

# DRAFT AIA® Document A201™ – 2007

## General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

[Redacted area]

THE OWNER:

(Name and address)

[Redacted area]

THE ENGINEER:

(Name and address)

[Redacted area]

Note: All references to the "Architect" in the Contract Documents shall be deemed to refer to the engineer listed above.

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#### ADDITIONS AND DELETIONS:

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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 Owner. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

#### § 1.1.2 THE CONTRACT

The Contract Documents form the "Contract for Construction" or "Contract." 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 except as set forth in Article 5 herein, (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.

#### § 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed. The Work may constitute the whole or a part of the Project. The Work shall include all labor, services, supervision, materials, supplies, fixtures, tools, equipment, transportation, parking, material lay down area, jobsite security, preconstruction services (including without limitation: estimating, budgeting, scheduling, and consultation on materials, constructability, reliability and maintenance and value engineering) and all other items necessary to construct and complete the Project pursuant to the Contract Documents, including all items, construction and services inferable from the Contract Documents in order to complete the Work in full compliance with the Contract Documents and all applicable laws, regulations, ordinances and codes. **||edit as necessary||**

#### § 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 [Intentionally Omitted]

**§ 1.1.8 REVIEW** The term "review" where used in conjunction with Owner's response to submittals, requests, applications, inquiries, reports and claims by the Contractor, will be limited to the Owner's responsibilities and duties as specified herein. In no case will the Owner's review, certification, response, or decision be interpreted as a release of the Contractor from responsibilities to fulfill requirements of the Contract Documents.

**§ 1.1.9 FINAL COMPLETION** The term "Final Completion" means that all Work has been completed in accordance with the Contract Documents (including punch list items).

**§ 1.1.10 STANDARD OF CARE** The term "Standard of Care" means that degree of care, skill and diligence ordinarily exercised by a contractor of similar knowledge, experience, and expertise as Contractor, performing work on projects of the size, complexity and nature as the Project.

## **§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

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

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

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

**§ 1.2.4** The Drawings shall be accurately followed, preference being given to figured dimensions over scaled, and to large scale details over small scale drawings. In the event of inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes, and ordinances, the Contractor shall (i) provide the better quality or greater quantity of Work or (ii) comply with the more stringent requirement. The terms and conditions of this Section, however, shall not relieve the Contractor of any of the obligations set forth in Section 3.2. Except as set forth above, if there is any difference, conflict or discrepancy between two or more of the Contract Documents or between the Contract Documents and any final-reviewed submittals, the following order of priority shall apply:

- a) Submittals reviewed and approved by Owner or Architect;
- b) Specifications;
- c) Drawings;
- d) Face Sheets;
- e) Supplementary Conditions; and
- f) General Conditions.

In general, Drawings compliment Specifications as to the scope, quality and workmanship of the Work. Anything mentioned in the Specifications and not shown on the Drawings, or shown in the Drawings and not mentioned in the Specifications, shall be of like effect as if shown or mentioned or both. Any inconsistency or question of intent in any of the Contract Documents that cannot be resolved with reference to this Section shall be referred to Owner for interpretation before proceeding. Thereafter, the matter may, at Owner's election, be submitted to the Architect for resolution to the extent provided in Subsection 4.2.11.

## **§ 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 Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or

for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's intellectual property rights.

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

#### **§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM**

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

### **ARTICLE 2 OWNER**

#### **§ 2.1 GENERAL**

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

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

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

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

**§ 2.2.2** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities. Notwithstanding the foregoing, it shall be the responsibility of the Contractor (subject to any limitations contained in the Contract Documents) to advise the Owner as to which permits and fees are required for the proper construction of the Project.

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

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

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

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

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or fails to carry out Work in accordance with the Contract Documents, in addition to all other rights and remedies available to Owner, including the right to terminate this Agreement pursuant to Section 14.2 below, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

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

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

## **ARTICLE 3 CONTRACTOR**

### **§ 3.1 GENERAL**

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

**§ 3.1.2** The Contractor shall expeditiously and diligently perform the Work in accordance with the Contract Documents in a sound and workmanlike manner and using new materials that are equal in quality to the best of their kind and in sufficient quantities to ensure the proper and rapid execution of the Work.

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

### **§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR**

**§ 3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has (i) visited the Project site, (ii) satisfied itself as to the nature of the Project site, (iii) become generally familiar with local conditions under which the Work is to be performed, (iv) correlated personal observations with requirements of the Contract Documents, and (v) included in the Contract Sum and Contract Time the appropriate allowances for site conditions, all in accordance with the Standard of Care. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section.

**§ 3.2.2** Contractor acknowledges and agrees that it has examined all of the Contract Documents in accordance with the Standard of Care. Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Owner may require. It is recognized that the Contractor's

review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

**§ 3.2.3** If Contractor, after reviewing the Contract Documents in accordance with the Standard of Care, discovers any violation of any local, state and federal laws, statutes, ordinances, codes, rules and regulations including, without limitation, the Americans with Disabilities Act, that apply to the Contractor's performance of the Work (collectively "Law" or "Laws"). , it will immediately report such violation to Owner in writing. Contractor shall ensure that all workmanship and materials will conform to the Law. Contractor shall ensure that the Work, as performed, will meet with the approval of, and pass any inspection of, any governmental authority having jurisdiction thereof.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Owner or Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.1, 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.1, 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damages resulting from non-compliance with Laws, 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, unless the Contractor breaches the Standard of Care.

### **§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Owner. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

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

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

**§ 3.3.4** Contractor will protect against loss or damage from any cause all parts of the Work, temporary or permanent, finished or not, until Final Completion. Contractor will take reasonable precautions and maintain reasonable safeguards to protect against loss or damage to persons or property owing to weather conditions and arising out of its activities at or about the site including, without limitation, bracing and reinforcing where necessary and providing for guards, locks, fences, signs, barricades, lights and such other warning and security devices where appropriate. Except to the extent covered by the builder's risk insurance required to be carried under Article 11, Contractor will bear and be liable for, and Owner will not be responsible for, any loss or damage to the Work and any material, equipment or other thing used in the Work or placed at the site including, but not limited to, loss or damage due to theft, trespass or vandalism before Final Completion of the Work.

**§ 3.3.5** The Contractor shall provide a Project office at the Project site adequate for the personnel and office facilities of the Project staff and the Contractor, with space and facilities adequate for the Owner's and the Architect's representatives. Such space for the Owner and the Architect shall be in a separate, lockable area, and shall be supplied with a phone/fax/computer line, air conditioning, and furniture.

**§ 3.3.6** The Contractor shall conduct regularly scheduled (in no event less than weekly) job meetings, *||Please verify timing||* and special meetings as required, to be attended by the Architect, the Subcontractors and the Owner to discuss, among other things, procedures, progress, problems, coordination and scheduling. Minutes of such meetings shall be prepared by the Contractor within 48 hours of the meeting and copies thereof shall be distributed to all interested parties, including but not limited to the Owner and its lender, for review and corrections.

**§ 3.3.7** Contractor shall establish and maintain quality control procedures for all parts of the Work, take measures to prevent the installation of any Work not in conformity with the Contract Documents (including, but not limited to, material or equipment not properly approved), suspend operations upon the installation thereof, and report promptly to the Owner that the particular Work or material fails to conform to the Contract Documents. Contractor shall ascertain that all tests of soils, cement, concrete, structural or reinforcing steel, or any other material or equipment required to be tested under the terms of the Contract Documents are performed by qualified consultants. Contractor shall employ a quality assurance and quality control program satisfactory to Owner.

### **§ 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. Contractor shall, prior to commencement of the Work, provide to Owner (i) an itemized list of all work/trades it will be performing and (ii) a detailed breakdown of labor rates for all such trades.

**§ 3.4.2** Except in the case of minor changes in the Work authorized by the Owner in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after all back-up material required by Owner relating to such substitution is provided, and in accordance with a Change Order or Construction Change Directive. Unless Contractor is unable to obtain a specified item due to an event out of Contractor's control, no substitution will be considered by the Owner.

**§ 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. The Contractor shall only employ labor on the Project or in connection with the Work capable of working harmoniously with all trades, crafts and any other individuals associated with the Project. The Contractor shall also use its best efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance. Should any persons performing the Work engage in a strike or work stoppage, or cease to work due to picketing or a labor dispute of any kind, Owner may, at its option and without prejudice to any other remedies it may have, after notice to Contractor, provide any such Work and deduct the cost thereof from any monies then due or thereafter to become due Contractor.

### **§ 3.5 WARRANTY**

For a period of two years following the Town or other governmental authority issuing a final certificate of occupancy or equivalent, or, afterwards, repair of defective work, the Contractor warrants to the Owner 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 Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor's warranty will not be restricted by any manufacturer's warranty or Subcontractor's warranty (or the lack of any Subcontractor's warranty). Contractor agrees that it will not cause or allow any Subcontractor to install any product or procedure which voids any warranty. The Contractor is responsible for Subcontractors' performance and/or non-performance of warranty work. The refusal of a Subcontractor or supplier to correct defective work for which it is responsible will not excuse the Contractor from performing such work under the Warranty. All warranties from Contractor to Owner relating to the Work are fully assignable by Owner.

### § 3.6 TAXES

Contractor will bear sole and exclusive responsibility for the payment of all sales, construction, use, consumer and other similar taxes imposed by local, state or federal law applicable to the Work, materials supplied by Contractor, payments received by Contractor and payments made by Contractor. Contractor will be solely responsible for the payment of all local, state and federal income taxes, withholding requirements, self employment taxes, social security taxes and other taxes on the payments made to Contractor and payments made by Contractor to its employees and suppliers.

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

§ 3.7.1 As part of the Work, 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 to perform the Work. Although Owner will reimburse Contractor for such payments without overhead or markup, the Contract Sum will exclude such amounts. *Coordinate with § 2.2.2*

§ 3.7.2 The Contractor shall comply with and give notices required by Law. Such compliance shall include any requirements under native or protected plants Law.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to Law, 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 could not have been discovered by Contractor in its performance of its duties pursuant to Section 3.2.1 above, and 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 five (5) days after first observance of the conditions. The Owner will promptly investigate such conditions and, if the Owner determines that they meet the criteria set forth above and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site do not meet the criteria set forth above and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Contractor in writing, stating the reasons. If the Contractor disputes the Owner's determination or recommendation, Contractor may proceed as provided in Article 15. No adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or that reasonably should have been disclosed by the Contractor's inspections, tests, reviews, and preconstruction services that the Contractor had the opportunity to make or should have performed pursuant to Section 3.2.1 above.

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

§ 3.7.6 The Contractor shall make all necessary arrangements and perform all necessary services in the care and maintenance of all public facilities during the construction period and until final acceptance of the Work by the Owner. Should any permits or inspections be necessary for the use of public streets, sidewalks or other facilities, the Contractor shall obtain all necessary permits, post all necessary guarantees and bonds and be responsible for repair and correction of damage as required by authorities having jurisdiction.

### § 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 furnish in writing to the Owner the name and qualifications of the proposed "Project Team" who will be providing supervision and administrative functions on behalf of the Contractor. The Owner may reply within 14 days to the Contractor in writing stating (1) whether the Owner has reasonable objection to the proposed Project Team or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14 day period shall constitute notice of no reasonable objection. **||Edit if Project Team is selected at execution of the contract – attach as Exhibit||**

**§ 3.9.3** The Contractor shall not employ any member of the Project Team to whom the Owner has made reasonable and timely objection. The Contractor shall not change any member of the Project Team without the Owner's consent, which shall not unreasonably be withheld or delayed. Owner may at any time direct Contractor to replace any member of the Project Team, in which case, Contractor shall promptly replace such member with a new member acceptable to Owner.

### **§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES**

**§ 3.10.1** The Construction Schedule shall (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (hereinafter referred to as "Milestone Dates"). The Contractor shall monitor the progress of the Work for conformance with the requirements of the Construction Schedule and shall promptly advise the Owner of any delays or potential delays. The Construction Schedule shall be updated to reflect actual conditions, if requested by the Owner, and to reflect any extensions pursuant to an approved Change Order. In the event of any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary.

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

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

### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect, the Owner and their representatives and shall be delivered to the Owner upon completion of the Work as a record of the Work as constructed.

### § 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

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

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

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

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

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

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

required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents. **||If the Project has a design/build component, coordinate with other design/build provisions.||**

### § 3.13 USE OF SITE

The Contractor shall confine operations at the site to areas permitted by applicable Laws and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### § 3.14 CUTTING AND PATCHING

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

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

### § 3.15 CLEANING UP

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

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

§ 3.15.3 The Contractor's clean-up responsibilities shall include, without limitation, the following: remove stains, spots, marks and dirt; remove paint, spots and smears from all surfaces; and leave the Work clean of dirt, smattering of paint, plaster, concrete, mortar, fingerprints and foreign matter. Further, the Contractor shall clean fixtures, cabinet work and equipment, removing stains, paint, dirt and dust, and leave same in undamaged, new condition; clean aluminum in accordance with recommendations of the manufacturer; leave all floor services in a broom-clean condition and clean resilient floors thoroughly with a well rinsed mop containing only enough moisture to clean off all surface dirt or dust and buff dry by machine to bring the surfaces to sheen.

### § 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect and all applicable governmental authorities access to the Work in preparation and progress wherever located. Contractor agrees to cooperate with any **[Construction Manager and/or any]** consultants engaged by Owner to provide peer review services. Owner shall have, at all reasonable times, the right to enter the Project for conducting its marketing activities, inspecting the Work, and all other reasonable purposes.

### § 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

### § 3.18 INDEMNIFICATION

3.18.1 Indemnification. The provisions of this Section 3.18 will survive the expiration or termination of this Agreement.

3.18.2 Claim. For purposes of this Section 3.18, a "Claim" or "Claims" is any notice of claim, notice of commencement of legal proceeding, claim, demand, obligation, cause of action, damage, loss, lien, liability, judgment, penalty, cost or expense (including, without limitation, attorneys' fees and costs, expert witness fees and costs and other litigation, mediation, arbitration or judicial reference expenses), of every kind or nature, whether based on tort, contract, or equitable principles, in any way arising from or in any way connected with the performance or nonperformance of this Agreement by Contractor or its employees, agents, officers, directors, shareholders, representatives, affiliates, independent contractors, suppliers, subcontractors, anyone employed directly or indirectly by any of them or for whose acts they may be liable, and its and their successors or assigns (collectively, "Contractor Parties").

3.18.3 Indemnitees. The Term "Indemnitees" means Owner and its members, managers, shareholders, and affiliates, and the officers, directors, shareholders, insurers, representatives, agents, employees, successors and assigns of all such parties.

3.18.4 Scope of Indemnification. Subject to the limitations set forth below, Contractor shall indemnify and hold harmless the Indemnitees for, from and against any and all Claims, except to the extent Claims arise out of the active negligence or willful misconduct of Owner.

Nothing in Contractor's indemnity obligations shall be construed to negate, abridge or otherwise reduce any of Owner's other rights of indemnity which would otherwise exist. In any and all Claims against any Indemnitee brought by any Contractor Party, the indemnification obligation hereunder shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any subcontractor under workers' or workman's compensation acts, disability benefit acts or other employee benefit acts.

An Indemnitee need not make a payment under an indemnified obligation in order to enforce the indemnity provisions contained in this Section.

3.18.5 Defense. Contractor shall immediately defend (with legal counsel reasonably satisfactory to Owner), the Indemnitees for, from and against any and all Claims. Such defense obligation shall arise immediately upon written notice of Claim being provided to Contractor, and includes, without limitation, (i) the obligation to defend with respect to any alternative dispute resolution proceeding authorized under this Agreement, (ii) matters related to investigation and resolution of Claims and (iii) the obligation to pay all costs, including attorney's fees incurred in enforcing this indemnity agreement. It is the parties' intention that any of the Indemnitees shall be entitled to obtain summary adjudication of Contractor's duty to defend and/or duty to indemnify the Indemnitees at any time. Payment by any Indemnitee to Contractor is not a condition precedent to Contractor's obligations under this Section.

3.18.6 Scope of Defense. Contractor's defense obligation shall apply regardless of the fault or negligence of the Contractor Parties, whether or not the Claim has any merit, and regardless of the fault, concurrent negligence (whether active or passive), any act or omission to act, or misconduct by any Indemnitee. Contractor's duty to defend the Indemnitees applies whether or not the issue of Contractor's liability, breach of this Agreement or other obligation or fault has been finally determined and whether or not any of the Indemnities have paid any sums or incurred any detriment, arising out of or resulting directly or indirectly from Contractor's performance of the Work.

3.18.7 Insurance. The indemnification obligations of Contractor under the Agreement shall not be limited by the amounts or types of insurance (or the deductibles or self insured retention amounts of such insurance) which Contractor is required to carry under this Agreement. The right to indemnification by Contractor shall be in addition to Owner's separate rights under the insurance to be provided by Contractor under this Agreement.

### **§ 3.19 MECHANICS LIENS**

Provided Owner has paid to Contractor all undisputed sums due under the Contract Documents, Contractor shall prevent (i) the recording of any mechanic's liens against the Project by its Subcontractors or any other persons or parties directly or indirectly employed by Contractor or its Subcontractors, including without limitation, all laborers, materialmen and others entitled to assert mechanic's liens; (ii) legal actions involving title to the Project or any portion thereof as a result of any mechanic's liens described in clause (i) above, and any attachments or executions or judgments pursuant thereto; and (iii) the filing of any stop notices with Owner or any lender by its Subcontractors or any such other persons or parties. If any such lien is recorded, or any such legal action is commenced, or any such stop notice is filed, Contractor shall, within ten (10) days, cause the effect of any such lien or legal action to be removed from the Project and the effect of any such stop notice to be negated by means of an appropriate bond (in an amount not less than 125% of such lien claim) or other action satisfactory to Owner. The cost of any premiums incurred in connection with such bonds and security shall be the responsibility of the Contractor and shall not be part of, or cause any adjustment to, the Contract Sum. Contractor may litigate or otherwise object to or dispute any matter leading to the recording of such a lien, or the commencement of such a legal action, or the filing of such a stop notice, provided that Contractor shall first cause the effect of the same to be removed or negated as provided in this Section. If Contractor fails to do so within such ten (10) day period, Owner may employ whatever means it may, in its sole discretion, deem best to cause said lien, attachment, or suit, together with its effect upon title to the Project, to be removed, discharged, compromised, or dismissed, and the effect of any such stop notices or other notices to be negated. Contractor shall, upon demand, reimburse Owner for all costs incurred in connection with any such action by Owner, including, without limitation, reasonable attorneys' fees and costs incurred in connection therewith.

**§ 3.20 SWPPP**. Contractor shall (i) retain a Qualified SWPPP Practitioner to implement the Storm Water Pollution Prevention Plan for the Project ("SWPPP"), (ii) provide and document appropriate training to all personnel engaged in construction activities, (iii) conduct and document all required inspections, (iv) implement, maintain, and repair as necessary appropriate Best Management Practices, (v) prepare any required Rain Event Action Plan, (vi) take and have analyzed properly any required samples, (vii) immediately report to Owner any the results of any sampling and any non-compliance with the SWPPP, (viii) assist Owner in submittal of all required documentation to the Storm Water Multiple Application and Report Tracking System, and (ix) comply with all other provisions of the SWPPP as may be modified from time to time. Contractor shall also comply with all applicable water quality Laws, and all ordinances, guidelines, and manuals of the applicable local governmental jurisdictions applicable to stormwater discharges from construction sites. If Contractor observes any violation of any such Laws, its shall immediately correct such violation. Any Work performed by Contractor that is not in compliance with such Laws shall be redone in compliance with such Laws at Contractor's sole expense. The SWPPP will be part of the Contract Documents.

**§ 3.21 PREVENTION OF MOLD**. Contractor will conform with the highest standards of the industry in order to keep the Project free from mold, moisture and other conditions that may cause mold to be present. Without limiting the foregoing, Contractor will use reasonable precautions to avoid the presence of mold or moisture in any construction materials. Contractor will also comply with all Laws relating to the remediation of any mold that may be present within the Project at any time as a result of the Work.

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 GENERAL**

**§ 4.1.1** The "Architect" is the person or entity identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§ 4.1.2** Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner and Architect. Owner reserves the right to perform certain administrative duties listed herein as responsibilities of the Architect.

**§ 4.1.3** If the employment of the Architect is terminated, the Owner shall employ a successor architect whose status under the Contract Documents shall be that of the Architect.

## § 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect may assist Owner in the administration of the Contract as described in the Contract Documents. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect and/or Owner may 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, neither the Architect nor the Owner will be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Neither the Architect nor the Owner will have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. Neither the Architect nor the Owner will be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Neither the Architect nor the Owner will have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

## § 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

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

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, if requested by Owner, the Architect will promptly review and certify the completion of the portion of the Work described in the Application for Payment and will issue Certificates for Payment for such portions of the Work, provided that the amount due to Contractor will be determined by Owner in accordance with the Contract Documents.

§ 4.2.6 The Architect will advise the Owner to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will advise the Owner to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed.

§ 4.2.7 The Architect may, at Owner's request, review and make recommendations to Owner regarding 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 and Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 If requested by the Owner, the Architect will prepare Change Orders and Construction Change Directives.

**§ 4.2.9** If requested by the Owner, the Architect will conduct inspections to make recommendations to the Owner regarding 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 make recommendations to the Owner regarding a final Certificate for Payment pursuant to Section 9.10.

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

**§ 4.2.11** 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.

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

## **ARTICLE 5 SUBCONTRACTORS**

### **§ 5.1 DEFINITIONS**

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

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

### **§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK**

**§ 5.2.1** Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Contractor in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. The Contractor shall furnish to the Owner at the time of award of each Subcontract or material purchase order a Certificate of Insurance evidencing satisfactory coverage of the Subcontractor including evidence of coverage of all additional insureds. Upon Owner's request, Contractor will deliver to Owner a current list with the name, address, phone number and contact person for each Subcontractor.

**§ 5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection. If Owner instructs Contractor to terminate any Subcontractor, Contractor shall immediately do so upon receipt of written notice from Owner and shall replace such Subcontractor with a new Subcontractor acceptable to Owner. Owner shall indemnify, defend and hold Contractor harmless for, from and against any claims, liabilities, damages, costs and expenses caused by the termination of any such Subcontractor whom the Owner has previously approved, except to the extent caused by Contractor's improper actions in connection with any such termination.

**§ 5.2.3** If the Owner has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by

the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

**§ 5.2.4** The Contractor shall not terminate or substitute a Subcontractor, person or entity previously selected without the Owner's prior written consent.

### **§ 5.3 SUBCONTRACTUAL RELATIONS**

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

Each subcontract and sub-subcontract shall contain (i) indemnity provisions substantially the same as Section 3.18 of the General Conditions to the extent allowed by law, (ii) insurance provisions substantially the same as those set forth in Addendum "B" to the General Conditions, including, without limitation, for Subcontractors of any tier, naming the Owner as an additional insured, (iii) alternate dispute resolution provisions substantially the same as Addendum "A" to the General Conditions, (iv) a provision stating that Contractor shall assign its interest in the subcontract to Owner, which assignment shall become effective upon Contractor's default under the Contract Documents or upon termination of the Agreement for any reason, and the Subcontractor's receipt of notification from Owner that Owner has chosen to have the assignment become effective, (v) a provision stating that the Owner is an intended third party beneficiary of the subcontract; (vi) warranty provisions substantially similar to Sections 3.5 and 12.2.2 herein; and (vii) such other provisions as Owner may request, each of which shall be in form and substance satisfactory to Owner.

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

**§ 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** The contingent assignment provided for above shall also be for the benefit of the Owner's lender and each subcontract shall also contain such provision as the Owner's lender shall require to create such assignment. Each subcontract shall specifically provide that the Owner or Owner's lender shall only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the Owner's exercise of any rights under this conditional assignment. Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity

## ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

### § 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

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

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

### § 6.2 MUTUAL RESPONSIBILITY

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

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

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

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

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

### § 6.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and 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 and Contractor; a Construction Change Directive and an order for a minor change in the Work may be issued by the Owner alone.

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

**§ 7.1.4** So long as the Owner gives Contractor a reasonable amount of time before the Completion Date to complete the Change in the Work, Contractor shall not be entitled to a change in the Substantial Completion Date or an adjustment to the Construction Schedule.

**§ 7.1.5** The Contract Sum and the Contract Time may only be changed by Change Order or by Construction Change Directive. A Change Order signed by the Contractor indicates Contractor's agreement therewith, including the adjustment to the Contract Sum and/or the Contract Time. No change in the Work, whether by way of alterations or additions to the Work, shall be the basis of any addition to or change in the Contract Sum and/or the Contract Time unless and until such alteration or addition has been authorized by a written Change Order or Construction Change Directive executed and issued in strict compliance with the requirements of the Contract Documents. No course of conduct or dealing between the parties, or express or implied acceptance of alterations or addition to the Work, and no claim that Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is in fact any unjust enrichment, shall be the basis for any claim to increase the Contract Sum and/or the Contract Time.

**§ 7.1.6** If so requested by Owner, upon receipt of any Change Order that affects the general scope of the Work or changes the Contract Sum, Contractor shall promptly notify its surety of such change, shall cause the amount of the applicable bonds to be adjusted accordingly, and shall furnish to Owner the modified bonds issued by its surety.

## **§ 7.2 CHANGE ORDERS**

**§ 7.2.1** A Change Order is a written instrument signed by the Owner and Contractor, and Owner's lender, if applicable, 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.

**§ 7.2.2** Agreement on any Change Order shall constitute a final settlement, accord and satisfaction, of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the Construction Schedule. In the event a Change Order increases the Contract Sum, the Contractor shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Contract Documents. The Contractor shall have no right to base a claim on the cumulative effect of Change Orders.

## **§ 7.3 CONSTRUCTION CHANGE DIRECTIVES**

**§ 7.3.1** A Construction Change Directive is a written order signed by the Owner, 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. A construction Change Directive may also be used by Owner prior to approval of a Change Order. Notwithstanding the subsequent disapproval of a Change Order, Owner shall be obligated to compensate Contractor for any Work performed pursuant to a Construction Change Directive. If Owner disapproves the Change Order, Owner shall notify Contractor in writing and Contractor shall immediately cease performing the change in the Work directed by the Construction Change Directive. In such event, the Contract Sum shall be adjusted in accordance with Section 7.3.3 for Work performed pursuant to the Construction Change Directive prior to the date of such notice.

**§ 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 chosen by Owner:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;

- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

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

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

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

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, and, 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 Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

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

§ 7.3.8 Owner shall be entitled to an immediate downward adjustment in the Contract Sum due to defects in the Work, costs incurred by Owner in correcting or completing the Work, and other similar adjustments, and shall direct Contractor to execute an appropriate Change Order. 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 Owner. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs.

§ 7.3.10 When the Owner and Contractor agree concerning the adjustments in the Contract Sum and Contract Time, such agreement shall be effective immediately and shall be recorded by the preparation and execution of an appropriate 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 Owner may order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Owner and shall be binding on the Contractor.

## ARTICLE 8 TIME

### § 8.1 DEFINITIONS

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

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

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

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

### § 8.2 PROGRESS AND COMPLETION

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

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

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

### § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner in writing pending resolution of a dispute, then the Contract Time shall be extended by Change Order to the extent such delay is demonstrated by Contractor's computerized scheduling system maintained with current scheduling and Work progress information, to affect the critical path and cause a delay in Substantial Completion of the Work beyond the Contract Time. Notwithstanding the foregoing, Contractor shall not be entitled to time extensions for any delay under this Subsection unless (i) Contractor notifies Owner in writing of such delay no later than five (5) days after the first observance of any such delay, (ii) such delay was not caused by the fault or neglect of Contractor, or any of the Subcontractors, or any other person or entity employed directly or indirectly by Contractor or any Subcontractor, (iii) such delay does not arise by reason of events or conditions for which Contractor is responsible or for which it is liable under the Contract Documents, and (iv) Contractor has made all reasonable efforts to avoid or mitigate such delay. In addition, the Contract Time shall not be extended for adverse weather conditions except as provided in Section 15.1.5.2. Extensions of the Contract Time will not be granted for Owner's or Architect's failure to act upon any submittals, render any interpretations or furnish additional drawings, or any other failure to respond to a Contractor request, unless Owner or Architect fails to so act within fifteen (15) days after receipt of a submittal or written request, and not unless such a request is reasonable. In the case of a continuing delay, only one notice is necessary. The notice of delay shall describe the cause in reasonable detail. Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work. Such estimate shall be updated or revised as necessary to keep Owner reasonable informed as required by the provisions of the Contract Documents pertaining to Schedules.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15. Any increase in the Contract Sum arising from an extension of the Contract Time shall be limited to the actual increase in general conditions costs (which general conditions costs shall be in accordance with pricing for such items set forth in the most recent schedule of values approved by Owner), incurred by Contractor which are directly attributable to the period of time by which the Contract Time is extended.

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

**§ 8.3.4** To the fullest extent permitted by law, Owner and its agents and employees shall not be held responsible for any losses or damages sustained by Contractor through delays caused by Owner, or its agents and employees, or by abnormal weather conditions, or by any other cause, and Contractor agrees not to make, and hereby waives, any claims for damages for delays, and agrees that the sole right and remedy therefor shall be an extension of the Contract Time and an increase in the Contract Sum pursuant to Section 8.3.2 above.

**§ 8.3.5** Should Contractor fail to comply with the Construction Schedule or in Owner's opinion otherwise fail, refuse or neglect to supply a sufficient amount of labor or material in the prosecution of the Work, Owner shall have the right to (i) direct Contractor to work additional shifts or overtime, including weekends and holidays, without any additional compensation, as may be required to comply with the Construction Schedule or to otherwise diligently prosecute the Work without additional cost to the Owner, (ii) furnish such additional labor and/or materials as may be required to comply with the Construction Schedule and charge any resultant and associated costs to the Contractor, deducting these costs from the Contract Sum, (iii) other similar measures, or (iv) terminate this Agreement as set forth herein (collectively, "Extraordinary Measures"). Such Extraordinary Measures shall continue until the progress of the Work complies with the stage of completion required by the Contract Documents. The Owner's right to require Extraordinary Measures is solely for the purpose of ensuring the Contractor's compliance with the Construction Schedule. The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by the Owner.

**§ 8.3.6** IF SUBSTANTIAL COMPLETION OF THE PROJECT IS DELAYED BEYOND \_\_\_\_\_ ("OUTSIDE COMPLETION DATE"), CONTRACTOR SHALL PAY TO OWNER LIQUIDATED DAMAGES IN AN AMOUNT EQUAL TO \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) PER DAY FROM THE OUTSIDE COMPLETION DATE (AS THE SAME MAY BE ADJUSTED IN ACCORDANCE WITH THIS CONTRACT) UNTIL SUBSTANTIAL COMPLETION OF THE PROJECT OCCURS. THE PARTIES ACKNOWLEDGE AND AGREE THAT SUCH LIQUIDATED DAMAGES CONSTITUTE A REASONABLE ESTIMATE OF THE DAMAGES OWNER WILL INCUR AS A RESULT OF ANY SUCH DELAY. THE PARTIES FURTHER ACKNOWLEDGE AND AGREE THAT THE AMOUNT PROVIDED FOR IN THIS SECTION OF LIQUIDATED DAMAGES IS FAIR AND REASONABLE CONSIDERING ALL OF THE FACTS AND CIRCUMSTANCES EXISTING ON THE DATE OF THIS CONTRACT, INCLUDING THE RELATIONSHIP OF SUCH AMOUNT TO THE RANGE OF HARM TO OWNER THAT COULD BE ANTICIPATED, AND THE ANTICIPATION THAT PROOF OF CAUSATION, FORESEEABILITY AND ACTUAL DAMAGES WOULD BE COSTLY AND/OR IMPRACTICAL. BY INITIALING THIS PROVISION BELOW, THE PARTIES SPECIFICALLY CONFIRM THE ACCURACY OF SUCH FACTS. SUCH LIQUIDATED DAMAGES SHALL CONSTITUTE OWNER'S SOLE AND EXCLUSIVE REMEDY FOR ANY DELAY IN COMPLETION OF THE WORK; PROVIDED, HOWEVER, THAT NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, SUCH LIQUIDATED DAMAGES SHALL ONLY APPLY TO OWNER'S CLAIMS AGAINST CONTRACTOR FOR DELAYS IN COMPLETION OF THE WORK, AND NOTHING CONTAINED HEREIN SHALL LIMIT ANY OTHER OBLIGATIONS OR LIABILITIES OF CONTRACTOR HEREUNDER INCLUDING, WITHOUT LIMITATION, OBLIGATIONS AND LIABILITIES ARISING OUT OF CONTRACTOR'S ABANDONMENT OF THE PROJECT, DEFECTS IN THE WORK AND/OR CONTRACTOR'S WARRANTY, GUARANTY AND INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT. *//Use if applicable//*

\_\_\_\_\_  
OWNER

\_\_\_\_\_  
CONTRACTOR

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 CONTRACT SUM

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

### § 9.2 SCHEDULE OF VALUES

At least fourteen (14) calendar days before the first Application for Payment, the Contractor shall submit to the Owner a schedule of values allocated to various portions of the Work and aggregating the total Contract Sum prepared in such form and supported by such data to substantiate its accuracy as Owner may require. *//Modify if the schedule of values is attached as an Exhibit//* The schedule of values, as approved by Owner shall be used as a basis for Contractor's Applications for Payment. The schedule of values shall list as separate line items the

Contractor's estimated amounts used to establish the price for all subcontract amounts or purchase order amounts for unexecuted subcontracts and purchase orders. In addition, the schedule of values shall contain such other information as the Owner may require including a detailed breakdown of that portion of the Cost of the Work to be performed by the Contractor using its own forces and a breakdown from at least two (2) competitive bidders for that portion of the Work the Contractor proposes to be performed by the Contractor's own forces. The schedule of values shall be updated monthly or otherwise as the Owner may reasonably require, and shall indicate the status of all aspects of the cost of the Project as well as the costs related to changes in the Work which have been approved by Change Orders or amounts not in dispute from Construction Change Directives. Such change amounts shall be distributed within the line items for each Subcontractor or purchase order, and shall be broken down into the smallest level of detail that is included in the schedule of values.

### **§ 9.3 APPLICATIONS FOR PAYMENT**

**§ 9.3.1** The procedures for application and certification of monthly Applications for Payment are as described herein and in Article 5 of the Agreement. Contractor shall submit to Owner and Architect an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents. The exact format of the Application for Payment and the progress report shall be determined by Owner prior to submission of the initial Application for Payment; however, the progress reports shall at a minimum describe those aspects of the Work which have been commenced and the status thereof, enumerate the trades and Subcontractors then involved in the Work and Contractor's appraisal of the progress of the Work. Each Application for Payment shall be accompanied by (i) certifications from Contractor and from Subcontractors that as-built plans are complete and current, (ii) conditional lien waivers in form and substance consistent with the applicable statutes and acceptable to Owner executed by Contractor and all Subcontractors, materialmen and others who may have lien rights whose Work is the subject of such Application for Payment and (iii) commencing with the second Application for Payment, unconditional lien waivers in form and substance consistent with the applicable statutes and acceptable to Owner executed by Contractor and by all Subcontractors, materialmen and others who may have lien rights whose Work is the subject of the prior month's Application for Payment.

**§ 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, but not yet included in Change Orders.

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay. Contractor shall not submit for Owner's and Architect's review and approval any Application for Payment which is incomplete, inaccurate or lacks the detail, specificity or supporting documentation required herein. Contractor acknowledges and agrees that any Application for Payment which is deficient in any such manner shall not constitute a valid and proper Application for Payment, and the Contractor shall be required to resubmit such Application for Payment in proper form prior to the Owner incurring any obligation to make a payment on account thereof. In addition, if all Subcontractor and purchase order lien waivers of any tier are not included and correct (conditionally and unconditional), then the applicable portion of the payment may be withheld by the Owner until such waivers are correctly submitted.

**§ 9.3.2** Payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work only if approved in writing by Owner in advance. 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. The Owner will not make payment for stored materials for items of a commodity nature which are readily available through distribution channels unless specifically approved by Owner in writing.

**§ 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 earlier of incorporation of the Work into the construction or 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 be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

#### **§ 9.4 CERTIFICATES FOR PAYMENT**

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

**§ 9.4.2** Owner's approval of an Application for Payment is subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion and Final 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. Owner's approval of an Application for Payment is also subject to Owner obtaining approval of such Application for Payment from its lender, if applicable. However in taking action on Contractor's Applications for Payment, whether progress payments or the final payment, Owner and the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by Contractor and shall not be deemed to represent that they have (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made audits of supportive data or any 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 Owner may withhold approval of an Application for Payment in whole or in part, to the extent reasonably necessary to protect the Owner if the Work has not progressed to the point indicated or is not in accordance with the Contract Documents. The Owner may also withhold a payment or, because of subsequently discovered evidence, may nullify the whole or a part of a payment previously issued, to such extent as may be necessary in the Owner'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 Work not in accordance with the Contract Documents;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment or to provide invoices, signed releases and lien waivers;
- .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;
- .7 repeated failure to carry out the Work in accordance with the Contract Documents; or
- .8 Contractor has failed to perform any of its obligations under the Contract Documents.

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

**§ 9.5.3** Unless otherwise agreed by Owner and Contractor, each progress payment and the final payment shall be made by Owner's check payable to Contractor. The proceeds of each progress payment and the final payment shall be used to pay applicable Subcontractors by checks written on Contractor's account. Owner shall not make payment directly to any Subcontractor or Sub-subcontractor or material supplier, except that Owner or its lender shall have the right to make checks to the applicable Subcontractor or Sub-subcontractors performing the Work for which payment is required if Contractor is in default under this Agreement, and to require each such Subcontractor, Sub-subcontractor or material supplier receiving payment to deliver a waiver and release of lien for all Work through the period covered by the Application for Payment simultaneously with the receipt of payment. Waivers and releases of lien shall be on a form approved in writing in advance by Owner. The Contractor may post a bond, in form and substance reasonably acceptable to the Owner, in lieu of joint checks, so long as such is done promptly upon notice by the Owner of its intent to issue joint checks.

## § 9.6 PROGRESS PAYMENTS

§ 9.6.1 Owner shall review the Application for Payment and all other considerations regarding whether Contractor is entitled to payment, including the matters described in Sections 9.4.2 and 9.5.1. If Owner disapproves of the Application for Payment, it shall notify Contractor in writing of such disapproval, which notice will state the specific reasons for the disapproval. Notwithstanding such disapproval, Owner will pay any undisputed portion of the Application for Payment to Contractor. If Owner approves of an Application for Payment, Owner shall make payment in the manner and within the time provided in the Contract Documents. In accordance with Article 5 of the Agreement, Owner shall pay the amount requested in each Application for Payment within each line item of the schedule of values. Owner, at its option, and notwithstanding its previous approval of an Application for Payment, may decline to pay Contractor when, in its opinion, Owner determines that it is necessary to protect itself against the items listed in Section 9.5.1. The provisions of this Article 9 shall not lessen or diminish, but shall be in addition to, the right or duty of Owner to withhold any payments under applicable provisions of law respecting the withholding of sums due to contractors.

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

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

§ 9.6.5 Contractor's obligation to perform the Work in accordance with the Contract Documents shall be absolute. Neither approval of any progress payment or final payment nor any payment by Owner to Contractor under the Contract Documents nor any use or occupancy of the Project or any part thereof by Owner or any other party, nor any act of acceptance by Owner, nor any failure to do so, nor any correction of any defective Work by Owner, shall constitute an acceptance of Work not in accordance with the Contract Documents.

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

§ 9.6.7 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect to deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner.

## § 9.7 FAILURE OF PAYMENT

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

## § 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 "Substantial Completion" or "Substantially Complete" is the stage in the progress of the Work when (i) the entire 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 in quiet enjoyment; and (ii) the Owner receives all occupancy or other necessary approvals including all approvals and permits required by all governmental agencies having jurisdiction related to the entire Work.

§ 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 Owner and Architect a comprehensive list of items in a format acceptable to Owner 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 Owner and Architect will make an inspection to determine whether the Work or designated portion thereof is Substantially Complete. If the Owner's and Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not complete, the Architect and Owner shall prepare a list of all such items. 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. Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner and Architect. In such case, the Contractor shall then submit a request for another inspection by the Owner and Architect to determine Substantial Completion. The procedures set forth in Sections 9.8.2 and this 9.8.3 shall be repeated until the Architect and Owner determine that the entire Work is Substantially Complete. When the Work is determined by the Architect and Owner to be Substantially Complete, the Owner and Architect shall prepare a final punch list of all items that remain to be completed and the Contractor's written acceptance of the punch list shall constitute its unconditional promise to complete the punch list items within thirty (30) days thereafter. Failure of the Contractor to timely complete the punch list items will constitute sufficient cause for the Owner to cause the punch list items to be completed by others. Further, the cost of such Work will be charged to the Contractor and such cost plus a sum equal to fifteen percent (15%) thereof (which additional sum will represent an allowance for the administration by the Owner of such Work) will be charged against the account of the Contractor.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. Notwithstanding anything to the contrary contained in this Subsection, all notices to Architect shall also be delivered to Owner and all matters to be certified or approved by Architect shall be subject to Owner's reasonable and good faith determination that Substantial Completion has occurred according to the Contract Documents. Architect's Certificate of Substantial Completion shall only constitute a recommendation to Owner regarding the matters set forth therein, and shall be subject to Owner's independent approval based upon its reasonable and good faith determination of whether Substantial Completion has occurred. Substantial Completion shall not be deemed to have occurred, and payment on account thereof shall not be required, unless and until Owner approves the Project as being Substantially Complete. Amounts withheld for incomplete Work or unsettled claims will be paid prior to final payment as such Work is completed or claims settled, in accordance with the regular monthly payment procedures.

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

## § 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the

Contract Documents. When the Contractor considers a portion of the Work to be Substantially Complete, the Contractor shall prepare and submit a list to the Owner 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.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner and the Contractor 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. As portions of the Work are completed and occupied, Contractor shall ensure that continuing construction activity will not unreasonably interfere with the use, occupancy and quiet enjoyment of the completed portion of the Work.

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

#### **§ 9.10 FINAL COMPLETION AND FINAL PAYMENT**

**§ 9.10.1** When Contractor has completed the punch list items, Contractor shall notify Owner and Architect that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner and Architect will promptly make such inspection and, when the Owner and the Architect determine that the Work has been completed in accordance with the Contract Documents and the Contract fully performed, the Architect will certify to Owner that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents. Such final certificate will constitute a recommendation only and shall be subject to the independent review and approval of Owner. Final Completion shall not be deemed to have occurred, and no payment shall be required on account thereof, unless and until Owner has reasonably and in good faith determined that Final Completion has occurred in accordance with the Contract Documents. Should the Owner or the Architect reasonably and in good faith determine that the Work has not been completed in accordance with the Contract Documents and the Contract not fully performed, costs associated with the Architect's reinspection under this Subsection will be reimbursed to the Owner by the Contractor. The approval of a Final Application for Payment shall not in any way release Contractor from its obligation to complete the Work in accordance with the Contract Documents.

If Owner and the Architect are not satisfied that the Work has been properly completed, Owner shall return the Application to Contractor, indicating in writing the reasons for refusing to approve final payment, and Contractor shall make the necessary corrections and resubmit the Application.

If, on the basis of their observations and review of the Work, Owner and Architect are satisfied that the Work is complete, the Owner may record a Notice of Completion. Owner shall give Contractor written notice of the date the Notice of Completion was recorded.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, (6) all warranty, maintenance and operating instructions, schedules and guarantees, certificates of inspection and other documents required by the Contract Documents, and (7) as-built plans for the Work certified by the Contractor and all applicable Subcontractors to be complete and accurate, to the best of their knowledge, to be prepared at Contractor's sole cost and expense. The as-built drawings shall show the field changes and selections affecting the general construction, mechanical, electrical, plumbing, and other work, and indicating the Work as actually installed. These shall consist of carefully drawn markings on one (1) set of reproducible prints of the Architect's drawings and one (1) copy thereof in electronic or compact disk form, obtained and paid for by Contractor. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied

after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien or stop notice, including all costs and reasonable attorneys' fees.

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

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

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

### **§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS**

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

### **§ 10.2 SAFETY OF PERSONS AND PROPERTY**

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

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

**§ 10.2.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss, including, without limitation, the safety and health rules and regulations established by or pursuant to the Federal Occupational Safety and Health Act of 1970 ("OSHA") (collectively, "Safety Laws"). Contractor shall at all times furnish its agents and employees a safe place of employment. Among other things, the OSHA regulations require all contractors and subcontractors to exchange Material Safety Data Sheets ("MSDS") and share information about precautionary measures necessary to protect all workers on a building project. Contractor agrees as follows:

(a) Contractor will fully comply with the Safety Laws and will cooperate with Owner and all subcontractors of Owner in order to assure compliance with the Safety Laws.

(b) Contractor hereby accepts full responsibility and liability for the training of its employees as to all precautionary measures necessary to protect such employees during both routine and emergency situations on the site.

(c) Contractor will indemnify, defend and hold Owner harmless from all Claims which arise from the failure of Contractor to comply with the Safety Laws.

(d) Contractor will assist Owner in complying with the Safety Laws.

(e) Contractor will not use any chemicals in its performance of the Work or incorporate any chemicals into materials or products supplied to Owner or to the Site unless Contractor has given Owner prior written notice of the existence and the possible exposure to such chemicals, has delivered an MSDS to Owner.

**§ 10.2.3** The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. Any damage to such property or improvements shall be promptly repaired by the Contractor.

**§ 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 give Owner written notice at least ten (10) days in advance of such use or storage and shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

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

**§ 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. If Owner, Architect, or any governmental agency notifies Contractor of any claimed dangerous condition at the site that has been caused by Contractor, Contractor shall take immediate action to rectify the condition at no additional cost to Owner.

**§ 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** No illegal drugs or alcohol will be permitted on the site. Contractor's employees, agents, Subcontractors or suppliers in possession of illegal drugs or alcohol on the site will be subject to immediate termination. Individuals on the site whose performance, coordination or ability to work is impaired, in the opinion of Owner's representatives, will be subject to immediate removal from the site.

**§ 10.2.9** Contractor will be responsible for implementing dust control procedures adequate to ensure at all times that dust caused by the Work does not migrate to neighboring properties.

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

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 5 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

#### **§ 10.3 HAZARDOUS MATERIALS**

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

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

perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written notification by the Owner. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up.

**§ 10.3.3** To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1, the procedures set forth in Sections 10.3.1 and 10.3.2 have been followed and such material or substance 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, or due to fault or negligence of a party claiming through the Indemnitee.

**§ 10.3.3** The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site. Contractor shall not permit any Hazardous Substances to be brought onto or stored at or used in the construction of the Work, except for materials and substances required by the Contract Documents and commonly used construction materials. Contractor shall handle all such materials in full compliance with all applicable current or future governmental laws, rules and regulations and all notices required to be given with respect to such products shall be given by Contractor. Contractor shall not, nor allow any other person to, release or dispose of Hazardous Substances at the site. Contractor shall indemnify, defend and hold Owner and the Indemnitees harmless from all costs, claims, damages, penalties and assessments (including attorneys' fees) arising from or in any way connected with any Hazardous Substance brought on the site by Contractor or by its Subcontractors or materialmen of any tier and whether or not caused accidentally, negligently or intentionally. As used herein, the term "Hazardous Substance" means any substance or material which has been determined by any state, federal or local governmental authority to be capable of posing a risk of injury to health, safety, property or the environment.

**§ 10.3.4** 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 Substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

#### **§ 10.4 EMERGENCIES**

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7, provided such emergency is not proximately caused by the negligent act or negligent omission of Contractor or its Subcontractors, employees or agents.

### **ARTICLE 11 INSURANCE AND BONDS**

**§ 11.1 CONTRACTOR'S LIABILITY INSURANCE** See Addendum "B" attached hereto.

#### **§ 11.2 OWNER'S LIABILITY INSURANCE**

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

#### **§ 11.3 PROPERTY INSURANCE**

**§ 11.3.1** Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by Contractor, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later.

§ 11.3.1.1 Property insurance shall be on an “all-risk” or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect’s and Contractor’s services and expenses required as a result of such insured loss. Property insurance carried by the Owner shall not cover any tools, apparatus, machinery, equipment, staging, and shoring, owned or rented by the Contractor that are utilized in the performance of the Work but not incorporated into the permanent improvements. The Contractor shall, at the Contractor's own expense, provide insurance coverage for all such items, which shall be subject to the provisions of Section 11.3.7.

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

§ 11.3.1.3 If the property insurance requires deductibles, the Owner shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

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

### § 11.3.2 BOILER AND MACHINERY INSURANCE

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

### § 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner’s option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner’s property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner’s property, including consequential losses due to fire or other hazards however caused.

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

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

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. To the extent obtainable in the

commercial insurance market, Owner shall use commercially reasonable efforts to cause each policy to contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

#### **§ 11.3.7 WAIVERS OF SUBROGATION**

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, 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 covered by property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise and shall be endorsed to provide that each insurer thereunder waives its right of subrogation against or contribution from the Owner, its affiliates or any of their insurers. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

**§ 11.3.8** A loss insured under the Owner's property insurance 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. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

#### **§ 11.4 PERFORMANCE BOND AND PAYMENT BOND**

**§ 11.4.1** The Owner shall have the right to require the Contractor to furnish and properly record if required by applicable law, bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. If the costs of the bond(s) were not included in the Contract Sum, then Owner shall reimburse Contractor for the actual costs to provide said bonds, but such costs will not be included in the Cost of the Work.  
*//Verify in each case//*

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

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

#### **§ 12.1 UNCOVERING OF WORK**

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

#### **§ 12.2 CORRECTION OF WORK**

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

The Contractor shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost

of uncovering and replacement, and compensation for the Architect's or other consultant'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 two years after the date of Final Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4. The warranty period for all corrective work shall be twelve (12) months from the completion of such corrective work. All warranty obligations shall survive both final payment for the Work and termination of the Contract. All guarantees and warranties will inure to the benefit of Owner, its successors and assigns. Contractor shall also insert the terms of this provision in all subcontracts and/or agreements executed in connection with the services to be performed under the Contract Documents and shall pass such provision to its Subcontractors for the stated express benefit of Owner. Notwithstanding the foregoing, the warranty period shall be ten (10) years for the roof of the Project. **||verify||**

§ 12.2.2.2 The one-year warranty shall not limit the terms of any manufacturer's warranty or Subcontractor's warranty (or the lack of any Subcontractor's warranty) or any special warranties given with regard to any portion of the Work.

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

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

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the two-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor Subcontractors, Sub-subcontractors and material suppliers 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.

§ 12.2.6 CALL BACK RESPONSIBILITY. During the warranty period set forth above, in connection with the performance of the Work by the Contractor, Contractor hereby agrees that:

(a) It will within 48 hours from written notice thereof (Saturdays and Sundays excluded unless an emergency exists) start to correct any and all deficiencies in the Work (and thereafter diligently pursue to completion) at Contractor's sole cost and expense;

(b) The determination as to what constitutes a deficiency will be within the sole discretion of the Owner, whose judgment will be reasonably exercised;

(c) Failure of the Contractor to make timely performance hereunder will constitute sufficient cause for the Owner to cause the correction of such deficiencies to be performed by others. Further, the cost of such Work will be charged to the Contractor and such cost plus a sum equal to 15% thereof (which additional sum will represent an allowance for the administration by the Owner of such Work) will be charged against the account of the Contractor. If the amount owing the Contractor under this Agreement at the time such Work is performed by others is less than the sum charged against its account, the Contractor will remit the difference to the Owner within five (5) days following Owner's request therefor.

### § 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 without regard to choice of law rules except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Addendum "A".

### § 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 Subject to the provisions of Section 8.6 of the Agreement relating to assignment, the Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents.

§ 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 first arising from the effective foreclosure date of such lender's lien instrument. The Contractor shall execute all consents reasonably required to facilitate such assignment.

### § 13.3 WRITTEN NOTICE

Any notice provided for herein will be in writing and deemed delivered to the other party when delivered to the address shown for such party in the first Section of the Agreement, or to such other address as may be designated by either party by written notice in accordance with the Agreement, (a) in person, (b) by facsimile transmission (with the original and a copy of the facsimile confirmation following in the United States mail), (c) by overnight delivery service, (d) by certified mail, return receipt requested or (e) by email (with the original and a copy of the email confirmation following in the United States mail). If such notice is given in person, via facsimile transmission or by email, such notice will be deemed to have been given when delivered or transmitted. If such notice is given by overnight delivery service, such notice is deemed received one (1) business day after delivery to the overnight delivery service. If such notice is given by certified mail, such notice will be deemed received two (2) business days after a certified letter containing such notice, properly addressed with postage prepaid, is deposited in the United States mail.

### § 13.4 RIGHTS AND REMEDIES

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

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

### § 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities and all governmental authorities having jurisdiction. 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 facilitate such inspections and give the Owner timely notice (at least 48 hours) of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of initial tests, inspections or approvals as part of the [Contract Sum/Cost of the Work] if any tests, inspections or approvals show a deficiency in the Work, Contractor shall pay all costs of subsequent testing, inspections and approvals.

§ 13.5.2 If the Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Owner will 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 Owner (not less than 48 hours) of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

**§ 13.5.3** If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's and other consultants' services and expenses shall be at the Contractor's expense. The Contractor also agrees that the cost of testing services required for the convenience of the Contractor in his scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work, shall be borne by the Contractor.

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

**§ 13.5.5** If the Owner is to observe tests, inspections or approvals required by the Contract Documents, the Owner will do so promptly and, where practicable, at the normal place of testing. Neither the observations or other duties, if any, of the Owner or the Architect in the administration of the Contract Documents, nor inspections, tests or approvals by the Owner or any other persons other than Contractor shall relieve Contractor from its obligations to perform the Work in accordance with the Contract Documents.

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

**§ 13.6 INTEREST** See Section 8.2 of the Agreement.

#### **§ 13.7 TIME LIMITS ON CLAIMS**

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement and within the time period specified by applicable law.

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

#### **§ 14.1 TERMINATION BY THE CONTRACTOR**

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

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped; or
- .3 Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; provided, however, if Owner is disputing the payment in good faith, Contractor shall not have the right to terminate the Contract for nonpayment. If such a dispute is resolved and Owner fails to make the payment in the manner agreed to by the parties in the resolution, Contractor shall have the right to terminate the Contract for nonpayment as set forth herein.

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

**§ 14.1.3** If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon fifteen days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work

executed, including reasonable overhead and profit, reasonable and proven costs incurred by reason of such termination, and damages, unless such matter is resolved within such fifteen day period.

**§ 14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the critical path of the Work, the Contractor may, upon seven additional days' written notice to the Owner, 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** In addition to any other rights of Owner to terminate the Contract, the Owner may terminate the Contract if the Contractor

- .1 fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise fails to comply with a provision of the Contract Documents;
- .5 if Contractor should be adjudged bankrupt, file or suffer to be filed a petition for relief under the Bankruptcy Act, or make a general assignment for the benefit of creditors; or
- .6 if a receiver should be appointed on account of Contractor's insolvency.
- .7 Failure to obtain inspections of the governmental agencies having jurisdiction.

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

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Article 5; 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** Upon receipt of such termination notice, unless otherwise instructed by Owner, Contractor will immediately discontinue prosecution of the Work and the placing of orders for materials, equipment, machinery and supplies in connection with this Agreement and will, if requested, make every reasonable effort to cancel all existing orders upon terms reasonably satisfactory to Owner. Then, unless otherwise instructed by Owner, Contractor will only do such Work as may be necessary to preserve and protect that portion of the Work that has been incorporated into the Project and to protect such materials, supplies and equipment at or around the site on in transit thereto. If Owner provides Contractor with such termination notice, Contractor will not be entitled to receive any further payment until the Work is completed and upon completion of the Work, Owner will pay to Contractor an amount equal to the lesser of (a) the undisputed portion of the Contract Sum attributable to the percentage of the Work performed, or the (b) Contract Sum, less the cost paid by Owner having the Work completed, including, without limitation, costs for architectural, managerial and administrative services and reasonable attorneys' fees, if legal counsel is employed. However, if the costs paid by Owner for having the Work completed is more than the Contract Sum, then Contractor will pay the difference to Owner within 10 days after receipt of written notice from Owner to Contractor, and Owner will not be obligated to pay Contractor any sums hereunder.

#### **§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE**

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

**§ 14.3.2** The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1 in accordance with the change order provisions of the Contract. No adjustment shall be made to the extent

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

#### **§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE**

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

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

- .1 cease operations as directed by the Owner in the notice, vacate the site and remove all of Contractor's equipment and materials;
- .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, and except for subcontractors to be assigned to Owner pursuant to Article 5 herein, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

**§ 14.4.3** In case of such termination for the Owner's convenience, the Contractor, as its sole and exclusive remedy, shall be entitled to receive payment for Work completed on the date of termination, and actual costs incurred by Contractor by reason of such termination, along with accrued through the date of termination. In no event shall Contractor have a claim for other damages, lost profits, savings, or otherwise on account of the termination of the Agreement pursuant to this provision. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits.

### **ARTICLE 15 CLAIMS AND DISPUTES**

#### **§ 15.1 CLAIMS**

##### **§ 15.1.1 DEFINITION**

As used in this Article 15, a "Claim" is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. As used in this Article 15, the term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

##### **§ 15.1.2 NOTICE OF CLAIMS**

[Intentionally omitted.]

##### **§ 15.1.3 CONTINUING CONTRACT PERFORMANCE**

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

##### **§ 15.1.4 CLAIMS FOR ADDITIONAL COST**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, such Claim must be filed in writing with Owner not later than 5 days after Contractor first has notice of the basis of such Claim and before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4; provided, however, in such cases written notice shall be given as soon as possible thereafter.

##### **§ 15.1.5 CLAIMS FOR ADDITIONAL TIME**

**§ 15.1.5.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. All such Claims must be filed with Owner not later than 5 days after Contractor first has notice of the basis for such Claim.

**§ 15.1.5.2** Contractor shall include in its Construction Schedule an allowance for anticipated days of lost production due to weather impacts. Such allowance shall be shown on the Schedule as its own "activity" occurring at the completion of the Project. If weather related delays actually experienced during the course of the performance of the Work are less than that assumed by the Contractor, the economic benefit shall be solely Contractor's; if weather related delays actually experienced during the course of the performance of the Work are more than that assumed by the Contractor, the economic detriment shall be solely Contractor's. **THEREFORE, NO APPLICATION FOR EXTENSION OF THE CONTRACT TIME DUE TO WEATHER CONDITIONS (EXCEPT TO THE EXTENT PERFORMANCE IS DELAYED FOR REPAIRS FOLLOWING DAMAGE TO CRITICAL PATH ACTIVITIES ARISING FROM SEVERE, EXTENDED, CATASTROPHIC OR OTHERWISE UNUSUAL WEATHER CONDITIONS TO THE PROJECT AREA) WILL BE MADE BY THE CONTRACTOR UNDER ANY CIRCUMSTANCES WHATSOEVER. NOR SHALL WEATHER CONDITIONS HAVE ANY EFFECT UPON THE OWNER'S RIGHTS UNDER THE CONTRACT DOCUMENTS TO RECOVER LIQUIDATED DAMAGES FOR CONTRACTOR'S FAILURE TO COMPLETE THE WORK ON TIME.** For purposes of the Contract Documents, "weather" means rain, wind, cold, heat, flood, drought, fire other than to the Project itself, and all other weather conditions, whether or not severe, extended, catastrophic or otherwise unusual in the Project area.

**§ 15.2 ARBITRATION.** All Claims will be determined in accordance with the Dispute Resolution Procedures set forth in Addendum "A".

