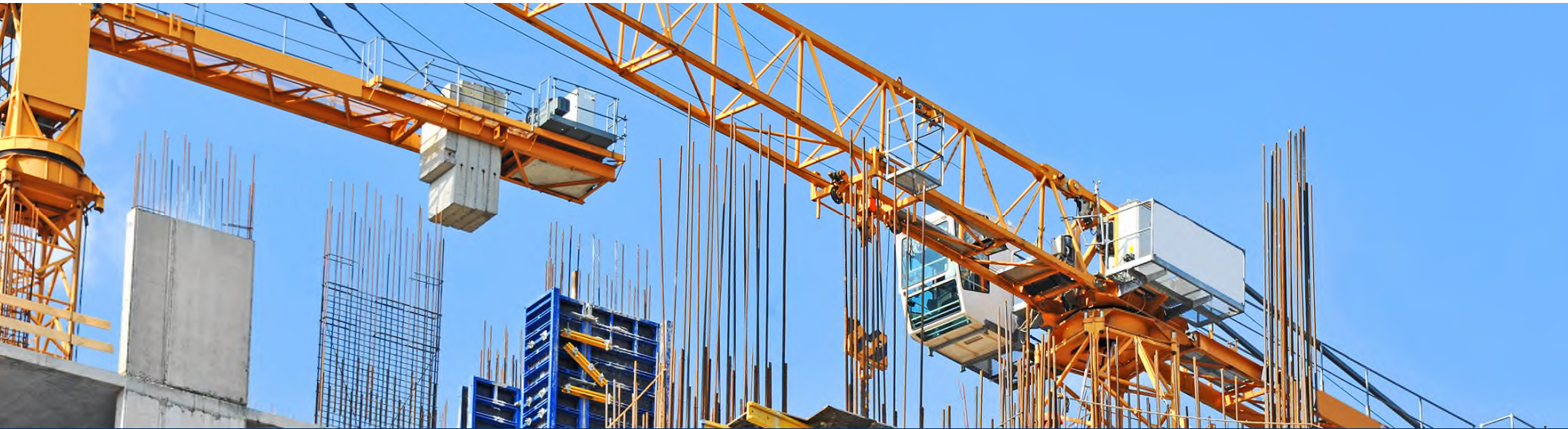




ETHICAL CONSTRUCTION CONTRACTS: NEGOTIATIONS, TERMS AND COMPLIANCE

Adam P. Handfinger, Esq.
Co-Founder/Advisory Board Head
www.DocumentCrunch.com



NEGOTIATIONS



Fairness



Honesty



Transparency



NEGOTIATIONS – FAIRNESS



Minnesota Court Rules

PROFESSIONAL RULES



Minnesota Rules of Professional Conduct

Rule 4.2 Communication with Person Represented by Counsel

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

(Amended to govern all lawyer disciplinary actions commenced on or after January 1, 1995; amended effective October 1, 2005.)

NEGOTIATIONS – FAIRNESS



Minnesota Court Rules

PROFESSIONAL RULES



Minnesota Rules of Professional Conduct

Rule 4.3 Dealing with Unrepresented Person

In dealing on behalf of a client with a person who is not represented by counsel:

- (a) a lawyer shall not state or imply that the lawyer is disinterested;
- (b) a lawyer shall clearly disclose that the client's interests are adverse to the interests of the unrepresented person, if the lawyer knows or reasonably should know that the interests are adverse;
- (c) when a lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding; and
- (d) a lawyer shall not give legal advice to the unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of the unrepresented person are or have a reasonable possibility of being in conflict with the interests of the client.

(Amended effective October 1, 2005.)

NEGOTIATIONS – FAIRNESS

ULTIMATE RESPONSIBILITY: ENTITY THAT DOES THE WORK



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READY	35. MT Speical.pdf	Comprehensive Review - Construction Industry Contracts	Josh Levy	December 17, 2021 11:55 AM		n/a	
READY	PTCS Test - CD 200.pdf	Project Team Cheat Sheet - Construction Industry Contracts	Kyle Dungca	December 8, 2021 11:29 AM		n/a	
READY	7Test - CD 200.pdf	Comprehensive Review - Construction Industry Contracts	Kyle Dungca	November 18, 2021 4:49 PM		View	
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Waivers/Limits of Consequential Damages

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STANDARD AGREEMENT AND GENERAL CONDITIONS BETWEEN OWNER AND CONSTRUCTOR (Lump Sum)



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Blue Boxes: Instructions for fields that may or may not be required for a complete contract.
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Notices - Where and how to send	34			Rationale & Insights	Sample Language
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Owner Directed Acceleration	No Provision(s) Found			Rationale & Insights	Sample Language
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Performance/Payment Bonds	28	29		Rationale & Insights	Sample Language
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Retainage	22	23		Rationale & Insights	Sample Language
Savings	No Provision(s) Found			Rationale & Insights	Sample Language
Wage Requirements (Prevailing, Davis-Bacon etc.)	No Provision(s) Found			Rationale & Insights	Sample Language
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B. Risks Allocated					

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correction and retesting.

3.8 WARRANTY

3.8.1 Constructor warrants that all materials and equipment shall be new unless otherwise specified, of good quality, in conformance with the Contract Documents, and free from defective workmanship and materials. At Owner's request, Constructor shall furnish satisfactory evidence of the quality and type of materials and equipment furnished. Constructor further warrants that the Work shall be free from material defects not intrinsic in the design or materials required in the Contract Documents. Constructor's warranty does not include remedies for defects or damages caused by normal wear and tear during normal usage, use for a purpose for which the Project was not intended, improper or insufficient maintenance, modifications performed by Owner or others, or abuse. Constructor's warranty shall commence on the Date of Substantial Completion of the Work, or of a designated portion.

3.8.2 To the extent products, equipment, systems, or materials incorporated in the Work are specified and purchased by Owner, they shall be covered exclusively by the warranty of the manufacturer. There are no warranties which extend beyond the description on the face of any such warranty. For such incorporated items, ALL OTHER WARRANTIES EXPRESSED OR IMPLIED INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.

3.8.3 Constructor shall obtain from its Subcontractors and Suppliers any special or extended warranties required by the Contract Documents. Constructor's liability for such warranties shall be limited to the one-year correction period as provided in the section below. After that period, Constructor shall provide reasonable assistance to Owner in enforcing the obligations of Subcontractors or Suppliers for such extended warranties.

3.9 CORRECTION OF WORK WITHIN ONE YEAR

3.9.1 Before Substantial Completion and within one year after the date of Substantial Completion of the Work, if any Defective Work is found, Owner shall promptly notify Constructor in writing. Unless Owner provides written acceptance of the condition, Constructor shall promptly correct the Defective Work at its own cost and time and bear the expense of additional services required for correction of any Defective Work for which it is responsible. If within the one-year correction period Owner discovers and does not promptly notify Constructor or give Constructor an opportunity to test or correct Defective Work as reasonably requested by Constructor, Owner waives Constructor's obligation to correct that Defective Work as well as Owner's right to claim a breach of the warranty with respect to that Defective Work.

3.9.2 With respect to any portion of Work first performed after Substantial Completion, the one-year correction period shall commence when that portion of the Work is substantially complete. Correction periods shall not be extended by corrective work performed by Constructor.

3.9.3 If Constructor fails to correct Defective Work within a reasonable time after receipt of written notice from Owner before final payment, Owner may correct it in accordance with Owner's right to carry out the Work. In such case, an appropriate Change Order shall be issued deducting the cost of correcting the Defective Work from payments then or thereafter due Constructor. If payments then or

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thereafter due Constructor are not sufficient to cover such amounts, Constructor shall pay the difference to Owner.

3.9.4 Constructor's obligations and liability, if any, with respect to any Defective Work discovered after the one-year correction period shall be determined by the Law. If, after the one-year correction period but before the applicable limitation period has expired, Owner discovers any Work which Owner considers Defective Work, Owner shall, unless the Defective Work requires emergency correction, promptly notify Constructor and allow Constructor an opportunity to correct the Work if Constructor elects to do so. If Constructor elects to correct the Work, it shall provide written notice of such intent within fourteen (14) Days of its receipt of notice from Owner and shall complete the correction of Work within a mutually agreed timeframe. If Constructor does not elect to correct the Work, Owner may have the Work corrected by itself or others, and, if Owner intends to seek recovery of those costs from Constructor, Owner shall promptly provide Constructor with an accounting of actual correction costs.

3.9.5 If Constructor's correction or removal of Defective Work causes damage to or destroys other completed or partially completed Work or existing buildings, Constructor shall be responsible for the cost of correcting the destroyed or damaged property.

3.9.6 The one-year period for correction of Defective Work does not constitute a limitation period with respect to the enforcement of Constructor's other obligations under the Contract Documents.

3.9.7 Before final payment, at Owner's option and with Constructor's agreement, Owner may elect to accept Defective Work rather than require its removal and correction. In such case, the Contract Price shall be equitably adjusted for any diminution in the value of the Project caused by such Defective Work.

3.10 CORRECTION OF COVERED WORK

3.10.1 Upon issuance of an Interim Directive, Work that has been covered without a requirement that it be inspected before being covered shall be uncovered for Owner's inspection. Owner shall pay for the costs of uncovering and replacement if the Work proves to be in conformance with the Contract Documents, or if the defective condition was caused by Owner or Others. If the uncovered Work proves to be defective, Constructor shall pay the costs of uncovering and replacement.

3.10.2 If any Work is covered contrary to requirements in the Contract Documents, Owner may issue

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Assurance of Owner Financing	14	31							Rationale & Insights	Sample Language
Design Responsibility	5	6	12	35					Rationale & Insights	Sample Language
Fiduciary Duties	No Provision(s) Found								Rationale & Insights	Sample Language
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and latent defects.

9.8.7 CONSTRUCTOR ACCEPTANCE OF FINAL PAYMENT Unless Constructor provides written identification of unsettled claims with an application for final payment, its acceptance of final payment constitutes a waiver of such claims.

9.9 LATE PAYMENT Payments due but unpaid shall bear interest from the date payment is due at the statutory rate at the place of the Project.

ARTICLE 10 INDEMNITY, INSURANCE, AND BONDS

10.1 INDEMNITY

10.1.1 To the fullest extent permitted by law, Constructor shall indemnify and hold harmless Owner, Owner's officers, directors, members, consultants, agents, and employees, Design Professional, and Others (the Indemnitees) from all claims for bodily injury and property damage, other than to the work itself and other property insured, including reasonable attorneys' fees, costs and expenses, that may arise from the performance of the Work, but only to the extent caused by the negligent or intentionally wrongful acts or omissions of Constructor, Subcontractors, Suppliers,

Subcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. Constructor shall be entitled to reimbursement of any defense costs paid above Constructor's percentage of liability for the underlying claim to the extent provided for by §10.1.2.

10.1.2 To the fullest extent permitted by law, Owner shall indemnify and hold harmless Constructor, its officers, directors, members, consultants, agents, and employees, Subcontractors, Suppliers, or anyone employed directly or indirectly by any of them or anyone for whose acts any of them may be liable from all claims for bodily injury and property damage, other than property insured, including reasonable attorneys' fees, costs, and expenses, that may arise from the performance of work by Owner, Design Professional, or Others, but only to the extent caused by the negligent or intentionally wrongful acts or omissions of Owner, Design Professional, or Others. Owner shall be entitled to reimbursement of any defense costs paid above Owner's percentage of liability for the underlying claim to the extent provided for by §10.1.1.

10.1.3 NO LIMITATION ON LIABILITY In any and all claims against the Indemnitees by any employee of Constructor, anyone directly or indirectly employed by Constructor or anyone for whose acts Constructor may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Constructor under workers' compensation acts, disability benefit acts, or other employment benefit acts.

10.2 INSURANCE

10.2.1 Before starting the Work and as a condition precedent to payment, Constructor shall procure and maintain in force Workers' Compensation Insurance, Employers' Liability Insurance, Business Automobile Liability Insurance, and Commercial General Liability Insurance (CGL). The CGL policy shall include coverage for liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, contractual liability, and broad

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DRAFT AIA Document A201™ - 2017
General Conditions of the Contract for Construction

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

THE OWNER:
(Name, legal status and address)

THE ARCHITECT:
(Name, legal status and address)

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ARCHITECT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK

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.
This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.
For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

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C. Remedies

- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK

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DESIGN – FOR THE DESIGNERS



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ARTICLE 3 CONSTRUCTOR'S RESPONSIBILITIES

Constructor shall use its diligent efforts to perform the Work in an expeditious manner consistent with the Contract Documents. Such Work includes furnishing construction administration and management services.

3.1 GENERAL RESPONSIBILITIES

3.1.1 Constructor shall provide all labor, materials, equipment, and services necessary to complete the Work, all of which shall be provided in full accord with the Contract Documents and shall include any Work reasonably inferable from the Contract Documents.

3.1.2 Constructor represents that it is an independent contractor and that it is familiar with the type of work required by this Agreement.

3.1.3 Unless the Contract Documents instruct otherwise, Constructor shall be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized. When following construction means, methods, techniques, sequences, or procedures instructed by the Contract Documents, Constructor is not liable to Owner for damages resulting from compliance with such instructions unless (a) Constructor recognized and (b) failed to timely report to Owner any error, inconsistency, omission, or unsafe practice that it discovered in such requirements.

3.1.4 Constructor shall perform Work only within locations allowed by the Contract Documents, Law, and applicable permits.

3.2 COOPERATION WITH WORK OF OWNER AND OTHERS

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Note

This is a preferred provision for contractors

Constructor shall use its diligent efforts to perform the Work in accordance with the Contract Documents. Such Work includes furnishing construction services.

3.1 GENERAL RESPONSIBILITIES

3.1.1 Constructor shall provide all labor, materials, equipment, and services necessary to perform the Work, all of which shall be provided in full accord with the Contract Documents and any Work reasonably inferable from the Contract Documents.

3.1.2 Constructor represents that it is an independent contractor and that it is familiar with the type of work required by this Agreement.

3.1.3 Unless the Contract Documents instruct otherwise, Constructor shall be responsible for the supervision and coordination of the Work, including the construction means, methods, techniques, sequences, and procedures utilized. When following construction means, methods, techniques, sequences, or procedures instructed by the Contract Documents, Constructor is not liable to Owner for damages resulting from compliance with such instructions unless (a) Constructor recognized and (b) failed to timely report to Owner any error, inconsistency, omission, or unsafe practice that it discovered in such requirements.

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3.2 COOPERATION WITH WORK OF OWNER AND OTHERS

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3.2 COOPERATION WITH WORK OF OWNER AND OTHERS

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Owner or Others, Constructor shall give Owner prompt written notification of any defects Constructor discovers in their work which will prevent the proper execution of the Work. Constructor's obligations in this subsection do not create a responsibility for the work of Owner or Others, but are for the purpose of facilitating the Work. If Constructor does not notify Owner of defects interfering with the performance of the Work, Constructor acknowledges that the work of Owner or Others is not defective and is acceptable for the proper execution of the Work. Following receipt of written notice from Constructor of defects, Owner shall promptly issue an Interim Directive informing Constructor what action, if any, Constructor shall take with regard to the defects.

3.3 CONTRACT DOCUMENT REVIEW

3.3.1 Before commencing the Work, Constructor shall examine and compare the drawings and specifications with information furnished in the Contract Documents, relevant field measurements made by Constructor, and any visible conditions at the Worksite affecting the Work.

3.3.2 Should Constructor discover any errors, omissions, or inconsistencies in the Contract Documents, Constructor shall promptly report them to Owner. It is recognized, however, that Constructor is not acting in the capacity of a licensed design professional, and that Constructor's examination is to facilitate construction and does not create an affirmative responsibility to detect errors, omissions, or inconsistencies or to ascertain compliance with a Law, building code, or regulation. Following receipt of written notice from Constructor of errors, omissions, or inconsistencies, Owner shall promptly inform Constructor what action, if any, Constructor shall take with regard to the errors, omissions, or inconsistencies.

3.3.3 In accordance with this Agreement, Constructor may be entitled to adjustments of the Contract Price or Contract Time because of clarifications or instructions arising out of Constructor's reports described in this §3.3.

3.3.4 Nothing in §3.3 shall relieve Constructor of responsibility for its own errors, inconsistencies, or omissions.

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Weather Days Defined/Assumed	No Provision(s) Found							Rationale & Insights	Sample Language

General Notes

THIS CONTRACT IS MODIFIED FROM THE ORIGINAL FORMAT. So, please be very careful to ensure you read each provision and do NOT presume to know what is in here.

Also, there are some significant risks of non-payment here, so be aware of the right to stop work on page 23. It's a 7-day notice requirement.

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9.6.4 Upon Owner's written acceptance of the Certificate of Substantial Completion, Owner shall pay to Constructor the remaining retainage held by Owner for the Work described in the Certificate of Substantial Completion, less a sum equal to one hundred fifty percent (150%) of the estimated cost of completing or correcting remaining items on that part of the Work, as agreed to by the Parties as

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9.6.4 Upon Owner's written acceptance of the Certificate of Substantial Completion, Owner shall pay to Constructor the remaining retainage held by Owner for the Work described in the Certificate of Substantial Completion, less a sum equal to one hundred fifty percent (150%) of the estimated cost of completing or correcting remaining items on that part of the Work, as agreed to by the Parties as

7 days!!!!

HONESTY





Minnesota Court Rules

PROFESSIONAL RULES



Minnesota Rules of Professional Conduct

Rule 4.1 Truthfulness in Statements to Others

In the course of representing a client a lawyer shall not knowingly make a false statement of fact or law.



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General Conditions of the Contract for Construction

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

DRAFT AIA Document A201™ - 2017
General Conditions of the Contract for Construction

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

ARTICLE 2 OWNER

§ 2.1 General

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative. The Contractor hereby expressly agrees to only look toward the Owner with regard to any claims that it may have arising from this Agreement and expressly waives any and all claims arising from the Owner's performance or non-performance of any of its obligations as set forth in this Agreement against the Owner's affiliates, parents, subsidiaries, predecessors, successors, principals, officers, directors, employees, agents and contractors (past and present).

§ 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 requires; (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





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(page 31)[Subsurface Conditions](#)[Insurance Requirements](#)**ARTICLE 4 OWNER'S RESPONSIBILITIES**

4.1 INFORMATION AND SERVICES Owner's responsibilities under this article shall be fulfilled with reasonable detail and in a timely manner.

4.2 FINANCIAL INFORMATION Before commencing the Work and thereafter, at the written request of Constructor, Owner shall provide Constructor with evidence of Project financing. Evidence of such financing shall be a condition precedent to Constructor's commencing or continuing the Work. Constructor shall be notified before any material change in Project financing.

4.3 WORKSITE INFORMATION To the extent Owner has obtained, or is required to obtain the following Worksite information, then Owner shall provide Constructor the following:

4.3.1 information describing the physical characteristics of the Worksite, including surveys, Worksite evaluations, legal descriptions, data or drawings depicting existing conditions, subsurface conditions, and environmental studies, reports, and investigations;

4.3.2 tests, inspections, and other reports dealing with environmental matters, Hazardous Material and other existing conditions, including structural, mechanical, and chemical tests, required by the Contract Documents or by Law;

4.3.3 the limits of Pollution Liability Insurance covering the Worksite held by Owner; and

4.3.4 any other information or services requested in writing by Constructor which are required for Constructor's performance of the Work and under Owner's control.

4.4 BUILDING PERMIT, FEES, AND APPROVALS Except for those permits and fees related to the Work which are the responsibility of Constructor, Owner shall secure and pay for all other permits, approvals, easements, assessments, and fees required for the development, construction, use, or occupancy of permanent structures or for permanent changes in existing facilities, including the building permit.

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11.4.3.3 cancel any subcontracts, orders, and commitments as Owner directs; and

11.4.3.4 sell at prices approved by Owner any materials, supplies, and equipment as Owner directs, with all proceeds paid or credited to Owner.

11.5 CONSTRUCTOR'S RIGHT TO TERMINATE

11.5.1 Seven (7) Days' after Owner's receipt of written notice from Constructor, Constructor may terminate this Agreement if the Work has been stopped for a thirty (30) Day period through no fault of Constructor for any of the following reasons:

- (a) under court order or order of other governmental authorities having jurisdiction;
- (b) as a result of the declaration of a national emergency or other governmental act during which, through no act or fault of Constructor, materials are not available; or
- (c) suspension by Owner for convenience pursuant to §11.1.

11.5.2 In addition, upon seven (7) Days' written notice to Owner and an opportunity to cure within three (3) Days, Constructor may terminate this Agreement if Owner:

11.5.2.1 fails to furnish reasonable evidence pursuant to §4.2 that sufficient funds are available and committed for Project financing; or

11.5.2.2 assigns this Agreement over Constructor's reasonable objection; or

11.5.2.3 fails to pay Constructor in accordance with this Agreement and Constructor has stopped Work in compliance with §9.5; or

11.5.2.4 otherwise materially breaches this Agreement.

11.5.3 Upon termination by Constructor in accordance with §11.5.2, Constructor is entitled to recover from Owner payment for all Work executed and for any proven loss, cost, or expense in connection with the Work, including all demobilization costs plus reasonable Overhead and profit on Work not performed.

11.6 OBLIGATIONS ARISING BEFORE TERMINATION Even after termination, the provisions of this Agreement still apply to any Work performed, payments made, events occurring, costs charged or

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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.

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

§ 11.2 Owner's Insurance

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

§ 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.

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terminate this Agreement.

10.2.4 To the extent commercially available to Constructor from its current insurance company, insurance policies required under §10.2.1 shall contain a provision that the insurance company or its designee must give Owner written notice transmitted in paper or electronic format: (a) 30 Days before coverage is nonrenewed by the insurance company and (b) within 10 Business Days after cancelation of coverage by the insurance company. Before commencing the Work and upon renewal or replacement of the insurance policies, Constructor shall furnish Owner with certificates of insurance until one year after Substantial Completion or longer if required by the Contract Documents. In addition, if any insurance policy required under §10.2.1 is not to be immediately replaced without lapse in coverage when it expires, exhausts its limits, or is to be cancelled, Constructor shall give Owner prompt written notice upon actual or constructive knowledge of such condition.

10.3 PROPERTY INSURANCE

10.3.1 Unless otherwise directed in writing by Owner, before starting the Work, Constructor shall obtain and maintain a Builder's Risk Policy upon the entire Project for the full cost of replacement at the time of loss, including existing structures. This insurance shall also: (a) name Constructor, Subcontractors, Subsubcontractors, Suppliers, and Design Professional as insureds; (b) be written in such form as to cover all risks of physical loss except those specifically excluded by the policy; and (c) insure at least against and not exclude:

10.3.1.1 the perils of fire, lightning, explosion, windstorm, hail, smoke, aircraft (except aircraft, including helicopter, operated by or on behalf of the Contractor) and vehicles, riot and civil commotion, theft, vandalism, malicious mischief, debris removal, flood, earthquake, earth movement, water damage, wind damage, testing if applicable, collapse however caused;



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(b) Owner accepts such assignment after termination by notifying Constructor and Subcontractor or Constructor and Supplier in writing, and assumes all rights and obligations of Constructor pursuant to each subcontract or supply agreement.

5.3.1 If Owner accepts such an assignment, and the Work has been suspended for more than thirty

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measures after two (2) Business Days' notice and allocate the cost among those responsible during the following pay period.

4.10 COST OF CORRECTING DAMAGED OR DESTROYED WORK With regard to damage or loss attributable to the acts or omissions of Owner or Others and not to Constructor, Owner shall either (a) promptly remedy the damage or loss (and assume affected warranty responsibilities), (b) accept the damage or loss, or (c) issue an Interim Directive or Change Order to remedy the damage or loss. If Constructor incurs costs or is delayed due to such loss or damage, Constructor may seek an equitable adjustment in the Contract Price or Contract Time under this Agreement.

ARTICLE 5 SUBCONTRACTS

5.1 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.1.1 Promptly after executing this Agreement, Constructor shall provide Owner and, if directed, Design Professional with a written list of the proposed Subcontractors and significant Suppliers. If Owner has a reasonable objection to any proposed Subcontractor or Supplier, Owner shall notify Constructor in writing. Failure to promptly object shall constitute acceptance.

5.1.2 If Owner has reasonably and promptly objected, Constructor shall not contract with the proposed Subcontractor or Supplier, and Constructor shall propose another acceptable Subcontractor or Supplier to Owner. An appropriate Change Order shall reflect any increase or decrease in the Contract Price or Contract Time because of the substitution.

5.2 BINDING OF SUBCONTRACTORS AND SUPPLIERS Constructor agrees to bind every Subcontractor and Supplier (and require each Subcontractor to so bind its subcontractors and significant suppliers) to the Contract Document's applicable provisions to that portion of the Work.

5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

If this Agreement is terminated, each subcontract and supply agreement shall be assigned by Constructor to Owner, subject to the prior rights of any surety, provided that: (a) this Agreement is terminated by Owner pursuant to §11.3 or §11.4; and

(b) Owner accepts such assignment after termination by notifying Constructor and Subcontractor or Constructor and Supplier in writing, and assumes all rights and obligations of Constructor pursuant to each subcontract or supply agreement.

5.3.1 If Owner accepts such an assignment, and the Work has been suspended for more than thirty

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6.6.1 The Parties shall each require similar waivers in contracts with Subcontractors and Others retained for the Project.

ARTICLE 7 PRICE

7.1 LUMP SUM Lump sum is the Contract Price of [] dollars (\$[]) subject to adjustment as provided in this Agreement.

7.2 ALLOWANCES

7.2.1 All allowances stated in the Contract Documents shall be included in the Contract Price. While Owner may direct the amounts of, and the particular Suppliers or Subcontractors to supply specific allowance items, if Constructor reasonably objects to a Supplier or Subcontractor, it shall not be required to contract with them. Owner shall select allowance items in a timely manner so as not to delay the Work.

7.2.2 Allowances shall include the costs of materials, supplies, and equipment delivered to the Worksite, less applicable trade discounts and including requisite taxes, unloading and handling at the Worksite, and labor and installation, unless specifically stated otherwise. Constructor's Overhead and profit for the allowances is included in the Contract Price, not in the allowances. If incurred costs are greater or less than the allowances, a Party may seek an equitable adjustment in the Contract Price or Contract Time under ARTICLE 8.

ARTICLE 8 CHANGES

Changes in the Work that are within the general scope of this Agreement shall be accomplished, without invalidating this Agreement, by Change Order and Interim Directive.

8.1 CHANGE ORDER

8.1.1 Constructor may request or Owner may order changes in the Work or the timing or sequencing of the Work that impact the Contract Price or the Contract Time. All such changes in the Work that affect Contract Time or Contract Price shall be formalized in a Change Order and processed in accordance with this article.

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6.6 LIMITED MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES Except for damages mutually agreed upon by the Parties as liquidated damages in §6.5 and excluding losses covered by insurance required by the Contract Documents, the Parties agree to waive all claims against each other for any consequential damages that may arise out of or relate to this Agreement, except for those specific items of damages excluded from this waiver as mutually agreed upon by the Parties and identified below. Owner agrees to waive damages, including but not limited to Owner's loss of use of the Project, any rental expenses incurred, loss of income, profit, or financing related to the Project, as well as the loss of business, loss of financing, loss of profits not related to this Project, loss of reputation, or insolvency. Constructor agrees to waive damages, including but not limited to loss of business, loss of financing, loss of profits not related to this Project, loss of bonding capacity, loss of reputation, or insolvency. The provisions of this section shall also apply to the termination of this Agreement and shall survive such termination. The following are excluded from this mutual waiver: []

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6.6.1 The Parties shall each require similar waivers in contracts with Subcontractors and Others retained for the Project.

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>> Liquidated Damages

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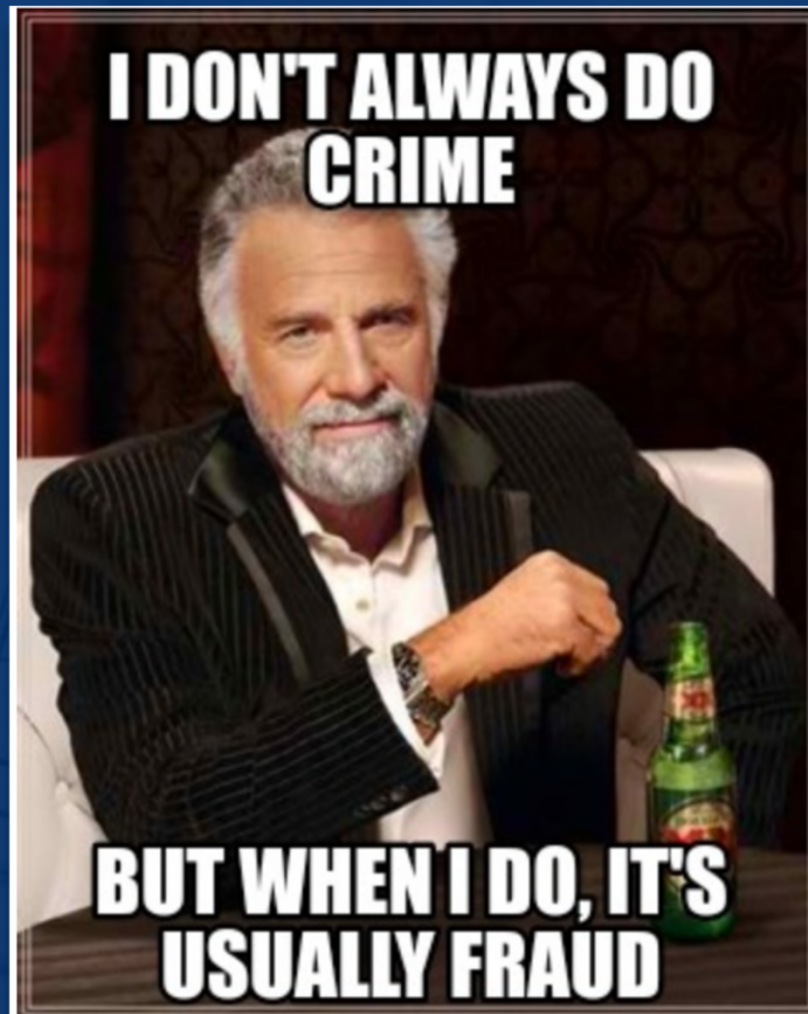
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COMPLIANCE

Ethical Contract Administration





UNITED STATES FALSE CLAIMS ACT

- The FCA provides that any person who knowingly submits a false claims to the government is liable for treble damages plus a penalty.
- The FCA allows private citizens to file suits on behalf of the government (called “qui tam” suits) against those who have defrauded the government. Private citizens who successfully bring qui tam actions may receive a portion of the government’s recovery. Many Fraud Section investigations and lawsuits arise from such qui tam actions.
- The Department of Justice obtained more than \$2.2 billion in settlements and judgments from civil cases involving fraud and false claims against the government in the fiscal year ending Sept. 30, 2020.



MINNESOTA FALSE CLAIMS ACT

- The Minnesota FCA closely mirrors the Federal FCA and punishes individuals and companies that submit false or fraudulent claims to obtain (or avoid paying) money or property to the State or a local government.
- The Act provides for triple damages and penalties up to over \$23K for every false or fraudulent claim.
- The Minnesota FCA allows whistleblowers to bring suit in the name of the State of Minnesota where a wrongdoer engages in conduct that defrauds the state or local governments of taxpayer dollars.
- Since the Act took effect in 2010, the OAG has recovered over \$57 million in public funds from FCA enforcement work.



United States FALSE CLAIMS ACT

- Balfour Beatty Communities recently pled guilty and was fined \$65M for defrauding U.S. military.
- The alleged “Fraud Scheme” ran from 2013 to 2019 and caused military families to suffer as they waited through “lengthy and unnecessary delays in resolution of maintenance issues”, according to the DOJ.
- Reportedly some residents had toxic mold, insect infestations, water leaks and burst pipes.
- Work orders were allegedly closed before maintenance had been completed and resident comment cards were destroyed and falsified.
- This allegedly induced the military to pay bonus fees not earned.
- Damages claimed by the federal government totaled \$18.7 million, per court documents.



PROCUREMENT FRAUD

Bechtel National Inc., Bechtel Corporation, AECOM Energy & Construction, Inc., and their joint venture Waste Treatment Completion Company, LLC agreed to pay over \$57 million to resolve allegations that they submitted false claims to the U.S. Department of Energy by charging inflated labor hours and by billing for work not actually performed to construct and maintain the Hanford Waste Treatment Plant

PROCUREMENT FRAUD

QuantaDyn Corporation agreed to pay \$37 million to resolve both its criminal and civil liability for engaging in a bribery scheme to steer government contracts for training simulators to the company. William T. Dunn Jr., the President and Chief Executive Officer of QuantaDyn, separately agreed to pay \$500,000 to resolve his personal civil liability for the alleged scheme



PROCUREMENT FRAUD

Bradken Inc., a subsidiary of Hitachi Construction Machinery and a leading supplier of high-yield steel for naval submarines, paid over \$10 million to resolve allegations that it produced and sold substandard steel components for installation on U.S. Navy submarines. The government alleged that Bradken produced castings that failed lab tests and did not meet the Navy's standards, and that its Director of Metallurgy falsified test results to hide the failures

PROCUREMENT FRAUD

Unitrans International, Inc. agreed to pay \$27 million to resolve allegations that it fraudulently induced the Army and the U.S. Defense Logistics Agency (DLA) to award wartime contracts for food and trucks by falsely certifying compliance with United States sanctions against Iran.

The agreement also resolved allegations that a company associated with Unitrans falsely represented construction progress on a warehouse to induce DLA to award the prime vendor contract to provide food to U.S. troops in Afghanistan.





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