificates of insurance acceptable to the Assignee, to be provided to the Assignee upon the Closing.
5. Assignee and the Contractor hereby ratify and affirm the effectiveness of all of the other provisions of the South Granite Place Construction Contract not amended or deleted hereby.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first stated above.

ASSIGNOR:  
2GRANITE PLACE LLC

By: \_\_\_\_\_  
Kate Young, Authorized Signatory

ASSIGNEE:  
STATE OF NEW HAMPSHIRE  
By and through its  
Department of Administrative Services

By: \_\_\_\_\_  
Charles M. Arlinghaus, Commissioner

CONTRACTOR:  
CAPITAL CONSTRUCTION LLC

By: \_\_\_\_\_  
Dana Adams, Managing Member

## **EXHIBIT A**

### **South Granite Place Construction Contract**

#### **Contract Documents attached:**

AIA Document A102-2017, dated November 23, 2022

AIA Document A102-2017 Exhibit A, dated November 15, 2022

AIA Document A201-2017 (General Conditions supplement to A102-2017)

Scope of Work (Phase 1) dated October 27, 2022

Scope of Work (Phase 2) dated December 12, 2023

# State of New Hampshire

## Department of State

### CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that 2GRANITE PLACE, LLC is a New Hampshire Limited Liability Company registered to transact business in New Hampshire on December 20, 2006. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 569249

Certificate Number: 0006646341



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 29th day of March A.D. 2024.

A handwritten signature in black ink, appearing to read "David M. Scanlan".

David M. Scanlan  
Secretary of State

2GRANITE PLACE, LLC

WRITTEN CONSENT OF THE SOLE MEMBER

March 29, 2024

The undersigned, being the sole member of 2Granite Place, LLC, a New Hampshire limited liability company (the "Company"), hereby consents in writing to the following action:

VOTED: To authorize the Company to enter into a Purchase and Sale Agreement (the "Agreement") by and between the Company, and the State of New Hampshire for the sale of property located at 1 Granite Place, Concord, New Hampshire (the "State") commonly known as the South Tower at Granite Place (the "Property"), which the Member has reviewed and finds to be in the best interest of the Company, and to sell the Property to the State pursuant to the terms of the Agreement; and

FURTHER  
VOTED: To authorize Stephen M. Duprey, Sole Member, or Kate Young, as duly authorized agent, acting singly, to negotiate, execute, and deliver on behalf of the Company all documents, including but not limited to the Purchase Agreement, warranty deed affidavits and settlement statement related to the sale of the Property that he/she deem necessary or desirable to effectuate the terms of the foregoing resolution, and to take such other acts and to perform such other things on behalf of the Company as they deem necessary or desirable in connection therewith.

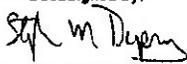
FURTHER  
VOTED: To ratify and confirm all prior actions of the Member of the Company with respect to the matters authorized above.

*[signature page follows]*

2GRANITE PLACE, LLC

WRITTEN CONSENT OF THE SOLE MEMBER

Signature Page

DocuSigned by:  
  
4362B6136D10471  
Stephen M. Duprey, Member

4799661

## ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (this "Agreement") is dated April 4, 2024, by and among 2GRANITE PLACE LLC, a New Hampshire limited liability company having an address of 81 North Main Street, Concord, New Hampshire 03301 ("Assignor"), the STATE OF NEW HAMPSHIRE, by and through its Department of Administrative Services, having an address of 25 Capitol Street, Concord, New Hampshire 03301 (the "Assignee"), and CAPITAL CONSTRUCTION LLC, a New Hampshire limited liability company having an address of 50 Ridge Road, Concord, New Hampshire 03301 (the "Contractor").

4 Assignor and Assignee are the parties to a certain Purchase and Sale Agreement dated April 4, 2024 (the "Purchase and Sale Agreement"), which provides for the sale by Assignor and the purchase by Assignee of real estate known as the South Parcel at Granite Place located off of Rumford Street in Concord, New Hampshire, consisting of land, buildings, and other improvements, together with all beneficial easements and other appurtenances thereto (the "Property").

Assignor and Assignee are also the parties to a certain Lease Agreement having an Effective Date defined therein as November 22, 2022 and a Commencement Date defined therein as July 1, 2022, as amended by that certain Lease Amendment dated December 13, 2023 and having an effective date of December 20, 2023 (collectively, the "Lease"), pursuant to which Assignor is obliged to contract with and supervise the Contractor to complete certain construction within the Property for the benefit of, and subject to reimbursement by, the Assignee on the terms and conditions pertaining to "Landlord's Work" as are set forth in the Lease. The Lease also includes an option to purchase the Property, pursuant to which the parties thereto have negotiated the Purchase and Sale Agreement.

Assignor and the Contractor are the parties to a certain Standard Form of Agreement Between Owner and Contractor (AIA Document A102-2017) dated November 23, 2022, as supplemented by the other Contract Documents (as that term is defined in the foregoing referenced Agreement) and as subsequently amended (collectively hereinafter, the "South Granite Place Construction Contract"), pursuant to which Assignor contracted with and supervised the Contractor to complete the construction work defined as "Landlord's Work" in the Lease. The work to be performed by the Contractor pursuant to the South Granite Place Construction Contract is understood by all parties hereto to be not yet fully complete as of the date of this Agreement.

The Purchase and Sale Agreement provides that in the event that the "Landlord's Work" as defined in the Lease has not reached final completion to the Assignee's reasonable satisfaction prior to or as of the closing of the sale of the Property by Assignor to Assignee (the "Closing"), Assignor shall assign and Assignee shall assume at such Closing all of Assignor's rights and outstanding obligations under the South Granite Place Construction Contract, subject to the express written consent of the Contractor, further subject to any allocation pursuant to the "Landlord's Work" provisions of the Lease between Assignor and Assignee of ultimate responsibility for payments to be made under said South Granite Place Construction Contract, and further subject to any satisfaction by the Assignor or the Contractor of additional respective obligations under the South Granite Place Construction Contract prior to the Closing.

NOW, THEREFORE, for good and valuable consideration hereinafter specified, the sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Assignor hereby assigns to Assignee, and Assignee hereby assumes, all of Assignor's rights and remaining or unmet obligations under the South Granite Place Construction Contract. Assignor shall have no further responsibility or liability for or to, and no further obligation to, the Contractor under said

Contract from and after the Closing. The Contractor hereby consents to the foregoing assignment and assumption of the South Granite Place Construction Contract and the resulting substitution of the Assignee for the Assignor as the "Owner" thereunder. A true and correct copy of all of the documents comprising the South Granite Place Construction Contract, including the scope of work documents for each of the two phases of construction contemplated thereunder, is attached hereto as **EXHIBIT A** and incorporated herein by reference.

2. This Agreement shall take effect upon the Closing of the purchase and sale of real property pursuant to the Purchase and Sale Agreement; but only in the event that both phases of the construction project contemplated by the South Granite Place Construction Contract have not reached final completion to the reasonable satisfaction of the Assignee prior to the Closing.

3. The effectiveness of this Agreement shall be subject to final authorization by the Governor and Executive Council. Assignee shall submit a late request for such authorization upon full execution of this Agreement.

4. Assignee and the Contractor hereby agree to further amend the South Granite Place Construction Contract as follows (all capitalized terms not defined herein are as defined in the South Granite Place Construction Contract):

- A. Any Change Orders pursuant to Section 3.8.2.3 of the AIA Document A201-2017 portion of the South Granite Place Construction Contract that result in an increase in the Contract Sum shall be contingent upon the availability and continued appropriation of funds, and in no event shall the Assignee be liable for any payments hereunder in excess of such available appropriated funds. The parties acknowledge and agree that the Contract Sum, defined in the South Granite Place Construction Contract as the Guaranteed Maximum Price to be paid to the Contractor thereunder, is Seven Million Six Hundred Eight Thousand Dollars (\$7,608,000.00), as specified in said Contract.
- B. Section 10.3.3 of the AIA Document A201-2017 portion of the South Granite Place Construction Contract (general indemnity) is hereby deleted in its entirety.
- C. To the extent that Section 11.2.1 of the AIA Document A201-2017 portion of the South Granite Place Construction Contract, or any other provision in said Contract, requires Assignee to obtain any commercial insurance policies, said requirement is hereby deleted. The parties acknowledge and agree that Assignee generally self-insures.
- D. Section 15.2.5 of the AIA Document A201-2017 portion of the South Granite Place Construction Contract is hereby amended so that if mediation of a claim dispute fails to resolve it, then the next step shall be to seek resolution in the Merrimack County Superior Court.
- E. Section 15.4 of the AIA Document A201-2017 portion of the South Granite Place Construction Contract (arbitration) is hereby deleted in its entirety, as are any other provisions in said Contract requiring or addressing arbitration.
- F. No provision of this Agreement or of the South Granite Place Construction Contract assigned hereby is intended to be, nor shall it be, interpreted by any party hereto to be a waiver of the sovereign immunity of the Assignee.

- G. Any and all expenditures in excess of the Project Budget as set forth in the Scope of Work dated October 27, 2022, a true and correct copy of which is included among the documents comprising the South Granite Place Construction Contract attached hereto as Exhibit A, shall be contingent upon the availability and continued appropriation of funds, and in no event shall the Assignee be liable for any payments hereunder in excess of such available appropriated funds. The parties acknowledge and agree that the Project Budget amount set forth in the Phase 2 Scope of Work included in Exhibit A hereto is part of and included within, and not in addition to, the Project Budget amount set forth in the initial Scope of Work dated October 27, 2022, also included in Exhibit A hereto. The parties further acknowledge and agree that the Contract Sum amount referenced in Section 4A of this Agreement is equal to the Project Budget amount set forth in the initial Scope of Work dated October 27, 2022.
- H. Section 7.6.9 of the AIA Document A102-2017 portion of the South Granite Place Construction Contract (reimbursement of Contractor's legal costs) is hereby deleted in its entirety.
- I. Section 13.2 of the AIA Document A102-2017 portion of the South Granite Place Construction Contract is hereby amended to select "Litigation in a court of competent jurisdiction" instead of arbitration.
- J. Upon the effectiveness of this Agreement at the Closing, Contractor shall substitute the Assignee for the Assignor as the "Owner" insured under all insurance policies that Contractor is required to procure and maintain pursuant to the South Granite Place Construction Contract. The addition of the Assignee as the insured "Owner" thereunder and the continuing effectiveness of such required insurance policies shall be evidenced by certificates of insurance acceptable to the Assignee, to be provided to the Assignee upon the Closing.
5. Assignee and the Contractor hereby ratify and affirm the effectiveness of all of the other provisions of the South Granite Place Construction Contract not amended or deleted hereby.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first stated above.

ASSIGNOR:  
2GRANITE PLACE LLC

By: Kate Young, Agent  
Kate Young, Authorized Signatory

ASSIGNEE:  
STATE OF NEW HAMPSHIRE  
By and through its  
Department of Administrative Services

By: Charles M. Arlinghaus  
Charles M. Arlinghaus, Commissioner

CONTRACTOR:  
CAPITAL CONSTRUCTION LLC

By:   
Dana Adams, Managing Member

## **EXHIBIT A**

### **South Granite Place Construction Contract**

#### **Contract Documents attached:**

AIA Document A102-2017, dated November 23, 2022  
AIA Document A102-2017 Exhibit A, dated November 15, 2022  
AIA Document A201-2017 (General Conditions supplement to A102-2017)  
Scope of Work (Phase 1) dated October 27, 2022  
Scope of Work (Phase 2) dated December 12, 2023



# AIA® Document A102™ – 2017

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

**AGREEMENT** made as of the Twenty-third day of November in the year Two Thousand Twenty-two  
*(In words, indicate day, month and year.)*

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

2Granite Place LLC, Limited Liability Company  
PO Box 1438  
Concord NH 03302-1438  
Telephone Number: 6032282151

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

Capital Construction LLC, Limited Liability Company  
PO Box 24  
Concord NH 03302  
Telephone Number: 603-225-2442

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

Granite Place - NH DOJ Renovation  
One Granite Place  
Concord NH 03301  
Interior renovations on floors one, three, and four of the south building for the New Hampshire Department of Justice.

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

Warrenstreet Architects, Inc., General Corporation  
27 Warren Street  
Concord NH 03301  
Telephone Number: 6032250640

The Owner and Contractor agree as follows.

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

The parties should complete A102™-2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201™-2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

**TABLE OF ARTICLES**

- 1 THE CONTRACT DOCUMENTS
- 2 THE WORK OF THIS CONTRACT
- 3 RELATIONSHIP OF THE PARTIES
- 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
- 5 CONTRACT SUM
- 6 CHANGES IN THE WORK
- 7 COSTS TO BE REIMBURSED
- 8 COSTS NOT TO BE REIMBURSED
- 9 DISCOUNTS, REBATES AND REFUNDS
- 10 SUBCONTRACTS AND OTHER AGREEMENTS
- 11 ACCOUNTING RECORDS
- 12 PAYMENTS
- 13 DISPUTE RESOLUTION
- 14 TERMINATION OR SUSPENSION
- 15 MISCELLANEOUS PROVISIONS
- 16 ENUMERATION OF CONTRACT DOCUMENTS

**EXHIBIT A INSURANCE AND BONDS**

**ARTICLE 1 THE CONTRACT DOCUMENTS**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 16.

**ARTICLE 2 THE WORK OF THIS CONTRACT**

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

**ARTICLE 3 RELATIONSHIP OF THE PARTIES**

The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Contractor's skill and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's

interests. The Owner agrees to furnish and approve, in a timely manner, information required by the Contractor and to make payments to the Contractor in accordance with the requirements of the Contract Documents.

#### ARTICLE 4 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

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

*(Check one of the following boxes.)*

The date of this Agreement.

A date set forth in a notice to proceed issued by the Owner.

Established as follows:

*(Insert a date or a means to determine the date of commencement of the Work.)*

The latter of the date of the issuance of building permit or the date set forth in a notice to proceed issued by the Owner.

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

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

#### § 4.3 Substantial Completion

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

*(Check one of the following boxes and complete the necessary information.)*

Not later than One hundred eighty three ( 183 ) calendar days from the date of commencement of the Work.

By the following date:

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

Portion of Work

Substantial Completion Date

§ 4.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 4.3, liquidated damages, if any, shall be assessed as set forth in Section 5.1.6.

#### ARTICLE 5 CONTRACT SUM

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

§ 5.1.1 The Contractor's Fee:

*(State a lump sum, percentage of Cost of the Work, or other provision for determining the Contractor's Fee.)*

Seven percentage (7%) of Cost of the work

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

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

Init.

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

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

Item	Units and Limitations	Price Per Unit (\$0.00)
------	-----------------------	-------------------------

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

§ 5.1.7 Other:  
*(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)*

**§ 5.2 Guaranteed Maximum Price**

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed Seven Million Six Hundred Eight Thousand dollars (\$ 7,608,000.00 ), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

**§ 5.2.2 Alternates**

§ 5.2.2.1 Alternates, if any, included in the Guaranteed Maximum Price:

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

Item	Price	Conditions for Acceptance
------	-------	---------------------------

§ 5.2.3 Allowances, if any, included in the Guaranteed Maximum Price:  
*(Identify each allowance.)*

Item	Price
Floor preparation	\$61,625.00
Signage	\$19,500.00
Access Control door hardware	\$45,000.00
Elevator travelling cables	\$30,000.00
Upgrades to flooring and millwork	\$250,000.00

§ 5.2.4 Assumptions, if any, upon which the Guaranteed Maximum Price is based:  
*(Identify each assumption.)*

§ 5.2.5 To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes or equipment, all of which, if required, shall be incorporated by Change Order.

§ 5.2.6 The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions contained in Section 5.2.4. The Owner shall promptly furnish such revised Contract Documents to the Contractor. The Contractor shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions contained in Section 5.2.4 and the revised Contract Documents.

#### ARTICLE 6 CHANGES IN THE WORK

§ 6.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Article 7 of AIA Document A201™-2017, General Conditions of the Contract for Construction.

§ 6.2 Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201-2017, as they refer to "cost" and "fee," and not by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

§ 6.3 In calculating adjustments to the Guaranteed Maximum Price, the terms "cost" and "costs" as used in Article 7 of AIA Document A201-2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term "fee" shall mean the Contractor's Fee as defined in Section 5.1.1 of this Agreement.

§ 6.4 If no specific provision is made in Article 5 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Article 5 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

#### ARTICLE 7 COSTS TO BE REIMBURSED

##### § 7.1 Cost of the Work

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

§ 7.1.2 Where, pursuant to the Contract Documents, any cost is subject to the Owner's prior approval, the Contractor shall obtain such approval in writing prior to incurring the cost.

§ 7.1.3 Costs shall be at rates not higher than the standard paid at the place of the Project, except with prior approval of the Owner.

##### § 7.2 Labor Costs

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

§ 7.2.2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site and performing Work, with the Owner's prior approval.

§ 7.2.2.1 Wages or salaries of the Contractor's supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

*(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)*

Project Management

§ 7.2.3 Wages or salaries of the Contractor's supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ 7.2.4 Costs paid or incurred by the Contractor, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments, and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

§ 7.2.5 If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

### § 7.3 Subcontract Costs

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

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

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

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

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

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

§ 7.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Contractor at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Contractor, or a related party as defined in Section 7.8, shall be subject to the Owner's prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

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

§ 7.5.4 Costs of the Contractor's site office, including general office equipment and supplies.

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

### § 7.6 Miscellaneous Costs

§ 7.6.1 Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

§ 7.6.1.1 Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

§ 7.6.1.2 Costs for insurance through a captive insurer owned or controlled by the Contractor, with the Owner's prior approval.

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

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

§ 7.6.4 Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201-2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

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

§ 7.6.5.1 The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Contractor resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Contractor had reason to believe that the required design, process or product was an infringement of a copyright or a patent, and the Contractor failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201-2017. The costs of legal defenses, judgments, and settlements, shall not be included in the Cost of the Work used to calculate the Contractor's Fee or subject to the Guaranteed Maximum Price.

§ 7.6.6 Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

§ 7.6.7 Costs of document reproductions and delivery charges.

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

§ 7.6.9 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Contractor, reasonably incurred by the Contractor after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

§ 7.6.10 Expenses incurred in accordance with the Contractor's standard written personnel policy for relocation and temporary-living allowances, of the Contractor's personnel required for the Work, with the Owner's prior approval.

§ 7.6.11 That portion of the reasonable expenses of the Contractor's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

#### § 7.7 Other Costs and Emergencies

§ 7.7.1 Other costs incurred in the performance of the Work, with the Owner's prior approval.

§ 7.7.2 Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201-2017.

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

#### § 7.8 Related Party Transactions

§ 7.8.1 For purposes of this Section 7.8, the term "related party" shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Contractor; (2) any entity in which any stockholder in, or management employee of, the Contractor holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Contractor; or (4) any person, or

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any member of the immediate family of any person, who has the right to control the business or affairs of the Contractor.

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

#### ARTICLE 8 COSTS NOT TO BE REIMBURSED

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

- 1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 15;
- 2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Contractor or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- 3 Expenses of the Contractor's principal office and offices other than the site office;
- 4 Overhead and general expenses, except as may be expressly included in Article 7;
- 5 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work;
- 6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Contractor, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- 7 Any cost not specifically and expressly described in Article 7; and
- 8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

#### ARTICLE 9 DISCOUNTS, REBATES AND REFUNDS

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

§ 9.2 Amounts that accrue to the Owner in accordance with the provisions of Section 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

#### ARTICLE 10 SUBCONTRACTS AND OTHER AGREEMENTS

§ 10.1 Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or other appropriate agreements with the Contractor. The Owner may designate specific persons from whom, or entities from which, the Contractor shall obtain bids. The Contractor shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Contractor shall deliver such bids to the Architect and Owner with an indication as to which bids the Contractor intends to accept. The Owner then has the right to review the Contractor's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 10.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Contractor of its responsibility to perform the Work in accordance with the Contract Documents. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

§ 10.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract

Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 10.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Contractor shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11.

#### ARTICLE 11 ACCOUNTING RECORDS

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

#### ARTICLE 12 PAYMENTS

##### § 12.1 Progress Payments

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

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

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

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

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

§ 12.1.5 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Contractor's Fee.

§ 12.1.5.1 The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 12.1.5.2 The allocation of the Guaranteed Maximum Price under this Section 12.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

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§ 12.1.5.3 When the Contractor allocates costs from a contingency to another line item in the schedule of values, the Contractor shall submit supporting documentation to the Architect.

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

§ 12.1.7 In accordance with AIA Document A201-2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 12.1.7.1 The amount of each progress payment shall first include:

- 1 That portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the most recent schedule of values;
- 2 That portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction or, if approved in writing in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- 3 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified; and
- 4 The Contractor's Fee, computed upon the Cost of the Work described in the preceding Sections 12.1.7.1.1 and 12.1.7.1.2 at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work included in Sections 12.1.7.1.1 and 12.1.7.1.2 bears to a reasonable estimate of the probable Cost of the Work upon its completion.

§ 12.1.7.2 The amount of each progress payment shall then be reduced by:

- 1 The aggregate of any amounts previously paid by the Owner;
- 2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201-2017;
- 3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- 4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201-2017;
- 5 The shortfall, if any, indicated by the Contractor in the documentation required by Section 12.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- 6 Retainage withheld pursuant to Section 12.1.8.

§ 12.1.8 Retainage

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

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

Five percent (5%)

§ 12.1.8.1.1 The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

§ 12.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 12.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)*

§ 12.1.8.3 Except as set forth in this Section 12.1.8.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 12.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)*

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

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

§ 12.1.11 The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Contractor shall execute subcontracts in accordance with those agreements.

§ 12.1.12 In taking action on the Contractor's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 12.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

## § 12.2 Final Payment

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

- 1 the Contractor has fully performed the Contract, except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment;
- 2 the Contractor has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- 3 a final Certificate for Payment has been issued by the Architect in accordance with Section 12.2.2.

§ 12.2.2 Within 30 days of the Owner's receipt of the Contractor's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 12.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 12.2.2.2 Within seven days after receipt of the written report described in Section 12.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 12.2.1 have been met, the Architect will either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201-2017. The time periods stated in this Section 12.2.2 supersede those stated in Article 9 of AIA Document A201-2017. The Architect is not responsible for verifying the accuracy of the Contractor's final accounting.

§ 12.2.2.3 If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Contractor's final accounting, is less than claimed by the Contractor, the Contractor shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201-2017. A request for mediation shall be made by the Contractor within 30 days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Contractor. Pending a final resolution of the disputed amount, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment.

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

§ 12.2.4 If, subsequent to final payment, and at the Owner's request, the Contractor incurs costs, described in Article 7 and not excluded by Article 8, to correct defective or nonconforming Work, the Owner shall reimburse the Contractor for such costs, and the Contractor's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 5.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 12.2.4 in determining the net amount to be paid by the Owner to the Contractor.

§ 12.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

*(Insert rate of interest agreed upon, if any.)*

Ten % 10%

ARTICLE 13 DISPUTE RESOLUTION

§ 13.1 Initial Decision Maker

The Architect will serve as Initial Decision Maker pursuant to Article 15 of AIA Document A201-2017, unless the parties appoint below another individual, not a party to the Agreement, to serve as Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

§ 13.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201-2017, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

Arbitration pursuant to Section 15 of AIA Document A201-2017

Litigation in a court of competent jurisdiction

Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

**ARTICLE 14 TERMINATION OR SUSPENSION**

**§ 14.1 Termination**

**§ 14.1.1** The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201-2017.

**§ 14.1.2 Termination by the Owner for Cause**

**§ 14.1.2.1** If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201-2017, the amount, if any, to be paid to the Contractor under Article 14 of AIA Document A201-2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- 1 Take the Cost of the Work incurred by the Contractor to the date of termination;
- 2 Add the Contractor's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.1 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- 3 Subtract the aggregate of previous payments made by the Owner; and
- 4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201-2017.

**§ 14.1.2.2** The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 14.1.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 14, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

**§ 14.1.3 Termination by the Owner for Convenience**

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201-2017, then the Owner shall pay the Contractor a termination fee as follows:

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

**§ 14.2 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201-2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201-2017, except that the term "profit" shall be understood to mean the Contractor's Fee as described in Article 5 and Section 6.4 of this Agreement.

**ARTICLE 15 MISCELLANEOUS PROVISIONS**

**§ 15.1** Where reference is made in this Agreement to a provision of AIA Document A201-2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 15.2** The Owner's representative:

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

Stephen Duprey  
PO Box 1438  
Concord NH 03302-1438  
Telephone Number: 6032282151

Email Address: sduprey@foxfirenh.com

§ 15.3 The Contractor's representative:  
(Name, address, email address and other information)

Dana Adams  
PO Box 24  
Concord NH 03302  
Telephone Number: 603-225-2442

Mobile Number: 603-724-4954  
Email Address: dana@capital-cllc.com

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

§ 15.5 Insurance and Bonds

§ 15.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A102™-2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 15.5.2 The Contractor shall provide bonds as set forth in AIA Document A102™-2017 Exhibit A, and elsewhere in the Contract Documents.

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

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

§ 15.7 Other provisions:

ARTICLE 16 - ENUMERATION OF CONTRACT DOCUMENTS

§ 16.1 This Agreement is comprised of the following documents:

- 1 AIA Document A102™-2017, Standard Form of Agreement Between Owner and Contractor
- 2 AIA Document A102™-2017, Exhibit A, Insurance and Bonds
- 3 AIA Document A201™-2017, General Conditions of the Contract for Construction
- 4

*(Insert the date of the E203-2013 incorporated into this Agreement.)*

- 5 Drawings

Number	Title	Date
A171	First Floor Furniture Plan	10/27/2022
A172	Third Floor Furniture Plan	10/27/2022
A173	Fourth Floor Furniture Plan	10/27/2022

6 Specifications

Section	Title	Date	Pages
---------	-------	------	-------

7 Addenda, if any:

Number	Date	Pages
--------	------	-------

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 16.

8 Other Exhibits:  
(Check all boxes that apply.)

AIA Document E204™-2017, Sustainable Projects Exhibit, dated as indicated below:  
(Insert the date of the E204-2017 incorporated into this Agreement.)

The Sustainability Plan:

Title	Date	Pages
-------	------	-------

Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
----------	-------	------	-------

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

One Granite Place – NH DOJ Scope of Work 10-27-22

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

\_\_\_\_\_  
OWNER (Signature)

Stephen Duprey, Member  
(Printed name and title)

\_\_\_\_\_  
CONTRACTOR (Signature)

Dana Adams, Owner  
(Printed name and title)

# Additions and Deletions Report for AIA® Document A102™ - 2017

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:49:46 ET on 11/23/2022.

PAGE 1

AGREEMENT made as of the Twenty-third day of November in the year Two Thousand Twenty-two

2Granite Place LLC, Limited Liability Company  
PO Box 1438  
Concord NH 03302-1438  
Telephone Number: 6032282151

Capital Construction LLC, Limited Liability Company  
PO Box 24  
Concord NH 03302  
Telephone Number: 603-225-2442

Granite Place - NH DOJ Renovation  
One Granite Place  
Concord NH 03301  
Interior renovations on floors one, three, and four of the south building for the New Hampshire Department of Justice.

Warrenstreet Architects, Inc., General Corporation  
27 Warren Street  
Concord NH 03301  
Telephone Number: 6032250640

PAGE 3

Established as follows:

The latter of the date of the issuance of building permit or the date set forth in a notice to proceed issued by the Owner.

Not later than One hundred eighty three ( 183 ) calendar days from the date of commencement of the

Work.

Seven percent (7%) of Cost of the work  
PAGE 4

§ 5.2.1 The Contract Sum is guaranteed by the Contractor not to exceed Seven Million Six Hundred Eight Thousand dollars (\$ 7,608,000.00 .), subject to additions and deductions by Change Order as provided in the Contract Documents. This maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner.

<u>Floor preparation</u>	<u>\$61,625.00</u>
<u>Signage</u>	<u>\$19,500.00</u>
<u>Access Control door hardware</u>	<u>\$45,000.00</u>
<u>Elevator travelling cables</u>	<u>\$30,000.00</u>
<u>Upgrades to flooring and millwork</u>	<u>\$250,000.00</u>

PAGE 5

Project Management  
PAGE 9

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

PAGE 10

Five percent (5%)  
PAGE 12

Ten % 10%

Arbitration pursuant to Section 15 of AIA Document A201-2017  
PAGE 13

Stephen Duprey  
PO Box 1438  
Concord NH 03302-1438  
Telephone Number: 6032282151

Email Address: sduprey@foxfirenh.com  
PAGE 14

Dana Adams  
PO Box 24  
Concord NH 03302  
Telephone Number: 603-225-2442

Mobile Number: 603-724-4954  
Email Address: dana@capital-cllc.com

- 4 ~~AIA Document E203™ 2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:~~

<u>A171</u>	<u>First Floor Furniture Plan</u>	<u>10/27/2022</u>
<u>A172</u>	<u>Third Floor Furniture Plan</u>	<u>10/27/2022</u>
<u>A173</u>	<u>Fourth Floor Furniture Plan</u>	<u>10/27/2022</u>

PAGE 15

One Granite Place – NH DOJ Scope of Work 10-27-22

Stephen Duprey, Member

Dana Adams, Owner

## **Certification of Document's Authenticity**

**AIA® Document D401™ – 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:49:46 ET on 11/23/2022 under Order No. 2114382812 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A102™ – 2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
(Signed)

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

\_\_\_\_\_  
(Dated)



# AIA Document A102™ – 2017 Exhibit A

## Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the 15th day of November in the year 2022  
(In words, indicate day, month and year.)

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

Granite Place - NH DOJ Renovation  
One Granite Place  
Concord NH 03301

**THE OWNER:**  
(Name, legal status and address)

2 Granite Place LLC, Limited Liability Company  
PO Box 1438  
Concord NH 03302-1438

**THE CONTRACTOR:**  
(Name, legal status and address)

Capital Construction LLC, Limited Liability Company  
PO Box 24  
Concord NH 03302

### TABLE OF ARTICLES

- A.1 GENERAL
- A.2 OWNER'S INSURANCE
- A.3 CONTRACTOR'S INSURANCE AND BONDS
- A.4 SPECIAL TERMS AND CONDITIONS

#### ARTICLE A.1 GENERAL

The Owner and Contractor shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™-2017, General Conditions of the Contract for Construction.

#### ARTICLE A.2 OWNER'S INSURANCE

##### § A.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article A.2 and, upon the Contractor's request, provide a copy of the property insurance policy or policies required by Section A.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

#### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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

This document is intended to be used in conjunction with AIA Document A201™-2017, General Conditions of the Contract for Construction. Article 11 of A201™-2017 contains additional insurance provisions.

Init.

**§ A.2.2 Liability Insurance**

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

**§ A.2.3 Required Property Insurance**

§ A.2.3.1 Unless this obligation is placed on the Contractor pursuant to Section A.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner's property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section A.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Contractor, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ A.2.3.1.1 **Causes of Loss.** The insurance required by this Section A.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

*(Indicate below the cause of loss and any applicable sub-limit.)*

**Causes of Loss**

**Sub-Limit**

§ A.2.3.1.2 **Specific Required Coverages.** The insurance required by this Section A.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect's and Contractor's services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

*(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)*

**Coverage**

**Sub-Limit**

§ A.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section A.2.3.1 or, if necessary, replace the insurance policy required under Section A.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ A.2.3.1.4 **Deductibles and Self-Insured Retentions.** If the insurance required by this Section A.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ A.2.3.2 **Occupancy or Use Prior to Substantial Completion.** The Owner's occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section A.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Contractor shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

**§ A.2.3.3 Insurance for Existing Structures**

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section A.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

Init.

**§ A.2.4 Optional Extended Property Insurance.**

The Owner shall purchase and maintain the insurance selected and described below.

*(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)*

- § A.2.4.1 **Loss of Use, Business Interruption, and Delay in Completion Insurance**, to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss.
- § A.2.4.2 **Ordinance or Law Insurance**, for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project.
- § A.2.4.3 **Expediting Cost Insurance**, for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property.
- § A.2.4.4 **Extra Expense Insurance**, to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred.
- § A.2.4.5 **Civil Authority Insurance**, for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance.
- § A.2.4.6 **Ingress/Egress Insurance**, for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage.
- § A.2.4.7 **Soft Costs Insurance**, to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses.

**§ A.2.5 Other Optional Insurance.**

The Owner shall purchase and maintain the insurance selected below.

Init.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

§ A.2.5.1 **Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. (Indicate applicable limits of coverage or other conditions in the fill point below.)

§ A.2.5.2 **Other Insurance**  
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage	Limits
----------	--------

**ARTICLE A.3. CONTRACTOR'S INSURANCE AND BONDS**

**§ A.3.1 General**

**§ A.3.1.1 Certificates of Insurance.** The Contractor shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article A.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section A.3.2.1 and Section A.3.3.1. The certificates will show the Owner as an additional insured on the Contractor's Commercial General Liability and excess or umbrella liability policy or policies.

**§ A.3.1.2 Deductibles and Self-Insured Retentions.** The Contractor shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Contractor.

**§ A.3.1.3 Additional Insured Obligations.** To the fullest extent permitted by law, the Contractor shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07-04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

**§ A.3.2 Contractor's Required Insurance Coverage**

**§ A.3.2.1** The Contractor shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)*

**§ A.3.2.2 Commercial General Liability**

**§ A.3.2.2.1** Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One million dollars (\$ 1,000,000.00 ) each occurrence, Two million dollars (\$ 2,000,000.00 ) general aggregate, and Two million dollars (\$ 2,000,000.00 ) aggregate for products-completed operations hazard, providing coverage for claims including

- 1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;

Init.

- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Contractor's indemnity obligations under Section 3.18 of the General Conditions.

§ A.3.2.2 The Contractor's Commercial General Liability policy under this Section A.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than One million dollars (\$ 1,000,000.00 ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ A.3.2.4 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section A.3.2.2 and A.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ A.3.2.5 Workers' Compensation with policy limits of not less than One million dollars (\$1,000,000.00).

(Paragraphs deleted)

§

**§ A.3.3 Contractor's Other Insurance Coverage**

§-A.3.3.1 Insurance selected and described in this Section A.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Contractor shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

*(If the Contractor is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)*

§ A.3.3.2 The Contractor shall purchase and maintain the following types and limits of insurance in accordance with Section A.3.3.1.

Init.

(Select the types of insurance the Contractor is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

§ A.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:  
*(Where the Contractor's obligation to provide property insurance differs from the Owner's obligations as described under Section A.2.3, indicate such differences in the space below. Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)*

§ A.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than \$ ( ) per claim and \$ ( ) in the aggregate, for Work within fifty (50) feet of railroad property.

§ A.3.3.2.3 Asbestos Abatement Liability Insurance, with policy limits of not less than \$ ( ) per claim and \$ ( ) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

§ A.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

§ A.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Contractor and used on the Project, including scaffolding and other equipment.

§ A.3.3.2.6 Other Insurance  
*(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)*

Coverage	Limits
----------	--------

(Paragraphs deleted)

§

(Paragraph deleted)

(Table deleted)

**ARTICLE A.4 SPECIAL TERMS AND CONDITIONS**

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

# Additions and Deletions Report for AIA® Document A102™ – 2017 Exhibit A

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

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PAGE 1

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Contractor, dated the 15th day of November in the year 2022

Granite Place - NH DOJ Renovation  
One Granite Place  
Concord NH 03301

2Granite Place LLC, Limited Liability Company  
PO Box 1438  
Concord NH 03302-1438

Capital Construction LLC, Limited Liability Company  
PO Box 24  
Concord NH 03302

PAGE 4

§ A.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than One million dollars (\$ 1,000,000.00 ) each occurrence, Two million dollars (\$ 2,000,000.00 ) general aggregate, and Two million dollars (\$ 2,000,000.00 ) aggregate for products-completed operations hazard, providing coverage for claims including

PAGE 5

§ A.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than One million dollars (\$ 1,000,000.00 ) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ A.3.2.5 Workers' Compensation at ~~statutory limits~~ with policy limits of not less than One million dollars (\$1,000,000.00).

~~§ A.3.2.6 Employers' Liability with policy limits not less than (\$ ) each accident, (\$ ) each employee, and (\$ ) policy limit.~~

~~§ A.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks~~

~~§ A.3.2.8 If the Contractor is required to furnish professional services as part of the Work, the Contractor shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.~~

~~§ A.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Contractor shall procure Pollution Liability insurance, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.~~

~~§ A.3.2.10 Coverage under Sections A.3.2.8 and A.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.~~

~~§ A.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.~~

~~§ A.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than (\$ ) per claim and (\$ ) in the aggregate.~~

~~§~~

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§ A.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section A.2.3, which, if selected in this section A.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section A.2.3.1.3 and Section A.2.3.3. The Contractor shall comply with all obligations of the Owner under Section A.2.3 except to the extent provided below. The Contractor shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Contractor shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

~~§ A.3.4 Performance Bond and Payment Bond~~

~~The Contractor shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:~~

~~(Specify type and penal sum of bonds.)~~

~~§~~

Type

Penal Sum (\$0.00)

Payment Bond

Performance Bond

~~Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.~~

# AIA® Document A201® – 2017

## General Conditions of the Contract for Construction

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

Granite Place - NH DOJ Renovation  
One Granite Place  
Concord NH 03301

**THE OWNER:**  
(Name, legal status and address)

2Granite Place LLC, Limited Liability Company  
PO Box 1438  
Concord NH 03302-1438

**THE ARCHITECT:**  
(Name, legal status and address)

Warrenstreet Architects, Inc., General Corporation  
27 Warren Street  
Concord NH 03301

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### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

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For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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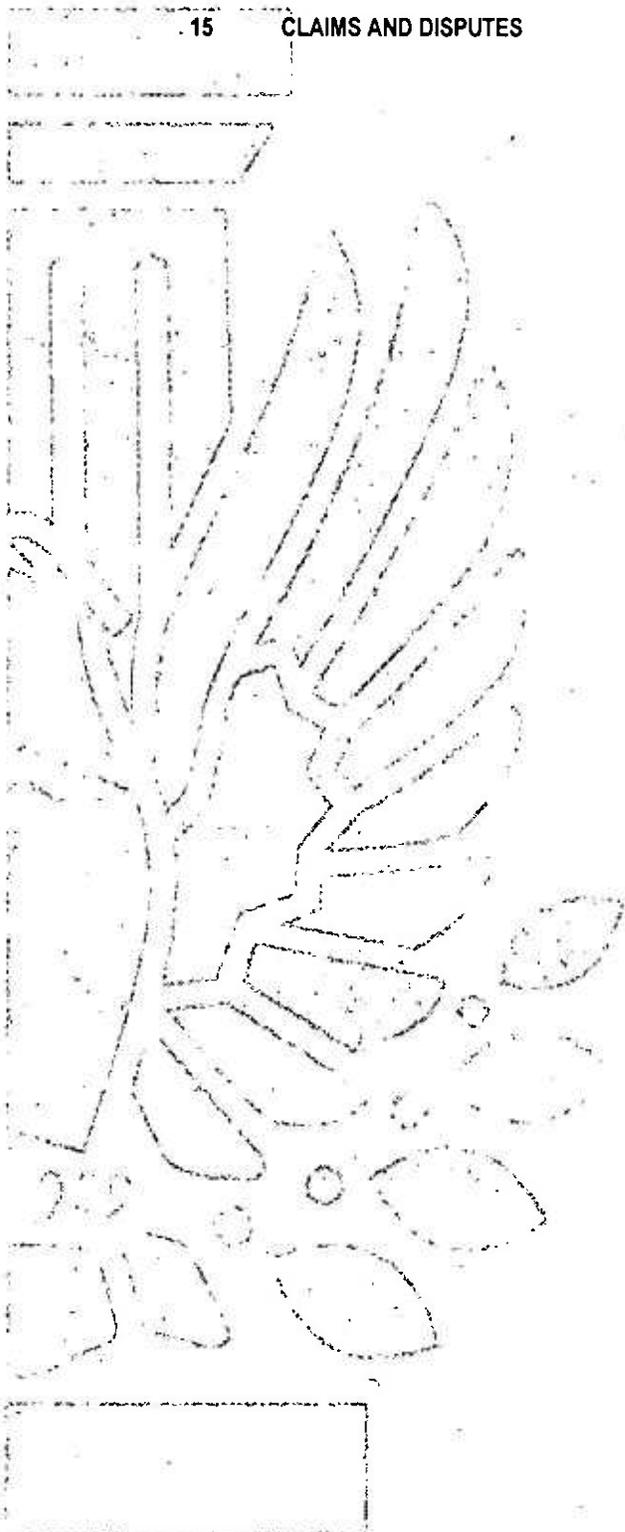
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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 Basic Definitions

#### § 1.1.1 The Contract Documents

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

#### § 1.1.2 The Contract

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

#### § 1.1.3 The Work

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

#### § 1.1.4 The Project

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

#### § 1.1.5 The Drawings

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

#### § 1.1.6 The Specifications

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

#### § 1.1.7 Instruments of Service

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

#### § 1.1.8 Initial Decision Maker

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

### § 1.2 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.

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

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

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

**§ 1.3 Capitalization**

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

**§ 1.4 Interpretation**

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

**§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service**

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

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

**§ 1.6 Notice**

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

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

**§ 1.7 Digital Data Use and Transmission**

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

**§ 1.8 Building Information Models Use and Reliance**

Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document

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G202™-2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

## ARTICLE 2 OWNER

### § 2.1 General

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

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

### § 2.2 Evidence of the Owner's Financial Arrangements

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

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

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

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

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

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

§ 2.3.2 The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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

§ 2.3.4 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

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

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

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

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

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

### ARTICLE 3 CONTRACTOR

#### § 3.1 General

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

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

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

#### § 3.2 Review of Contract Documents and Field Conditions by Contractor

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

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

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

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

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

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

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

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

### **§ 3.4 Labor and Materials**

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

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

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

**§ 3.5 Warranty**

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

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

**§ 3.6 Taxes**

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

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

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

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

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

**§ 3.7.4 Concealed or Unknown Conditions**

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

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

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### § 3.8 Allowances

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

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

### § 3.9 Superintendent

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

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

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

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

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

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

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

### § 3.11 Documents and Samples at the Site

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and

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delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

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

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

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

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

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

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

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

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

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

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

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

**§ 3.12.10.1** If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will

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

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

**§ 3.13 Use of Site**

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

**§ 3.14 Cutting and Patching**

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

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

**§ 3.15 Cleaning Up**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

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

**§ 3.16 Access to Work**

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

**§ 3.17 Royalties, Patents and Copyrights**

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

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**§ 3.18 Indemnification**

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

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

**ARTICLE 4 ARCHITECT**

**§ 4.1 General**

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

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

**§ 4.2 Administration of the Contract**

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

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

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

**§ 4.2.4 Communications**

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

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

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

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

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

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

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

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

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

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

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

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 Definitions

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

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

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

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

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

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

### § 5.3 Subcontractual Relations

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

### § 5.4 Contingent Assignment of Subcontracts

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

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

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

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

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

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

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

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

### § 6.2 Mutual Responsibility

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

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

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

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

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

**§ 6.3 Owner's Right to Clean Up**

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

**ARTICLE 7 CHANGES IN THE WORK**

**§ 7.1 General**

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

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

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

**§ 7.2 Change Orders**

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

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

**§ 7.3 Construction Change Directives**

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

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

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

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

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

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

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

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

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

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

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

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

#### § 7.4 Minor Changes in the Work

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

### ARTICLE 8 TIME

#### § 8.1 Definitions

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

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

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

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

## § 8.2 Progress and Completion

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

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

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

## § 8.3 Delays and Extensions of Time

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by 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 the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

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

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

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 Contract Sum

§ 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

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

### § 9.3 Applications for Payment

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

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

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

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

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

#### § 9.4 Certificates for Payment

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either (1) issue to the Owner a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; or (2) issue to the Owner a Certificate for Payment for such amount as the Architect determines is properly due, and notify the Contractor and Owner of the Architect's reasons for withholding certification in part as provided in Section 9.5.1; or (3) withhold certification of the entire Application for Payment, and notify the Contractor and Owner of the Architect's reason for withholding certification in whole as provided in Section 9.5.1.

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

#### § 9.5 Decisions to Withhold Certification

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

- 1 defective Work not remedied;
- 2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- 3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;

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

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

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

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

#### § 9.6 Progress Payments

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

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

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

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

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

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

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

§ 9.6.8 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.

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### § 9.7 Failure of Payment

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

### § 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

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

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

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

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

### § 9.9 Partial Occupancy or Use

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

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

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

#### § 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

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

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

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.

### ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

#### § 10.1 Safety Precautions and Programs

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

#### § 10.2 Safety of Persons and Property

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

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

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

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

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

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

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

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

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

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

#### § 10.3 Hazardous Materials and Substances

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

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will

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promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

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

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

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

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

#### § 10.4 Emergencies

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

### ARTICLE 11 INSURANCE AND BONDS

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

§ 11.1.1 The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

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

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

§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance. Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act

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or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

#### **§ 11.2. Owner's Insurance**

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

**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

#### **§ 11.3 Waivers of Subrogation**

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

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

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

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

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

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

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

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

#### **§ 12.1 Uncovering of Work**

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

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

#### **§ 12.2 Correction of Work**

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

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

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

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

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

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

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

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

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

### § 12.3 Acceptance of Nonconforming Work

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

## ARTICLE 13 MISCELLANEOUS PROVISIONS

### § 13.1 Governing Law

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

### § 13.2 Successors and Assigns

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

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

### § 13.3 Rights and Remedies

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

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

### § 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and

approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

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

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

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

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

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

#### § 13.5 Interest

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate the parties agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

### ARTICLE 14 - TERMINATION OR SUSPENSION OF THE CONTRACT

#### § 14.1 Termination by the Contractor

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

1. Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
2. An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
3. Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
4. The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

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

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

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

**§ 14.2 Termination by the Owner for Cause**

§ 14.2.1 The Owner may terminate the Contract if the Contractor

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

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

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

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

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

**§ 14.3 Suspension by the Owner for Convenience**

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

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

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

**§ 14.4 Termination by the Owner for Convenience**

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

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- 1 cease operations as directed by the Owner in the notice;
- 2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- 3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

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

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 Claims

#### § 15.1.1 Definition

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

#### § 15.1.2 Time Limits on Claims

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

#### § 15.1.3 Notice of Claims

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

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

#### § 15.1.4 Continuing Contract Performance

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

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

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### § 15.1.7 Waiver of Claims for Consequential Damages

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

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

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

### § 15.2 Initial Decision

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

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

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

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

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

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of receipt of an initial decision, demand in writing that the other party file for mediation. If such a demand is made and the party receiving the demand fails to file for mediation within 30 days after receipt thereof, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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

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

### § 15.3 Mediation

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

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

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

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

### § 15.4 Arbitration

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

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

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

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

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**§ 15.4.4 Consolidation or Joinder**

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

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

**§ 15.4.4.3** The Owner and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.4, whether by joinder or consolidation, the same rights of joinder and consolidation as those of the Owner and Contractor under this Agreement.



Init.

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

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

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:49:30 ET on 11/23/2022.

**PAGE 1**

Granite Place - NH DOJ Renovation  
One Granite Place  
Concord NH 03301

2Granite Place LLC, Limited Liability Company  
PO Box 1438  
Concord NH 03302-1438

Warrenstreet Architects, Inc., General Corporation  
27 Warren Street  
Concord NH 03301

**Certification of Document's Authenticity**

**AIA® Document D401™ - 2003**

I, \_\_\_\_\_, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 14:49:30 ET on 11/23/2022 under Order No. 2114382810 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A201™ - 2017, General Conditions of the Contract for Construction, as published by the AIA in its software, other than those additions and deletions shown in the associated Additions and Deletions Report.

\_\_\_\_\_  
*(Signed)*

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

\_\_\_\_\_  
*(Dated)*

## Department of Justice Renovations - Scope of Work

One Granite Place, Concord, NH

October 27, 2022

### DIVISION I – GENERAL CONDITIONS

#### PROJECT MANAGEMENT:

1. Capital Construction LLC (Capital) will assign a project manager who will be responsible for management and oversight of the project. This person will serve as 2Granite Place LLC's (OWNER) primary contact. The project manager will work in close cooperation with OWNER throughout the design and construction process.
2. Project meetings between Capital and OWNER will take place a minimum of twice per month, or more often if required to keep all the parties properly informed as to the progress of the project.

#### DESIGN:

1. Project design documents will be provided by others.
2. This proposal is based on the following documents by: Warrenstreet Architects, Inc.
  - A. 3787 2022-10-27 Attorney General Fitup Plans First Floor
  - B. 3787 2022-10-27 Attorney General Fitup Plans Third Floor
  - C. 3787 2022-10-27 Attorney General Fitup Plans Fourth Floor
3. Adjusted counts and scopes for access control based on walk-through with Pasek Security.

#### PERMITTING:

1. All permitting of the renovation will be the responsibility of Capital.

#### TEMPORARY FACILITIES:

1. The following temporary construction-related facilities will be provided by Capital:
  - A. Temporary lighting.
  - B. Toilet facilities.
  - C. Waste storage and removal; as required to maintain site in clean and orderly condition.
2. Project identification signage with the following information:
  - A. Capital's company name, logo and phone number.

#### INSURANCE:

1. General liability and worker's compensation policies will be provided by Capital.
2. A Builder's Risk policy will be provided during the construction by Capital.
3. All building components and systems described in this specification will be provided with a minimum 1-year warranty from the date of substantial completion.

#### PROJECT CLOSEOUT AND COMPLETION:

1. At the completion of the project, an Owner's Manual with the following information will be assembled onto a CD and presented to OWNER:
  - A. Operation and maintenance manuals for major building systems.
  - B. A copy of all available manufacturers' extended warranties.
  - C. Product designations and color selections for finish materials.
  - D. Electronic copies of construction documents.
2. All equipment will be placed into full operation upon completion of the project, including the testing and adjusting of all systems for proper operation.
3. Capital will clean the facility, as described below, prior to occupancy:
  - A. Remove temporary labels, stains and spots.
  - B. Remove waste materials, debris and rubbish from project site.
  - C. Clean interior glass surfaces.
  - D. Broom clean and mop hard surface flooring.
  - E. Vacuum carpet flooring.

4. A limited supply of finish materials such as flooring, ceiling tiles and paint materials will be delivered to OWNER for future repair and touch-up.

#### **DIVISION 2 – SITE WORK**

##### **DEMOLITION:**

1. Remove acoustical ceilings and lighting.
2. Remove flooring.
3. Remove existing doors and frames and save as required.
4. Remove existing walls not framed to deck.
5. Remove planters and cap plumbing.
6. Provide make-safe electrical demolition at removed walls and office partitions.
7. Remove data wiring no longer in service.

#### **DIVISION 3 – CONCRETE**

None specified.

#### **DIVISION 4 – MASONRY**

None specified.

#### **DIVISION 5 – METALS**

None specified.

#### **DIVISION 6 – WOOD & PLASTIC**

##### **ROUGH CARPENTRY:**

1. Install blocking at new walls for millwork and accessories.

##### **MILLWORK:**

1. Install millwork as follows:
  - A. Plastic laminate faced upper and base cabinets at break areas.

##### **SOLID SURFACE MATERIAL:**

1. Install solid surface material countertops as follows:
  - A. Break area countertops with backsplash

#### **DIVISION 7 – THERMAL & MOISTURE PROTECTION**

##### **ACOUSTICAL INSULATION:**

1. Sound insulating fiberglass batts will be installed within all new interior stud walls.

##### **ROOFING SYSTEMS:**

1. Provide appropriate roof flashing at new penetrations for plumbing and mechanical systems.

### CAULKING AND SEALANTS:

1. Install caulking at dissimilar materials.
2. Install fire caulking as necessary at penetrations.

## DIVISION 8 – DOORS & WINDOWS

### DOORS:

#### 1. General Door Standards:

- A. Certain hardware may be specified with an "ANSI" classification (American National Standards Institute). ANSI defines grade 1 as appropriate for heavy duty commercial applications, grade 2 as appropriate for medium duty commercial applications, and grade 3 as appropriate for residential and/or light duty commercial applications.
- B. **Fire ratings:** Fire rated doors will be provided in accordance with all applicable codes.
- C. **Master keying:** All key operated locking doors will be provided with a master keying system capable of permitting multiple security levels. Keying hierarchy to be developed in cooperation with the owner.
- D. **Hardware finish:** Polished chrome, or brushed chrome finish to be selected by OWNER.
- E. **Hardware design:** ADA approved lever handles.
- F. **Hinges:** All doors will be provided with commercial duty hinges. Finish shall match the remaining hardware. Exterior doors and security doors shall have hinge pins that cannot be removed while the door is in the closed position.
- G. **Automatic closing devices:** Commercial duty parallel arm hydraulic door closers will be installed on all doors that should normally remain in a closed position.
- H. **Doorstops:** Floor or wall mounted door stops matching the finish hardware will be provided at all doors without automatic closers.

#### 2. Interior wood passage doors:

- A. **Door style:** 1 3/4" thick, solid core, smooth face, prefinished veneer door.
- B. **Finish:** Clear finish
- C. **Frame:** Knock down steel construction.
- D. **Hardware:**
  - i. Cylindrical locksets, passage sets or push/pull as appropriate for the intended application.
  - ii. ANSI grade 1 or 2 depending on application.
- E. **Finish:** Enamel paint on frame to match the building color scheme.
- F. **Full Glass Doors:** Provide an allowance of 15 fully glazed wood doors for suites and other areas.

## DIVISION 9 – FINISHES

### GYPSUM BOARD AND LIGHT GAUGE FRAMING:

1. Interior stud walls will be framed with light gauge galvanized steel studs as follows:
  - A. **Stud gauge and thickness:** As required to support all applicable loads, which are part of the construction.
  - B. **Wall heights:** All partition walls will extend to deck above.
2. Gypsum wallboard will be installed as follows:
  - A. **Thickness:** Generally wallboard will be minimum 5/8" thick. Certain specialty situations may utilize lesser thicknesses.
  - B. **Finish:** All wallboard will be taped prepared for the finish materials.
  - C. **Gypsum board finish at painted areas:** Where paint is specified to be installed over finished gypsum panels the following finish standards shall apply:
    - i. **Finish Level:** Level 4, as specified by the Gypsum Association of America. Level 4 is the highest finish level for taped drywall joints.
    - ii. **Limitations:** Taped drywall joints are subject to the following limitations, as outlined by the Gypsum Association of America.
      - In certain lighting conditions, particularly strong side lighting, drywall joints and fastener coatings may be visible. This is due to the fact that the joint compound will

have a slightly different texture and surface elevation than the gypsum panels. Low gloss paints, furnishings, and wall decoration will all help to minimize and/or eliminate seam visibility.

- Gloss and semi-gloss paints are not recommended for taped drywall finishes.
- Drywall finishing is always subject to some degree of imperfection.

D. **Fire Ratings:** Fire rated gypsum assemblies will be installed in accordance with applicable codes.

#### **FLOOR FINISH MATERIALS:**

I. The following outlines the floor finish material standards:

- A. **Carpet:** Install carpet tile at all office areas.
- B. **Luxury Vinyl Tile:** Install luxury vinyl tile at lobbies and break areas.
- C. **Vinyl Base:** Install vinyl base at new flooring.
- D. **Floor Preparation:** An allowance of \$61,625 has been carried for floor preparation.

#### **WALL FINISH MATERIAL STANDARDS:**

I. The following outlines the wall finish material standards:

- A. **Painted Drywall:**
  - i. **Installation:** Minimum 2 coats of eggshell finish paint over 1 coat primer.
  - ii. **Location:** Throughout.
- B. **Wallcovering:**
  - i. **Installation:** Install vinyl wallcovering on gypsum wallboard.
  - ii. **Location:** Restrooms.

#### **CEILING FINISHES:**

I. The following outlines the ceiling finish material standards:

- A. **2' x 2' Revealed Edge Acoustical Tile:**
  - i. **Grid:** 15/16" white prefinished steel suspended grid.
  - ii. **Location:** Throughout.

### **DIVISION 10 – SPECIALTIES**

#### **ARCHITECTURAL SPECIALTIES:**

I. **Fire Extinguishers:**

- A. **Location and Quantities:** As required by applicable codes.
- B. **Type:** As required by applicable codes.
- C. **Installation Style:** Extinguishers installed in semi-recessed cabinets in finished areas.

#### **SIGNAGE:**

I. Install custom plastic ADA compliant door signage at new openings and existing common area doors to coordinate with building color scheme.

- A. An allowance of \$19,500 has been carried for this work (260 openings @ \$75 each).

### **DIVISION 11 – EQUIPMENT**

None specified.

### **DIVISION 12 – FURNISHINGS**

None specified.

## **DIVISION 13 – SPECIAL CONSTRUCTION**

None specified.

## **DIVISION 14 – CONVEYING**

None specified.

## **DIVISION 15 – MECHANICAL SYSTEMS**

### **PLUMBING PIPING:**

1. **Water:**
  - A. **Piping Material:** Copper
  - B. Hot and cold domestic water piping will be installed as required to all plumbing fixtures provided as part of this specification
2. **Sewer/Waste Drainage:**
  - A. **Drain Material:** PVC or Cast Iron
  - B. **Vent Material:** PVC or Cast Iron
  - C. Sanitary waste and vent piping will be installed as required to all plumbing fixtures, including appropriate cleanouts.

### **PLUMBING FIXTURES:**

1. **Kitchen Sinks:**
  - A. **Type:** Single bowl stainless steel
  - B. **Mounting:** Under mount
2. **Kitchen Faucets:**
  - A. **Type:** Single lever swivel spout
  - B. **Finish:** Polished chrome

### **FIRE SUPPRESSION SYSTEMS:**

1. The fire suppression sprinkler system will be modified to coordinate with new floor plans and in accordance with all applicable codes.

### **HVAC SYSTEMS:**

1. Provide modifications and upgrades to existing HVAC system to accommodate floor plan changes.

## **DIVISION 16 – ELECTRICAL SYSTEMS**

### **POWER DISTRIBUTION:**

1. Existing electrical panels will be utilized for new modifications.
2. Receptacles in office areas will be installed as appropriate.
3. Receptacles in general purpose areas without continually operating appliances will be provided with convenience receptacles appropriately located to facilitate cleaning equipment.
4. Receptacles for equipment such as appliances and printers will be installed as required.

### **LIGHTING:**

1. Flat panel LED troffer lights will be installed in all new ceiling areas controlled by wall switches or occupancy sensors depending on the situation.

### **EMERGENCY AND EXIT LIGHTING:**

1. Emergency egress lighting and lighted exit signs will be provided as required by code.

**FIRE ALARMS:**

1. The existing fire alarm system will be modified as required by code to accommodate the renovations.
2. Fire alarm devices such as horn/strobe units, pull stations and smoke detectors will be installed as required by code.

**DATA WIRING:**

1. Install Category 6 wiring to all renovated areas as required. It is anticipated that each office will have up to two (2) jacks and will be wired to existing data closets on each floor.
2. Install Category 6 patch panels into existing racks at existing data closets on each floor.
3. Terminate and test new wiring.

**ACCESS CONTROL SYSTEMS:**

1. Install new card access system which will interface with all other State of New Hampshire Agencies.
2. Install card readers, wiring, terminations, and IT room equipment.
3. Install new workstation with ID printer and 200 ID badges with lanyards.
4. Install 5 panic alarms at interior office locations.
5. Provide and install door hardware such as electric strikes and magnetic locks.
  - A. An allowance of \$45,000 has been carried for this work (30 openings @ \$1,500 each).
6. Provide elevator traveling cables and card readers at elevators.
  - A. An allowance of \$30,000 has been carried for this work (3 lifts @ \$10,000 each).

**CAMERA SYSTEMS:**

1. Install new video management system for control of interior and exterior CCTV.
2. Install CCTV cameras at stairwells for floors 1, 3 and 4.
3. Install CCTV cameras at common area hallways on floors 1, 3 and 4.
4. Install CCTV cameras, stand alone or isolated systems at interview rooms.
5. Install CCTV cameras at evidence room.
6. Provide CCTV monitoring at perimeter of building(s) to cover all the parking areas.

**EXCLUSIONS****EXCLUSIONS:**

1. Hazardous material testing and removal other than listed above.
2. Municipal Permits and Fees other than as listed above.
3. Special Inspection Fees.
4. Winter Conditions.
5. Demolition other than as listed.
6. Removal of existing office partitions.
7. Structural improvements or repairs.
8. Roof repairs or patching other than as listed above.
9. Rigging or relocating existing equipment/furniture.
10. Shelving or racks.
11. Furnishings or fixtures.
12. Kitchen equipment or appliances.
13. Window Treatments.
14. Adding plumbing facilities or repairs other than as listed above.
15. Upgrading the existing fire protection sprinkler service.
16. In-rack sprinkler systems.
17. Upgrading the existing electrical service or panels.
18. Audio/Visual wiring/equipment.
19. Phone or computer systems.
20. Access control programming on the State system.
21. Renovations to areas of the building not included in this scope.
22. Restroom renovations other than new wall covering, ceilings and lighting.
23. Training room renovations other than new flooring, base, painting, ceilings, and lighting.

**OPTIONS**

**OPTIONS:**

- 1. Provide an allowance for upgrades to flooring, and decorative millwork..... \$250,000
- 2. ADA modifications per NH DAS email dated 8/31/22..... \$43,000

**PROJECT BUDGET**

CONSTRUCTION SCOPE OF WORK	\$7,315,000
OPTION 1	\$250,000
OPTION 2	\$43,000
<b>TOTAL</b>	<b>\$7,608,000</b>

## One Granite Place Phase 2 - Proposed Scope of Work

One Granite Place, Concord, NH

December 12, 2023

### DIVISION 1 – GENERAL CONDITIONS

#### PROJECT MANAGEMENT:

1. Capital Construction LLC (Capital) will assign a project manager who will be responsible for management and oversight of the project. This person will serve as FoxFire Property Management's (OWNER) primary contact. The project manager will work in close cooperation with OWNER throughout the design and construction process.
2. Project meetings between Capital and OWNER will take place a minimum of twice per month, or more often if required to keep all the parties properly informed as to the progress of the project.

#### DESIGN:

1. Project design documents will be provided by others.
2. Project plans will be reviewed by consultants for code compliance.
3. This proposal is based on the following documents by: NH - DAS.
  - A. A100 Demolition Plan – Level 1 11-29-23
  - B. A101 New Construction – Level 1 11-29-23
  - C. A200 Demolition Plan – Level 2 11-29-23
  - D. A201 New Construction – Level 2 11-29-23

#### PERMITTING:

1. All permitting of the renovation will be the responsibility of Capital.

#### TEMPORARY FACILITIES:

1. The following temporary construction-related facilities will be provided by Capital:
  - A. Temporary lighting.
  - B. Waste storage and removal; as required to maintain site in clean and orderly condition.
2. Project identification signage with the following information:
  - A. Capital's company name, logo and phone number.

#### INSURANCE:

1. General liability and worker's compensation policies will be provided by Capital.
2. A Builder's Risk policy will be provided during the construction by Capital.
3. All building components and systems described in this specification will be provided with a minimum 1-year warranty from the date of substantial completion.

#### PROJECT CLOSEOUT AND COMPLETION:

1. At the completion of the project, an Owner's Manual with the following information will be assembled onto a CD and presented to OWNER:
  - A. Operation and maintenance manuals for major building systems.
  - B. A copy of all available manufacturers' extended warranties.
  - C. Product designations and color selections for finish materials.
  - D. Electronic copies of construction documents.
2. All equipment will be placed into full operation upon completion of the project, including the testing and adjusting of all systems for proper operation.
3. Capital will clean the facility, as described below, prior to occupancy:
  - A. Remove temporary labels, stains and spots.
  - B. Remove waste materials, debris and rubbish from project site.
  - C. Clean interior glass surfaces.
  - D. Broom clean and mop hard surface flooring.
  - E. Vacuum carpet flooring.

4. A limited supply of finish materials such as flooring, ceiling tiles and paint materials will be delivered to OWNER for future repair and touch-up.

## **DIVISION 2 – SITE WORK**

### **DEMOLITION:**

1. Remove acoustical ceilings and lighting as necessary.
2. Remove flooring as necessary.
3. Remove existing doors and frames and save as required.
4. Remove existing walls and framing as necessary.
5. Provide make-safe electrical demolition at removed walls and office partitions.
6. Remove tombstone receptacles.
7. Remove data wiring no longer in service.
8. Remove one ceiling mounted monitor bracket.
9. Remove wall clocks and patch walls.

## **DIVISION 3 – CONCRETE**

None specified.

## **DIVISION 4 – MASONRY**

None specified.

## **DIVISION 5 – METALS**

None specified.

## **DIVISION 6 – WOOD & PLASTIC**

### **ROUGH CARPENTRY:**

1. Install blocking at new walls for millwork and accessories.

### **MILLWORK:**

1. Install millwork as follows:
  - A. Plastic laminate faced base cabinets at break areas.

### **SOLID SURFACE MATERIAL:**

1. Install solid surface material countertops as follows:
  - A. Break area countertops with backsplash

## **DIVISION 7 – THERMAL & MOISTURE PROTECTION**

### **ACOUSTICAL INSULATION:**

1. Sound insulating fiberglass batts will be installed within all new interior stud walls.

### **ROOFING SYSTEMS:**

1. Provide appropriate roof flashing at new penetrations for plumbing and mechanical systems.

#### CAULKING AND SEALANTS:

1. Install caulking at dissimilar materials.
2. Install fire caulking as necessary at penetrations.

### DIVISION 8 – DOORS & WINDOWS

#### DOORS:

##### 1. General Door Standards:

- A. Certain hardware may be specified with an "ANSI" classification (American National Standards Institute). ANSI defines grade 1 as appropriate for heavy duty commercial applications, grade 2 as appropriate for medium duty commercial applications, and grade 3 as appropriate for residential and/or light duty commercial applications.
- B. **Fire ratings:** Fire rated doors will be provided in accordance with all applicable codes.
- C. **Master keying:** All key operated locking doors will be provided with a master keying system capable of permitting multiple security levels. Keying hierarchy to be developed in cooperation with the owner.
- D. **Hardware finish:** Polished chrome, or brushed chrome finish to be selected by OWNER.
- E. **Hardware design:** ADA approved lever handles.
- F. **Hinges:** All doors will be provided with commercial duty hinges. Finish shall match the remaining hardware. Exterior doors and security doors shall have hinge pins that cannot be removed while the door is in the closed position.
- G. **Automatic closing devices:** Commercial duty parallel arm hydraulic door closers will be installed on all doors that should normally remain in a closed position.
- H. **Doorstops:** Floor or wall mounted door stops matching the finish hardware will be provided at all doors without automatic closers.

##### 2. Interior wood passage doors:

- A. **Door style:** 1 3/4" thick, solid core, smooth face, prefinished veneer door.
- B. **Finish:** Clear finish
- C. **Frame:** Knock down steel construction.
- D. **Hardware:**
  - i. Cylindrical locksets, passage sets or push/pull as appropriate for the intended application.
  - ii. ANSI grade 1 or 2 depending on application.
- E. **Finish:** Enamel paint on frame to match the building color scheme.

### DIVISION 9 – FINISHES

#### GYPSUM BOARD AND LIGHT GAUGE FRAMING:

1. Interior stud walls will be framed with light gauge galvanized steel studs as follows:
  - A. **Stud gauge and thickness:** As required to support all applicable loads which are part of the construction.
  - B. **Wall heights:** All partition walls will extend to deck above where called for.
2. Gypsum wallboard will be installed as follows:
  - A. **Thickness:** Generally wallboard will be minimum 5/8" thick. Certain specialty situations may utilize lesser thicknesses.
  - B. **Finish:** All wallboard will be taped prepared for the finish materials.
  - C. **Gypsum board finish at painted areas:** Where paint is specified to be installed over finished gypsum panels the following finish standards shall apply:
    - i. **Finish Level:** Level 4, as specified by the Gypsum Association of America. Level 4 is the highest finish level for taped drywall joints.
    - ii. **Limitations:** Taped drywall joints are subject to the following limitations, as outlined by the Gypsum Association of America.
      - In certain lighting conditions, particularly strong side lighting, drywall joints and fastener coatings may be visible. This is due to the fact that the joint compound will have a slightly different texture and surface elevation than the gypsum panels. Low

gloss paints, furnishings, and wall decoration will all help to minimize and/or eliminate seam visibility.

- Gloss and semi-gloss paints are not recommended for taped drywall finishes.
- Drywall finishing is always subject to some degree of imperfection.

D. **Fire Ratings:** Fire rated gypsum assemblies will be installed in accordance with applicable codes.

#### **FLOOR FINISH MATERIALS:**

1. The following outlines the floor finish material standards:
  - A. **Carpet:** Install carpet tile as necessary.
  - B. **Luxury Vinyl Tile:** Install luxury vinyl tile at lobbies and break areas.
  - C. **Vinyl Base:** Install vinyl base at new flooring.
  - D. **Floor Preparation:** An allowance of \$6,000 has been carried for floor preparation.

#### **WALL FINISH MATERIAL STANDARDS:**

1. The following outlines the wall finish material standards:
  - A. **Painted Drywall:**
    - i. **Installation:** Minimum 2 coats of eggshell finish paint over 1 coat primer.
    - ii. **Location:** Throughout as required.

#### **CEILING FINISHES:**

1. Reconfigure acoustic ceilings as necessary to accommodate floor plan changes.
2. The following outlines the ceiling finish material standards for new products:
  - A. **2' x 2' Revealed Edge Acoustical Tile:**
    - i. **Grid:** 15/16" white prefinished steel suspended grid.

### **DIVISION 10 – SPECIALTIES**

#### **ARCHITECTURAL SPECIALTIES:**

1. **Fire Extinguishers:**
  - A. **Location and Quantities:** As required by applicable codes.
  - B. **Type:** As required by applicable codes.
  - C. **Installation Style:** Extinguishers installed in semi-recessed cabinets in finished areas.

#### **SIGNAGE:**

1. Install custom plastic ADA compliant door signage at new openings and existing common area doors to coordinate with building color scheme.
  - A. An allowance of \$2,125 has been carried for this work (25 openings @ \$85 each).

### **DIVISION 11 – EQUIPMENT**

None specified.

### **DIVISION 12 – FURNISHINGS**

None specified.

### **DIVISION 13 – SPECIAL CONSTRUCTION**

None specified.

## DIVISION 14 – CONVEYING

None specified.

## DIVISION 15 – MECHANICAL SYSTEMS

### PLUMBING PIPING:

1. **Water:**
  - A. **Piping Material:** Copper
  - B. Hot and cold domestic water piping will be installed as required to all plumbing fixtures provided as part of this specification
2. **Sewer/Waste Drainage:**
  - A. **Drain Material:** PVC or Cast Iron
  - B. **Vent Material:** PVC or Cast Iron
  - C. Sanitary waste and vent piping will be installed as required to all plumbing fixtures, including appropriate cleanouts.

### PLUMBING FIXTURES:

1. **Kitchen Sinks:**
  - A. **Type:** Single bowl stainless steel
  - B. **Mounting:** Under mount
2. **Kitchen Faucets:**
  - A. **Type:** Single lever swivel spout
  - B. **Finish:** Polished chrome

### FIRE SUPPRESSION SYSTEMS:

1. The fire suppression sprinkler system will be modified to coordinate with new floor plans and in accordance with all applicable codes.

### HVAC SYSTEMS:

1. Provide modifications and upgrades to existing HVAC system to accommodate floor plan changes.
- 2.

## DIVISION 16 – ELECTRICAL SYSTEMS

### POWER DISTRIBUTION:

1. Existing electrical panels will be utilized for new modifications.
2. Receptacles in office areas will be installed as appropriate.
3. Receptacles in general purpose areas without continually operating appliances will be provided with convenience receptacles appropriately located to facilitate cleaning equipment.
4. Receptacles for equipment such as appliances and printers will be installed as required.

### LIGHTING:

1. Reconfigure lighting to accommodate floor plan changes.

### EMERGENCY AND EXIT LIGHTING:

1. Emergency egress lighting and lighted exit signs will be provided as required by code.
2. Update building controls to include new reheat coils and floor plan modifications.
3. Test and balance HVAC system.

### FIRE ALARMS:

1. The existing fire alarm system will be modified as required by code to accommodate the renovations.
2. Fire alarm devices such as horn/strobe units, pull stations and smoke detectors will be installed as required by code.

**DATA WIRING:**

1. Install Category 6 wiring to all renovated areas as required.
2. Install Category 6 patch panels into existing racks at existing data closet.
3. Terminate and test new wiring.

**ACCESS CONTROL SYSTEMS:**

1. Install new card access system components which will interface with all other State of New Hampshire Agencies.
2. Install card readers, wiring, terminations, and equipment.
3. Provide 75 access cards.

**EXCLUSIONS**

**EXCLUSIONS:**

1. Hazardous material testing and removal other than listed above.
2. Municipal Permits and Fees other than as listed above.
3. Special Inspection Fees.
4. Winter Conditions.
5. Demolition other than as listed.
6. Removal of existing office partitions.
7. Structural improvements or repairs.
8. Roof repairs or patching other than as listed above.
9. Rigging or relocating existing equipment/furniture.
10. Shelving or racks.
11. Furnishings or fixtures.
12. Kitchen equipment or appliances.
13. Window Treatments.
14. Adding plumbing facilities or repairs other than as listed above.
15. Upgrading the existing fire protection sprinkler service.
16. In-rack sprinkler systems.
17. Upgrading the existing electrical service or panels.
18. Power poles and whips.
19. Audio/Visual wiring/equipment.
20. Camera systems.
21. Phone or computer systems.
22. Access control programming on the State system.
23. Renovations to areas of the building not included in this scope.
24. Restroom renovations other than new wall covering, ceilings and lighting.
25. Training room renovations other than new flooring, base, painting, ceilings, and lighting.

**PROJECT BUDGET**

CONSTRUCTION SCOPE OF WORK	\$725,000
OWNER CONTINGENCY	<u>\$75,000</u>
TOTAL	<b>\$800,000</b>

# State of New Hampshire

## Department of State

### CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that CAPITAL CONSTRUCTION LLC is a New Hampshire Limited Liability Company registered to transact business in New Hampshire on April 01, 2019. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 816227

Certificate Number : 0006653787



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 29th day of March A.D. 2024.

A handwritten signature in black ink, appearing to read "David M. Scanlan", is written over a faint circular stamp.

David M. Scanlan  
Secretary of State

**LLC Certificate of Authority**

I, Dana Adams, hereby certify that I am the duly qualified and authorized Managing Member of CAPITAL CONSTRUCTION LLC, a New Hampshire limited liability company formed under RSA 304-C (the "LLC").

I further certify that the LLC has been duly authorized to consent to the assignment of that certain Standard Form of Agreement Between Owner and Contractor (AIA Document A102-2017), dated November 23, 2022, by and between 2GRANITE PLACE LLC and the LLC, as supplemented by the other Contract Documents (as that term is defined in the foregoing referenced Agreement) and as subsequently amended (collectively hereinafter, the "South Granite Place Construction Contract"), by 2GRANITE PLACE LLC to the STATE OF NEW HAMPSHIRE as the existing Owner and the anticipated future Owner of the Project thereunder, respectively, and also to the assumption of said South Granite Place Construction Contract by said STATE OF NEW HAMPSHIRE; and I further certify that the LLC is further duly authorized to enter into said partially performed South Granite Place Construction Contract with said STATE OF NEW HAMPSHIRE by virtue of said assignment and assumption, said STATE OF NEW HAMPSHIRE to be the replacement Owner thereunder for the duration of the effectiveness of said Contract, subject to the performance of both existing parties under said Contract prior to the anticipated sale of the underlying real property by 2GRANITE PLACE LLC to said STATE OF NEW HAMPSHIRE.

I further certify that I have been duly authorized to bind the LLC and to take all actions and to execute all documents on its behalf as may be necessary to effectuate the LLC's consent to the assignment and assumption contemplated hereby and to further and complete the performance of the LLC under said Contract thereafter. I further certify my understanding that the State of New Hampshire will rely on this certificate as evidence of the matters certified herein.

DATED:

4/3/2024

ATTEST:



Dana Adams, Individually