ST. LUKE’S HEALTH SYSTEM
GENERAL CONDITIONS OF THE CONTRACT
FOR CONSTRUCTION

THIS DOCUMENT HAS IMPORTANT LEGAL CONSEQUENCES; CONSULTATION WITH AN ATTORNEY IS ENCOURAGED WITH RESPECT TO ITS MODIFICATION.

2007 EDITION
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ARTICLE 1
GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

In addition to the terms defined herein, the following terms are used in the Contract Documents and are defined as follows:

1.1.1 The Contract Documents. The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplemental and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, the Project Manual, 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 pursuant to Paragraph 7.4. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor’s bid or portions of Addenda relating to bidding requirements). In the event of any conflict between the Contract Documents, the Contract Documents shall have the following priority: the Agreement, the Addenda (with those of later date controlling over those of earlier date), the Supplemental Conditions (if any), the General Conditions, and the Drawings and Specifications.

1.1.2 The Contract. The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification except as provided in Paragraph 5.4. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor except as provided in Paragraph 5.4 (3) between any persons or entities other than the Owner and Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations of Contractor under the Contract intended to facilitate performance of the Architect’s duties.

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

1.1.4 The Project. The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or 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, construction systems, standards and workmanship for the Work, and performance of related services. The Specifications supplement, clarify and are in addition to any other matter specifically addressed herein.

1.1.7 The Project Manual. The Project Manual is the volume or volumes assembled for the Work that includes, without limitation, the Specifications, the bidding requirements, the sample forms, and the Conditions of the Contract (General, Supplemental or otherwise).

1.1.8 Addenda. Addenda are written or graphic instruments issued by Owner prior to the execution of the Agreement that modify or interpret the Contract Documents by additions, deletions, clarifications, or corrections.

1.1.9 Approved. As used in the Drawings and Specifications, “Approved” means as allowed by the Architect and accepted by the Owner to be incorporated in the Work. When the word “Approved” is used, acceptance by the Owner shall be understood.

1.1.10 Approved Equal. As used in the Drawings and Specifications, “Approved Equal” means products by manufacturers other than those specified in the Contract Documents that the Contractor may submit for substitution and prove to be equal to those specified in the Contract Documents and that may be incorporated in the Work after review and acceptance by the Architect and acceptance by Owner.

1.1.11 By Owner. As used in the Drawings and Specifications, “By Owner” means work on this Project that will be performed by the Owner or his agents, at the Owner’s cost.

1.1.12 By Others. As used in the Drawings and Specifications, “By others” means work on this Project that is outside the scope of Work to be performed by the Contractor under this Contract, but that will be performed by the Owner, other Contractors, or other means.
1.1.13 Directed. As used in the Drawings and Specifications, “Directed” means as instructed by the Owner.

1.1.14 Furnish. As used in the Drawings and Specifications, “Furnish” means to supply only, not to install.

1.1.15 Indicated. As used in the Drawings and Specifications, “Indicated” means as shown and/or noted on the Drawings detailed, scheduled, or called for in the Contract Documents.

1.1.16 Install. As used in the Drawings and Specifications, “Install” means to install or apply only, not to furnish.

1.1.17 Knowledge. The terms “Knowledge”, “Recognize”, and “Discover” their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows or should know, recognizes or should recognize, and discovers or should discover in exercising the care, skill, and diligence required by the Contract Documents.

1.1.18 Owner-furnished, Contractor-installed. As used in the Drawings and Specifications, “Owner-furnished, Contractor-installed” means the Owner will furnish at their cost and the Contractor will install under their Contract for this Work.

1.1.19 Provide. As used in the Drawings and Specifications, “Provide” means to properly fabricate, complete, transport, deliver, install, erect, construct, test and furnish all labor, materials, equipment, apparatus, appurtenances, and all items and expenses necessary to properly complete in place, ready for operation or use under the terms of the Specifications.

1.1.20 Site. “Site” means the geographical location of the Project.

1.1.21 Specified. As used in the Drawings and Specifications, “Specified” means as written in the Specifications.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 The Agreement shall be signed by the Owner and Contractor.

1.2.2 Execution of the Contract by the Contractor is a representation that said Contract Documents are full and complete; are sufficient to have enabled the Contractor to determine the cost of the Work therein and to enter into the Contract and are sufficient to enable the Contractor to construct the Work outlined therein, and otherwise to fulfill all its obligations hereunder, including, but not limited to, Contractor’s obligations to construct the Work for an amount not in excess of the Contract Sum on or before the date(s) of Substantial Completion established in the Agreement. The Contractor further acknowledges and declares that it has visited and examined the Site, examined all physical, legal and other conditions affecting the Work and is fully familiar with all of the conditions thereon and thereunder affecting the same. The Contractor warrants and represents that it has substantial experience in performing work such as the Work and in working on construction projects such as the Project. In connection therewith, Contractor specifically represents and warrants to Owner that it has, by careful examination, satisfied itself as to: (1) the nature, location, and character of the Project and the Site, including, without limitation, the surface and subsurface conditions of the Site and all structures and obstructions thereon and thereunder, both natural and man-made, and all surface and subsurface water conditions of the Site and the surrounding area; (2) the nature, location, and character of the general area in which the Project is located, including without limitations, its climatic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; and (3) the quality and quantity of all materials, supplies, tools, equipment, labor, and professional services necessary to complete the Work in the manner and within the cost and time frame required by the Contract Documents.

In connection with the foregoing, and having carefully examined all Contract Documents, as aforesaid, and having visited the Site, the Contractor acknowledges and declares that it has no knowledge of any discrepancies, omissions, ambiguities, or conflicts in the Contract Documents and that if it becomes aware of any such discrepancies, omissions, ambiguities, or conflicts, it will promptly notify Owner and Architect of such fact.

Further, Contractor recognizes the extra degree of care required under the urban site construction circumstances, and the close proximity of the Site to the hospital and medical offices, with respect to safety, protection of pedestrians, cleanliness of the Site, health and other laws, and protection of existing utilities, adjacent streets and property. In arriving at the Contract Sum and the Contract Time, Contractor has, as an experienced and prudent contractor, exercised its best judgment and expertise to include the impact of such circumstances upon the Contract Sum and the Contract Time.

No allowances will be made on account of Contractor’s errors, negligence, or failure to fulfill the requirements represented by his execution of the Contract. Notwithstanding the foregoing, however, the Contractor shall not be responsible for the cost of handling any Hazardous Materials (defined below) encountered at the Site that existed prior to the date of the Agreement unless the existence of same was expressly disclosed in the Contract Documents.

1.2.3 The Contract Documents include all items necessary for the proper execution and completion of the Work by the Contractor. The Work shall consist of all items specifically included in the Contract Documents as well as all additional items of work which are reasonably inferable from that which is specified in order to complete the Work in accordance with the Contract Documents. The Contract Documents are complimentary, and what is required by any one Contract Document shall be as binding as if required by all. Any differences between the requirements of the Drawings and the Specifications, or any differences noted within the Drawings themselves or within the Specifications themselves, have been referred to the Owner by Contractor prior to the submission of bids and have been clarified by an addendum issued to all bidders. If any such differences or conflicts were not called to the Owner's attention prior to submission of bids, the Owner shall decide which of the
conflicting requirements will govern based upon the most stringent of the requirements. The Contractor shall perform the Work at no additional cost and/or time to the Owner.

1.2.4 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.

1.2.5 Unless otherwise stated in the Contract Documents, words and abbreviations which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, no substitutions may be made unless accepted by Owner in writing prior to execution of the Contract or if accepted in writing as a change in the Work.

1.3 OWNERSHIP AND USE OF ARCHITECT’S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

1.3.1 The Drawings, Specifications and other similar or related documents and copies are furnished to the Contractor for the purpose of performing the Work and are, and shall remain, the property of the Owner. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other similar or related documents and Owner will retain all common law, statutory, and other reserved rights, in addition to the copyright (including, without limitation, the right to create derivative works therefrom). All copies of such documents shall be returned to the Owner upon completion of the Work. The Drawings, Specifications and other similar or related documents and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents appropriate to and solely for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents. 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 any copyright or other reserved rights.

1.4 CAPITALIZATION

1.4.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document or (3) the titles of other documents published by the American Institute of Architects. Not all specifically defined terms are capitalized.

1.5 INTERPRETATION

1.5.1 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.

ARTICLE 2
OWNER

2.1 DEFINITION

2.1.1 The Owner is St. Luke’s Health System.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 Except for permits and fees which are the responsibility of the Contractor, (including those required under Subparagraph 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. Such approvals and the like shall be provided by Owner within a time and in a manner so as to avoid any unreasonable delays in the Work or schedule of Contractor and shall include only such approvals for permanent facilities that are necessary to perform the Work as set forth in the Contract Documents.

2.2.2 Owner shall furnish information in the Owner’s possession regarding physical characteristics, legal limitations and utility locations for the Site of the Project, and a legal description of the Site. Contractor is responsible for determining whether such information is accurate and Contractor has no Claim against Owner for any errors in the information supplied. The furnishing of these surveys and the legal description of the Site shall not relieve the Contractor from its duties under the Contract Documents. Neither Owner nor the Architect shall be required to furnish Contractor with any information concerning subsurface characteristics or conditions of the areas where the Work is to be performed. When the Owner or Architect has made investigations of subsurface characteristics or conditions of the areas where the Work is to be performed, such investigations, if any, were made solely for the purposes of Owner’s study and Architect’s design. Neither such investigations nor the records thereof are a part of the Contract between Owner and Contractor. To the extent such investigations or the records thereof are made available to Contractor by the Owner or Architect, such information is furnished solely for the convenience of Contractor. Neither Owner nor Architect assumes any responsibility whatsoever in respect of the sufficiency or accuracy of the investigations thus made, the records thereof, or of the interpretations set forth therein or made by the Owner or Architect in its use thereof, and there is no warranty or guaranty, either express or implied, that the conditions
indicated by such investigations or records thereof are representative of those existing throughout the areas where the Work is to be performed, or any part thereof, or that unforeseen developments may not occur, or that materials other than or in proportions different from those indicated may not be encountered. The Contractor shall undertake such further investigations and studies as may be necessary or useful to determine subsurface characteristics and conditions. In connection with the foregoing, Contractor shall be solely responsible for locating (and shall locate prior to performing any Work), all utility lines, telephone company lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, without limitation, all buried pipelines and buried telephone cables and shall perform the Work in such a manner so as to avoid damaging any such lines, cables, pipes and pipelines.

2.2.3 Information or services to be furnished by Owner shall be furnished by the Owner with reasonable promptness following written request from the Contractor.

2.2.4 The Contractor will be furnished, free of charge, all returned bidding copies of the Drawings and Project Manuals. If additional copies are reasonably required by Contractor for its use and convenience in performing the Work, additional copies shall be furnished at Contractor's expense equal to the cost of reproduction. Four (4) copies of Change Order documents plus one (1) set of reproducible transparencies, including Drawings, shall be provided to Contractor free of charge and additional copies shall be furnished at Contractor's expense.

2.2.5 The foregoing are in addition to other duties and responsibilities of the Owner enumerated herein and especially those in respect to Article 6 (Construction by Owner or by Separate Contractors), Article 9 (Payments and Completion) and Article 11 (Insurance and Bonds).

2.3 OWNER'S RIGHT TO STOP THE WORK

2.3.1 If the Contractor (1) fails to comply with the requirements of the Contract Documents; (2) fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2; (3) fails to carry out Work in accordance with the Contract Documents; (4) fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, materials, or equipment so as to be able to complete the Work within the Contract Time; (5) fails to remove and discharge within ten (10) days any lien filed upon Owner's property by anyone claiming by, through, or under Contractor; (6) disregards the instructions of Owner when based on the requirements of the Contract Documents; or (7) violates any local, state or federal law, including all federal and state safety and environmental laws, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may, without penalty to Owner, order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect to eliminate, the cause of any stop order issued under Subparagraph 2.3.1., the Owner may without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order or Construction Change Directive shall be issued deducting from payments then or thereafter due the Contractor the cost of correcting such deficiencies, including compensation for the Architect's additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

2.5 PROJECT REPRESENTATIVE

2.5.1 The Owner will provide a Project Representative that is authorized to act on behalf of the Owner, unless a new representative is subsequently designated by the Owner. Notwithstanding the foregoing, however, in no event shall the Contract Documents be deemed amended nor any approval from Owner be deemed given unless such amendment or approval is contained in a writing signed by the Owner's Construction Manager or Director of Architecture and Construction.

2.6 EXTENT OF OWNER'S RIGHTS

2.6.1 The rights of the Owner stated in the Contract Documents are cumulative and not in limitation of any rights of the Owner granted in the Contract Documents, at law, or in equity.

2.7 OWNER'S REVIEW OF SUBMITTALS

2.7.1 Owner shall review and approve 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 Owner's action will be taken with reasonable promptness while allowing sufficient time in the Owner's reasonable 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 Owner's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Paragraphs 3.3, 3.5 and 3.12. The Owner's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component. The owner's approval shall not be an approval to change the contract unless the change is specifically noted by the contractor and specifically approved by the owner.

ARTICLE 3
CONTRACTOR

3.1 DEFINITION

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 term “Contractor” means the Contractor or the Contractor’s authorized representative.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Architect and Owner pursuant to Subparagraph 2.2.2 and shall at once report to the Architect and Owner errors, inconsistencies or omissions discovered. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor recognized or reasonably should have recognized such error, inconsistency or omission and failed to report it to the Owner. If the Contractor performs any construction activity involving a recognized error, inconsistency or omission in the Contract Documents without such notice to the Owner, the Contractor shall assume responsibility for such performance and shall bear the full amount of the attributable costs for correction. Requests for clarification or additional information shall be in writing and shall be on the “Request for Information” form prescribed by Architect or Owner. The Owner shall not be responsible for representations alleged to be made by the Owner, the Architect, or representatives of either of them, made prior to the execution of the Agreement, unless the representations are expressly set forth in the Agreement.

3.2.2 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities. Errors, inconsistencies or omissions discovered shall be reported to the Owner at once. In laying out the Work, the Contractor shall verify all dimensions and immediately notify the Architect and the Owner of any errors or discrepancies in dimensions.

3.2.3 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.12. When the Contract Documents require the Work, or any part of same, to be above the standards required by applicable laws, ordinances, rules, and regulations, and other statutory provisions pertaining to the Work, such Work shall be performed and completed by the Contractor in accordance with the Contract Documents.

3.2.4 Should the Specifications and Drawings fail to particularly describe the material or kind of goods to be used in any place, then it shall be the duty of the Contractor to make inquiry of the Owner as to what is best suited. Material that would normally be used to produce first quality finished work shall be considered a part of the Contract.

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 and procedures and for coordinating all portions of the Work under the Contract, even where the Contract Documents give specific instructions concerning these matters. The Contractor has reviewed any instances where the Contract Documents specify means, methods, techniques, sequences and procedures and coordination of portions of the Work and the Contractor acknowledges and agrees that the same are appropriate under the circumstances and the Contractor agrees to take full responsibility for same as though they had not been specified in the Contract Documents.

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 any entity or other persons performing portions of the Work. It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained in or inferable from this Agreement shall be deemed or construed to make Contractor the agent, servant, or employee of the Owner, or other association between Owner and Contractor. Any direction or instruction by Owner in respect of the Work shall relate to the results the Owner desires to obtain from the Work, and shall in no way affect Contractor’s independent contractor status.

3.3.3 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 Architect in the Architect’s administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

3.3.4 The Contractor shall be responsible for inspection of portions of Work already performed under this Contract to determine that such portions are in proper condition to receive subsequent Work.

3.3.5 The Contractor has the responsibility to insure that all material suppliers and subcontractors, their agents and employees, adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions and that they provide materials on time. The Contractor shall coordinate its work with that of all others on the Project including deliveries, storage, installations, and construction materials.

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, storage on the Site or in an approved bonded warehouse 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. All increases in costs of material or equipment, either specified or accepted substitutions, occurring subsequent to execution of the Contract between the Owner and the Contractor, shall be borne by the Contractor.

3.4.2 The Contractor shall enforce strict discipline and good order among the Contractor’s employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Contractor shall insure that all workers on the job site have had proper training in the areas of worker safety, and dealing with Hazardous Materials (defined below). Contractor shall also be responsible for labor peace on the Project and shall make its best efforts and judgment as an experienced Contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes, or strikes where reasonably possible and practical under the circumstances and shall maintain Project-wide labor harmony. Except as specifically provided in Subparagraph 8.3.1, Contractor shall be liable to Owner for all damages suffered by Owner occurring as a result of work stoppages, slowdowns, disputes, or strikes.

3.5 WARRANTY

3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of the best quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from fault and defects, and that the Work will conform with the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. If required by the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.5.2 All warranties shall include labor and materials and shall be signed by the manufacturer or Subcontractor as the case may be and countersigned by the Contractor. All warranties shall be addressed and delivered to the Owner with a copy to the Architect upon completion of the Work and before or with the submission of request for all final payment. The Contractor is responsible for being familiar with all warranties, and is obligated to comply with all conditions precedent required by the manufacturer in connection with the warranty. All Work performed shall be in such a manner so as to preserve any and all warranties.

3.5.3 The Contractor shall issue in writing to the Owner as a condition precedent to final payment, a “General Warranty” reflecting the terms and conditions of this Paragraph 3.5 for all Work under the Contract.

3.5.4 Except when a longer warranty time is specifically called for in the Specifications or is otherwise provided by law, the General Warranty shall be for one (1) year and shall be in form and content otherwise satisfactory to the Owner.

3.5.5 Warranties shall become effective on the date of Substantial Completion of the entire Work, unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties.

3.6 TAXES

3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor.

3.7 PERMITS, FEES AND NOTICES

3.7.1 The Contractor shall secure, pay for, and, as soon as practicable, furnish the Owner with copies or certificates of all permits and fees, licenses, and inspections and other approvals for general construction necessary for the proper execution and completion of the Work, including, without limitation, all building permits, sidewalk encroachment permits and fees, and permits for access over public ways; provided, however, if the Work is only a portion of a larger Project for which a permit is necessary, and the Work cannot be permitted separately, the Owner shall obtain the permit and pay all fees (including traffic impact fees) payable with respect to the larger Project. The foregoing shall not be construed to require the Owner to obtain any permits or approvals or pay any fees that relate solely to the Work if they can be separated from the Project as a whole. All connection charges, assessments, or inspection fees, as may be imposed by any municipal agency or utility company, are included in the Contract Sum and shall be the Contractor’s responsibility.

3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders and all other requirements of public authorities bearing on performance of the Work.

3.7.3 Unless otherwise provided in the Contract Documents, it is not the Contractor’s responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

3.7.4 If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations the Contractor shall assume full responsibility for such Work and shall bear all costs attributable to the correction thereof or related thereto, including all fines and penalties.

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 against which the Contractor makes reasonable objection.
3.8.2 Unless otherwise provided in the Contract Documents:

3.8.2.1 materials and equipment under an allowance shall be selected promptly by the Owner to avoid unreasonable delay in the Work;

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

3.8.2.3 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 and not in the allowances;

3.8.2.4 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 Clause 3.8.2.2 and (2) changes in Contractor’s costs under Clause 3.8.2.3.

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. Except where a communication is required to be in writing under the Contract Documents, communication between the Owner and the Contractor may be oral. A party shall reduce to writing its communications to the other party promptly upon request from the other party.

3.9.2 Prior to commencing the Work, the Contractor shall obtain the Owner’s approval of the Contractor’s proposed superintendent. The superintendent shall not be changed without the Owner’s consent. Unless otherwise approved by the Owner, the superintendent shall be on Site full time. Owner shall have the right, upon written notice to Contractor, to demand that the superintendent or other key personnel retained by Contractor be replaced. In the event of such demand, Contractor shall, within seven (7) days after notification thereof, replace the individual with an individual satisfactory to Owner. If the replacement is disapproved by Owner, the Owner may terminate the Contract for cause.

3.10 CONTRACTOR’S CONSTRUCTION SCHEDULE

3.10.1 The Contract Documents include a schedule for the Project (“Project Schedule”) prepared by the Owner that includes the completion date for the Work and may include dates which are critical to insure the timely and orderly completion of the Work and the Project as a whole (“Milestone Dates”). The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner’s review and approval a detailed schedule for the Work (“Construction Schedule”). If not accepted, the Construction Schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and resubmitted for acceptance. The schedule shall not exceed the time limits allowed by the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

3.10.2 The Contractor shall prepare and keep current, for the Owner’s approval, a schedule of submittals (“Schedule of Submittals”) which is coordinated with the Construction Schedule and allows the Owner and Architect reasonable time to review submittals.

3.10.3 The Contractor shall conform to the most recent Construction Schedule and Schedule of Submittals.

3.10.4 The Construction Schedule shall be in a detailed format satisfactory to the Owner and shall also:

(1) provide a graphic representation of all activities and events that will occur during performance of the Work, including, without limitation, the ordering of materials, (2) identify each phase of construction and occupancy, and (3) shall be in accordance with the requirements of the Contract Documents (including the completion date and Milestone Dates set forth in the Project Schedule). The Contractor’s Construction Schedule, even if accepted by the Owner, shall not be deemed to modify the Contract Documents (including, without limitation, the Contract Time, the Contract Sum, the Project Schedule or any Milestone Dates set forth in the Project Schedule). The purpose of the Construction Schedule is to give the Owner a tool to assess the Contractor’s progress and, if the Work is only a portion of the Project, to monitor the coordination of the various portions of the project. 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 every thirty (30) days and submitted to the Owner. The Construction Schedule update shall also include a schedule of the estimated amount of each progress payment the Contractor will be due in accordance with the Work shown on the update. If an update indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime or additional labor. A Construction Schedule update shall not constitute amendment to the Contract Documents (including without limitation the Contract Time, the Contract Sum, the Project Schedule or any Milestone Dates set forth in the Project Schedule) unless any such adjustment is agreed to by the Owner and authorized pursuant to a Change Order.

3.10.5 Upon request from Owner, the Contractor shall supply any evidence reasonably requested by Owner to assure the Owner that the Contractor is in compliance with the Construction Schedule and the Project Schedule including, without limitation, written evidence that materials have been ordered in a timely manner. If the Owner determines that the performance of the Work, as of a Milestone Date, has not progressed or reached the level of completion required by the Contract Documents, the Owner shall have the right to order the Contractor to take corrective measures necessary to expedite the progress of construction, including, without limitation, working additional shifts or overtime, supplying additional labor, equipment, and facilities, and other similar measures (“Corrective Measures”). Such Corrective 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 Corrective Measures is solely for the purpose of insuring the Contractor’s compliance with the Construction Schedule. The Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Corrective Measures required by the Owner pursuant to this Subparagraph. The Owner may exercise the rights furnished the Owner under this Subparagraph as frequently as the Owner deems necessary.

3.10.6 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work that may interfere with the operation of the Owner’s premises or any tenants or invitees thereof. The Contractor shall, upon the Owner's written request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement or rescheduling of the Work under this Subparagraph may be grounds for an extension of the Contract Time or an adjustment in the Contract Sum if otherwise permitted under the Contract Documents.

3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

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 which 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. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Owner is subject to the limitations of Paragraph 2.7.

3.12.5 The Contractor shall review, approve and submit to the Owner all Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents 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. Submittals made by the Contractor which are not required by the Contract Documents may be returned without action. Unless otherwise indicated in writing, the Contractor shall be deemed to have reviewed and approved any information submitted and submittal of same shall constitute a certification from the Contractor that the information complies with the Contract Documents.

3.12.6 The Contractor shall perform no portion of the Work requiring submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect. Such Work shall be in accordance with approved submittals.

3.12.7 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

3.12.8 The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Owner’s approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Owner in writing of such deviation at the time of submittal and the Owner has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Owner’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 Owner on previous submittals. The Contractor shall submit Shop Drawings, Product Data, Samples, and other submittals only for those items for which they are specifically required. The Owner will not be obliged to review Shop Drawings, Product Data, Samples, and other submittals other than those required by the Contract Documents.

3.12.10 Informational submittals upon which the Owner is not expected to take responsive action may be so identified in the Contract Documents.

3.12.11 When professional certification of performance criteria of materials, systems, or equipment is required by the Contract Documents, the Contractor shall provide the person or party providing the certification with full information on the relevant performance requirements and on materials, systems, or equipment that are expected to operate at the Project Site. The certification shall be based on performance under the operating conditions generally prevailing or expected at the Project Site. The Architect and Owner shall be entitled to rely in a reasonable and professional fashion upon the accuracy and completeness of such certificates.
3.12.12 Submittal of Shop Drawings by the Contractor shall constitute a representation and warranty from the Contractor to the Owner that all Shop Drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the Shop Drawing is prepared and, if required by the Owner or applicable law, by a licensed engineer.

3.13 USE OF SITE

3.13.1 The Contractor shall confine operations at the Site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the Site with materials or equipment.

3.13.2 Only the materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project Site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project Site. The Contractor is solely responsible for protecting construction materials and equipment stored at the Project Site from weather, theft, damage, and all other adversity.

3.13.3 The Contractor shall insure that the Work is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the Site and all adjacent areas. The Work shall be performed so that public areas adjacent to the Site shall be free from all debris, building materials, and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Documents, Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of any areas and buildings adjacent to the Site.

3.13.4 Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Owner.

3.14 CUTTING AND PATCHING

3.14.1 The Contractor shall be responsible for cutting, fitting or patching required completing the Work or to make its parts fit together properly. All areas requiring cutting and patching shall be restored to a completely finished condition acceptable to the Owner.

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 prior written consent of the Owner and of such separate contractor. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor’s consent to cutting or otherwise altering the Work.

3.15 CLEANING UP

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

3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor.

3.15.3 The Contractor shall remove all labels, wash, and polish both sides of all glass. Further, in addition to general broom cleaning, the Contractor shall perform the final cleaning for all trades immediately upon completion of the Work, which shall include, but not be limited to, the following: (a) remove temporary protections; (b) remove marks, stains, fingerprints and other soil or dirt from painted, decorated and natural-finished woodwork and other Work; (c) remove spots, mortar, plaster, soil and paint from ceramic tile, marble, and other finish materials and wash or wipe clean; (d) clean fixtures, cabinet work and equipment, removing stains, paint, dirt and dust, and leave in undamaged, new condition; (e) clean aluminum in accordance with recommendations of the manufacturer; and (f) clean resilient floors thoroughly with a well-rinsed mop containing only enough moisture to clean off any surface dirt or dust and buff dry by machine to bring the surfaces to sheen.

3.16 ACCESS TO WORK

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

3.17 ROYALTIES AND PATENTS

3.17.1 The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights 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 patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

ARTICLE 4
ADMINISTRATION OF THE CONTRACT
4.1 ARCHITECT

4.1.1 The "Architect" with respect to any portion of the Work shall mean the design consultant that is responsible for the design of that portion of the Work and may include persons and entities lawfully licensed to practice architecture and person and entities lawfully licensed to practice engineering.

4.1.2 In case of termination of employment of the Architect, the Owner may at any time employ or retain another design consultant to perform all or any part of the duties of the Architect under the Contract Documents.

4.2 ADMINISTRATION OF THE CONTRACT

4.2.1 Owner will provide construction administration, unless Owner directs the Architect to take action as set forth below. The Architect will provide administration of the Contract as described in the Contract Documents, only as directed by Owner. Owner may modify or terminate the Architect's authority at any time.

4.2.2 At the direction of the Owner, the Architect will visit the Site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed Work and to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Contract.

4.2.3 The Architect shall be responsible for promptly notifying the Owner of the failure of the Contractor, Subcontractors, or any other persons performing any of the Work, in failing to use proper construction means, methods, techniques, sequences, procedures, safety precautions, and programs, but only to the extent Architect becomes aware of, or should, exercising due professional diligence, be aware of the same. Also the Architect shall promptly notify the Owner in writing of the failure of any of the foregoing parties to carry out the Work in accordance with the Contract Documents.

4.2.4 The Owner and the Contractor shall communicate directly with one another. 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 If requested by the Owner, the Architect will have the responsibility and authority to reject Work which does not conform to the Contract Documents and shall do so unless, after consultation in each instance with the Owner, the Owner instructs otherwise. Whenever the Architect considers it necessary or advisable for implementation of the intent of the Contract Documents, the Architect will have authority, subject to the Owner's prior approval, to require additional inspection or testing of the Work in accordance with Subparagraphs 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

4.2.6 At the direction of the Owner, the Architect will promptly review and approve or reject or take other appropriate action upon the Contractor’s submittals such as Shop Drawings, Product Data and Samples. In performing that function, the Architect shall have no greater duties or liabilities than the Owner.

4.2.7 The Owner will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Paragraph 7.4.

4.2.8 The Owner will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion. The Contractor will 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.

4.2.9 The Architect will interpret matters concerning performance under, and requirements of, the Contract Documents on written request of the Owner. The Architect’s response to such requests is not binding upon the parties. If a conflict is discovered within the Contract Documents, the Contractor shall be deemed to have agreed to perform the most stringent or highest quality way of performing the Work.

4.2.10 Interpretations 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 so rendered in good faith.

4.3 CLAIMS AND DISPUTES

4.3.1 A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term “Claim” also includes other disputes between the Owner and Contractor arising out of or relating to the Contract. Claims must be made by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.
4.3.2 Claims arising or discovered prior to the date of final payment may, upon request of both the Contractor and the Owner, be referred initially to the Architect for action as provided in Paragraph 4.4.

4.3.3 Claims by either party must be made within 21 days after occurrence of the event giving rise to such Claim or within 14 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. However, the claimant shall use its best efforts to make a Claim as expeditiously as possible. Claims must be made by written notice to the other party. Claims may also be reserved in writing within the time limits set forth in this Subparagraph. If a Claim is reserved, the resolution of Claims and disputes procedure described in Paragraph 4.4 shall not commence until a written notice of the reservation from the claimant is received by the Owner. Any reservation of Claim must clearly identify the alleged cause and the nature of the Claim and include data and information then available to the claimant that will facilitate prompt verification and the valuation of the Claim.

4.3.4 Pending final resolution of a Claim including litigation, unless otherwise directed by the Owner in writing the Contractor shall proceed diligently with performance of the Contract.

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

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

4.3.5.2 failure of the Work to comply with the requirements of the Contract Documents;

4.3.5.3 terms of warranties required by the Contract Documents; or

4.3.5.4 faulty or defective work appearing after Substantial Completion.

4.3.6 If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. The notice shall itemize all Claims and shall contain sufficient detail and substantiating data to permit evaluation of the Claim by Owner. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.3. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued pursuant to Paragraph 7.4, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner’s suspension or (7) other reasonable grounds, Claim shall be filed in accordance with the procedure established herein. Any change in the Contract Sum resulting from such Claim shall be authorized by Change Order or Construction Change Directive, as the case may be.

4.3.7 The following provisions relate to Claims for additional time:

4.3.7.1 If the Contractor wishes to make 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.

4.3.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time and could not have been reasonably anticipated, and that weather conditions had an adverse effect on scheduled construction. Requests for extensions of construction time due to adverse weather conditions shall include U.S. Weather Bureau Climatological reports for the months involved plus a report indicating the average precipitation, temperature, and other similar information for the past ten years from the nearest reporting station. The ten-year average will be the basis for determining the number of adverse weather days and the effect resulting therefrom on construction which the Contractor would normally expect to encounter. Extensions of time may be requested for any month of construction for days lost due to adverse weather in excess of the normally expected lost time. However, if the Owner determines that the number of adverse weather days during construction is less than would be normally expected, no Change Order shall be issued and the request for extension of time shall be denied.

4.3.8 If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party’s employees or agents, or of others for whose acts the other party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 14 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Subparagraphs 4.3.7 or 4.3.8.

4.4 RESOLUTION OF CLAIMS AND DISPUTES

4.4.1 If a Claim is referred to the Architect for initial interpretation, the Architect will review the Claim and take one or more of the following preliminary actions within ten days of receipt of a Claim: (1) request additional supporting data from the claimant, (2) submit a schedule to the parties indicating when the Architect expects to take action, (3) reject the Claim in whole or in part, stating reasons for rejection, (4) recommend approval of the Claim by the other party or, (5) suggest a compromise. The Architect may also, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim.

4.4.2 If a Claim has been resolved, the Owner will prepare or obtain appropriate documentation.

4.4.3 If a Claim has not been resolved, the party making the Claim shall, within ten days after the Architect’s preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Architect, (2) modify the initial Claim or (3) notify the Architect that the initial Claim stands.
4.4.4 If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect’s interpretation will be made within seven days. Upon expiration of such time period, the Architect will render to the parties the Architect’s written interpretation relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor’s default, the Architect may, but is not obligated to, notify the surety and request the surety’s assistance in resolving the controversy.

4.4.5 The decision of the Architect shall not be binding on either Contractor or Owner. If either party is dissatisfied with the Architect’s decision, the parties may pursue any remedies that are available to them at law or in equity.

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 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 SUBTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1 No later than five days subsequent to the full execution of the Agreement, the Contractor shall submit in writing to the Owner for review and approval the name, trade, and subcontract amount for each Subcontractor and the names of all persons or entities proposed as manufacturers of the products identified in the Specifications, including those who are to furnish materials or equipment fabricated to a special design and, where applicable, the name of the installing Subcontractor. The Owner will promptly reply to the Contractor in writing stating whether or not it has reasonable objection to any such proposed person or entity.

5.2.2 The Contractor shall not contrac diverse person or entity to whom the Owner has made timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

5.2.3 If the Owner has objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner has no objection.

5.2.4 The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner makes objection to such change.

5.2.5 Prior to any solicitation of bids from Subcontractors and material suppliers, Contractor shall submit to the Owner a proposed list of bidders. The Owner reserves the right to approve and add to such bidder’s list.

5.2.6 Subcontractors whose Work is unsatisfactory to the Owner, or is considered by the Owner to be careless, incompetent, unskilled or otherwise objectionable, shall be dismissed from Work under the Contract upon written notice from the Owner.

5.3 SUBCONTRACTUAL RELATIONS

5.3.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Owner and Architect all the obligations and responsibilities 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 which may be in variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

5.3.2 All subcontract agreements shall be substantially similar to the form subcontract agreement agreed to in writing by the Owner and shall specifically provide that the Owner is an intended third-party beneficiary of the subcontract. All subcontract agreements shall also provide that they are freely assignable by Contractor to Owner and assigns under the terms and conditions of the Contract Documents.

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:

5.4.1.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Paragraph 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor in writing; and

5.4.1.2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

5.4.2 If the Work in connection with a subcontract has been suspended for more than thirty days after termination of the Contract by the Owner pursuant to Paragraph 14.2 and the Owner accepts assignment of the subcontract, the Subcontractors’ compensation shall be equitably adjusted for any increase in direct costs incurred by the Subcontractor as a result of the suspension.

5.4.3 Upon acceptance of a subcontract agreement by the Owner, the Contractor shall promptly furnish the Owner true and correct copies of the designated subcontract agreements, and purchase orders, and Owner shall only be required to compensate the designated Subcontractor or supplier for compensation accruing to such party for Work done or materials delivered from and after the date on which Owner determines to accept the subcontract agreement. All sums due and owing by Contractor to the assigned Subcontractor or supplier for Work performed or materials supplied prior to Owner’s determination to accept the subcontract agreement or purchase order shall constitute a debt between such party and the Contractor. The Contractor shall deliver or cause to be delivered to the Owner a written acknowledgment in form and substance satisfactory to the Owner from each of its Subcontractors and suppliers of the contingent assignment described in this Paragraph no later than ten days after the date of execution of each subcontract agreement and purchase order with such parties.

ARTICLE 6
CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

6.1 OWNER’S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner’s own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the Site under these or similar Conditions of the Contract. The Contractor acknowledges the Owner’s intent to cause the installation of tenant finish and other work to be performed by others and that a portion of such work may take place before Substantial Completion by the Contractor. The Contractor shall afford such parties ample access to the Site and all areas of the Work as may be reasonably necessary for the performance of such work including, without limitation, storage of materials and equipment, vertical transportation, and connection to utilities and services.

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 when directed to do so. The Contractor shall make any revisions to the Construction Schedule as requested by the Owner. If the Contractor claims additional costs are involved because of any such revisions to the Contractor’s Construction Schedule, the Contractor shall make such Claim as provided elsewhere in the Contract Documents. 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 or would render it incompatible with Contractor’s Work. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner’s or separate contractors’ completed or partially completed construction is fit and proper to receive the Contractor’s Work, and fully compatible with Contractor’s Work.

6.2.3 Subject to Paragraph 8.3, costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

6.2.4 The Contractor shall promptly remedy damage caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Subparagraph 10.2.5.

6.2.5 In the event of a claim or dispute between the Contractor and any separate contractor, the Contractor shall promptly attempt to settle with the other contractor by agreement or otherwise.

6.3 OWNER’S RIGHT TO CLEAN UP
6.3.1 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 as described in Paragraph 3.15, the Owner may clean up and allocate the cost among those responsible.

ARTICLE 7
CHANGES IN THE WORK

7.1 CHANGES

7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, only 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. A field directive or field order shall not be recognized as having any impact upon the Contract Sum or the Contract Time. If the Contractor believes that a field directive or field order warrants a change in the Contract Sum or the Contract Time, it shall submit a change proposal to the Owner for the Owner’s approval prior to complying with such directive or order and in no event later than ten working days from the date such directive or order was given.

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

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 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive 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.

7.2 CHANGE ORDERS

7.2.1 A Change Order is a written instrument signed by the Owner and Contractor, stating their agreement upon all of the following for the item covered in each Change Order as well as the cumulative effect and impact of all previous Change Orders:

7.2.1.1 a change in the Work;
7.2.1.2 the amount of the adjustment in the Contract Sum, if any; and
7.2.1.3 the extent of the adjustment in the Contract Time, if any.

7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Subparagraph 7.3.3.

7.2.3 Except as permitted in Paragraph 7.3 and Subparagraph 9.7.2, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no Claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any Claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

7.2.4 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of a 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 any Change Order increases the Contract Sum, 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.

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 and stating a proposed basis for 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. This includes the right to shorten the Contract Time and thereby accelerate the Work.

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

7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:
7.3.3.1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;

7.3.3.2 unit prices stated in the Contract Documents or subsequently agreed upon;

7.3.3.3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

7.3.3.4 as provided in Subparagraph 7.3.6.

7.3.4 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.

7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor 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.

7.3.6 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 by the Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a percentage fee for overhead and profit not to exceed 15% as set forth below. In such case, and also under Clause 7.3.3.3, the Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting of actual costs together with appropriate supporting data. Costs for the purposes of this Subparagraph 7.3.6 shall be limited to the following:

7.3.6.1 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and Workers’ or Workmen’s Compensation insurance;

7.3.6.2 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

7.3.6.3 reasonable rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;

7.3.6.4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes directly attributable to such work.

7.3.7 The allowance for overhead and profit combined, included in the total cost to the Owner, shall be based upon a fixed fee to be agreed upon, but not to exceed the following percentages of the actual cost of the Work for approved changes, broken down as follows:

7.3.7.1 For additions to the Contract Sum:

   a. For the Contractor’s or Subcontractor’s own Work, a maximum of fifteen percent (15%), of which a maximum of five percent (5%) shall be compensation to cover costs of supervision (job and office), Change Order preparation, overhead, bond, and any other general expenses associated with the performance of the Work; and a maximum of ten percent (10%) shall be for profit.

   b. For the Contractor on Subcontractor’s Work, a maximum of ten percent (10%), of which a maximum of five percent (5%) shall be compensation to cover costs of supervision (job and office), Change Order preparation, overhead, bond, and any other general expenses associated with the performance of the Work; and a maximum of five percent (5%) shall be for profit.

7.3.7.2 Deductions from the Contract:

   a. For the Contractor’s or Subcontractor’s own Work, a maximum of ten percent (10%), of which a maximum of five percent (5%) shall also be deducted from compensation for costs of supervision (job and office), Change Order preparation, overhead, bond, and any other general expenses associated with the performance of the Work; and a maximum of five percent (5%) from profit.

   b. For the Contractor on Subcontractor’s Work, a maximum of ten percent (10%), of which a maximum of five percent (5%) shall also be deducted from compensation for costs of supervision (job and office), Change Order preparation, overhead, bond, and any other general expenses associated with the performance of the Work; and a maximum of five percent (5%) from profit.
7.3.8 Pending final determination of actual cost to the Owner, amounts not in dispute shall be recorded by preparation and execution of an appropriate Change Order and thereafter may be included in Applications for Payment. 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 If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be determined in accordance with Paragraph 8.3.

7.3.10 When the adjustments in the Contract Sum and Contract Time are determined as provided by the Contract Documents, such determination shall be recorded by preparation and execution of an appropriate Change Order prior to any payment on account thereof.

7.4 MINOR CHANGES IN THE WORK

7.4.1 The Owner will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

7.5 OVERTIME WORK

7.5.1 Overtime, when specifically authorized by the Owner, and not as a Corrective Measure, shall be paid for by the Owner on the basis of premium payment only, plus the cost of insurance and taxes based upon the premium payment period. Overhead and profit will not be paid by the Owner for overtime.

7.6 ACCOUNTING RECORDS FOR CHANGES IN THE WORK

7.6.1 The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management of changes in the Work performed under the Contract; the accounting and control system shall be established and maintained in accordance with general accepted accounting principles, and otherwise shall be satisfactory to the Owner. The Owner and the Owner’s accountants shall be afforded access to the Contractor’s records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to changes in the Work, and the Contractor shall preserve these for a period of three (3) years after final payment, or for such longer period as may be required by law.

7.6.2 The Owner shall have the right to conduct an independent audit of the Contractor’s records, books and other documents referenced in Subparagraph 7.6.1 at any time upon and after Substantial Completion of the Work or suspension or termination of the Contract. If such audit determines that the Contractor has submitted Applications for payment which total, or that the Contractor has been paid, more than the amount actually due under the Contract Documents, the Contractor shall immediately pay the difference to the Owner as well as the Owner’s costs for the audit.

7.6.3 As used in the Contract, the term “Owner’s accountants” shall mean, at the Owner’s sole discretion, Owner’s accountants, Owner’s internal audit department, or such other persons or entities as are designated by the Owner.

ARTICLE 8
TIME

8.1 DEFINITIONS

8.1.1 Unless otherwise provided, Contract Time is the period of time, allotted in the Project Schedule for Substantial Completion of the Work, together with authorized adjustments thereto.

8.1.2 The date of commencement of the Work, and the beginning of the performance time limit, is the date of the Agreement, unless the parties agree otherwise. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

8.1.3 The date of Substantial Completion is the date certified by the Owner in accordance with Paragraph 9.8.

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

8.1.5 The Contract Time shall be set by the time allotted in the Project Schedule.

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. The Contractor acknowledges and understands that failure by the Contractor to complete the Work in accordance with the Project Schedule will cause significant damage to the Owner, including, without limitation, loss of funding beyond governmental agency deadlines, increased costs and inefficiency resulting from disruption and
delay in the Owner’s moving schedule, and delay in commencement of subsequent portions of the Project to be performed under separate contract(s) that is dependent upon the completion of the Work under this Contract.

8.2.2 The Contractor shall not, except by agreement or instruction of the Owner in writing, prematurely commence operations on the Site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic’s liens and other security interests.

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 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 occurrences beyond the control and without the fault or negligence of the Contractor and that by the exercise of reasonable diligence the Contractor is unable to prevent or provide against, including labor disputes (other than disputes limited to the work force of, or provided by, the Contractor or its Subcontractors) fire, unusual delay in deliveries not reasonably anticipatable, unavoidable casualties, then the Contract Time shall be extended by Change Order or Construction Change Directive for the length of time actually and directly caused by such occurrence as determined by the Owner. The Contractor’s financial difficulties and the defaults of the Contractor’s Subcontractors (of any tier) shall never justify a delay. Moreover, any extension of Contract Time shall be reduced by any period during the excusable delay in which the Contractor would have been delayed anyway due to causes that would not justifi an extension under this subparagraph and shall be further reduced by the amount of any contingency or “float” time allowance included in the Contractor’s Construction Schedule prior to the delay. The Contractor shall, in the event of any occurrence likely to cause a delay, cooperate in good faith with the Architect and the Owner to minimize and mitigate the impact of any such occurrence and do all things reasonable under the circumstances to achieve this goal. No extension of time or increase in Contract Sum will be granted on account of the Contractor’s failure to order materials, articles, or equipment in sufficient time or quantities for the timely progress of the Work.

8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.3.

8.3.3 Notwithstanding anything to the contrary in the Contract Documents, an extension in the Contract Time, to the extent permitted under Paragraph 8.3.1, shall be the sole remedy of the Contractor for any (1) Delay in the commencement, prosecution or completion of the Work, (2) hindrance or obstruction in the performance of the Work, (3) loss of productivity, or (4) other similar Claims (collectively referred to in this Paragraph as “Delays”) whether or not such Delays are foreseeable, unless a Delay is caused by acts of the Owner constituting active interference with the Contractor’s performance of the Work, and only to the extent such acts continue for an unreasonable time after the Contractor furnishes the Owner with notice of such interference. In no event shall the Contractor be entitled to any compensation or recovery of any damages, in connection with any Delay, including, without limitation, consequential damages, lost opportunity costs, impact damages or other similar remuneration. The Owner’s exercise of any of its rights or remedies under the Contract Documents (including, without limitation, ordering changes in the Work, or directing suspension, rescheduling or correction of the Work), regardless of the extent or frequency of the Owner’s exercise of such rights or remedies, shall not be construed as active interference with the Contractor’s performance of the Work.

8.3.4 The Owner may seek recovery for actual damages suffered due to delays of the Contractor. Actual damages will be deemed to commence five days after each or all of the following: (1) scheduled Substantial Completion date for any portion of the Work, (2) scheduled occupancy date for any portion of the Work, (3) scheduled Substantial Completion date for the entire Work, and (4) scheduled occupancy date for the entire Work. The dates referenced shall be subject to adjustment as provided in the Contract Documents.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

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

9.2 SCHEDULE OF VALUES

9.2.1 Not more than 15 days after the award of Contract, the Contractor shall submit to the Owner a “schedule of values” allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor’s Applications for Payment.

9.2.2 Upon request of Owner, the Contractor and each Subcontractor shall prepare a “trade payment breakdown” for the Work for which each is responsible using a uniform standardized form approved by the Owner. The form shall be divided in detail sufficient to exhibit areas, floors and/or sections of the Work, and/or by convenient units and shall be updated as required by the Owner as necessary to reflect (1) description of Work (listing labor and material separately), (2) total value, (3) percent of the Work completed to date, (4) value of Work completed to date, (5) percent of previous amount billed, (6) previous amount billed, (7) current percent completed and (8) value of Work completed to date. Any trade payment breakdown which fails to include sufficient detail, is unbalanced, or exhibits “front-loading” of the value of the Work shall be
shall be withheld from future Applications for Payment to ensure an adequate reserve to complete the Work.

9.2.3 In addition to the required schedule of values, if required for convenience of Owner’s accounting, the Contractor shall furnish segregated prices for various portions of the Work; and shall submit said prices within 15 calendar days from receipt of any request for same from Owner.

9.3 APPLICATIONS FOR PAYMENT

9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the schedule of values. Each application shall be notarized, if required, and supported by such data substantiating the Contractor’s right to payment as the Owner may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents.

9.3.1.1 Such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives but not yet included in Change Orders. The foregoing shall not diminish the Owner’s right to insist that a Change Order be agreed upon prior to any payment relating to any payment relating to a Construction Change Directive.

9.3.1.2 Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a Subcontractor or material supplier because of a dispute or other reason. Such applications may not include requests for payment for portions of the Work for which the Contractor shall include with the application a written notice stating the name of and amount owed to any Subcontractor that has requested payment not included on the Application for Payment.

9.3.1.3 Each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner: (1) a current Contractor’s lien waiver and duly executed and acknowledged sworn statement showing all Subcontractors and materialmen with whom the Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractors and materialmen in the requested progress payment and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all such Subcontractors and materialmen; (2) duly executed waivers of mechanics’ and materialmen’s liens from all Subcontractors, and when appropriate, from materialmen and lower tier Subcontractors establishing payment or satisfaction of payment of all amounts requested by the Contractor on behalf of such entities or persons in any previous Application for Payment; and (3) all information and materials required to comply with the requirements of the Contract Documents or reasonably requested by the Owner.

9.3.1.4 Upon request from the owner, the Contractor shall submit to the Owner, along with the Construction Schedule specified hereinbefore, a schedule of the estimated amount of each monthly progress payment the Contractor will be due in accordance with the Work shown on the Construction Schedule.

9.3.1.5 Each Application for Payment shall be accompanied by waivers of lien, using AIA Document G706A, for previous billing period from Subcontractors, Sub-subcontractors, and material suppliers for amounts billed of Ten Thousand Dollars ($10,000) or more.

9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work, but only if such incorporation will occur within 30 days after such request for payment or such longer period as may be approved in advance by Owner. 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 applicable insurance, storage and transportation to the Site for such materials and equipment stored off the Site. In addition, the Owner’s representative shall have the right to make inspections of the storage areas at any time, and such materials shall be (1) protected from diversion, destruction, theft, and damage to the satisfaction of the Owner, (2) specifically marked for use on the Project, and (3) segregated from other materials at the storage facility. The Owner’s written approval shall be obtained before off-Site storage is used. Suitable off-Site storage shall be a bonded warehouse or other appropriate storage.

9.3.3 The Contractor warrants and agrees that title to all Work will pass to the Owner either by incorporation in the construction or upon the receipt by Contractor of payment therefore, whichever occurs first, free and clear of all liens, claims, security interests, or encumbrances whatsoever; that the vesting of such title shall not impose any obligations on the Owner or relieve Contractor of any of its obligations under the Contract; that the Contractor shall remain responsible for damage to or loss of the Work, whether completed or under construction, until responsibility for the Work has been accepted by the Owner in the manner set forth in the Contract Documents; and that no Work covered by an Application for Payment will have been acquired by the Contractor, or by any other person performing work at the Site or furnishing materials and equipment for the Project, subject to an agreement under which an interest therein or an encumbrance thereon is retained by the seller or otherwise imposed by the Contractor or such other person.

9.3.4 Duplicate originals of the periodic Subcontractor and materialmen’s lien waivers and releases shall remain on file at the Contractor’s office for inspection by the Owner. Duplicate originals of final lien waivers and releases supplied by each Subcontractor and materialman shall remain on file at the Contractor’s office for a period of one year from the date of final payment and shall be available for inspection by the Owner.

9.4 CERTIFICATES FOR PAYMENT
9.4.1 The Owner will, within a reasonable time after receipt of the Contractor’s Application for Payment, either issue to the Contractor a written approval of the Application for Payment or notify the Contractor of Owner’s reasons for withholding approval in whole or in part as provided in Subparagraph 9.5.1.

9.5 DECISIONS TO WITHHOLD CERTIFICATION

9.5.1 The Owner may decide not to approve and Application for Payment may without payment in whole or in part, or may decide to revoke a previous approval of an Application for Payment based on newly discovered evidence, to the extent reasonably necessary to protect the Owner from loss because of:

9.5.1.1 defective Work not remedied;

9.5.1.2 third party claims filed or reasonable evidence indicating probable filing of such claims;

9.5.1.3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;

9.5.1.4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

9.5.1.5 damage to the Owner or another contractor;

9.5.1.6 reasonable evidence that the Work will not be completed within the Contract Time, or that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or

9.5.1.7 failure to comply with the Contract Documents including, without limitation, failure to carry out the Work in accordance with the Contract Documents.

9.5.2 The Owner shall not be deemed in default by reason of withholding payment while and failure of the Contractor to comply with the Contract Documents remains uncured.

9.6 PROGRESS PAYMENTS

9.6.1 After the Owner has approved an Application for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Contractor. The Owner may retain five percent of any payment (the “retainage”) Contractor and specified in Idaho Code Section 29-115. Retainage shall be held and released as set forth in Idaho Code Section 29-115.

9.6.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor’s portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such 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 similar manner. Notwithstanding anything in this Subparagraph to the contrary, the Owner may elect, in the Owner’s sole discretion, to make any payment requested by the Contractor on behalf of a Subcontractor of any tier jointly payable to the Contractor and such Subcontractor. The Contractor and such Subcontractor shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint payment be construed to create any (1) contract between the Owner and a Subcontractor of any tier, (2) obligations from the Owner to such Subcontractor, or (3) rights in such Subcontractor against the Owner.

9.6.3 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

9.6.4 Payment to material suppliers shall be treated in a manner similar to that provided in Subparagraphs 9.6.2.

9.6.5 The approving of an Application for Payment, the making of a progress payment, or using or occupying all or a part of the Work or the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

9.7 FAILURE OF PAYMENT

9.7.1 If the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount or approved by the Contractor may, upon seven additional days’ written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor’s reasonable costs of shut-down, delay and start-up, which shall be accomplished as provided in Article 7.

9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything in the Contract Documents to the
contrary, if the Contractor fails to promptly make any payment due the Owner, 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 either to: (1) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (2) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

9.8 SUBSTANTIAL COMPLETION

9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or a designated portion thereof that the Owner agrees to accept separately is sufficiently complete in accordance with the Contract Documents so the Owner can occupy or utilize the Work for its intended use and the Owner has issued a Certificate of Substantial Completion in accordance with subparagraph 9.8.2 below. However, as a further condition precedent to Substantial Completion, the Owner shall have received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the Owner’s beneficial use of the Work (or portion thereof). In general, the only remaining work shall be minor in nature, so that the Owner could use the Work (or portion thereof) for its intended use on that date and the completion of the Work by the Contractor would not materially interfere or hamper the Owner’s use of the Work (or portion thereof) for its intended use.

9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. 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. Upon receipt of the Contractor’s list, the Owner will make an inspection to determine whether the Work or designated portion thereof that the Owner agrees to accept separately is substantially complete. If the Architect’s inspection discloses any item, whether or not included on the Contractor’s list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. The Contractor shall then submit a request for another inspection by the Owner to determine Substantial Completion. When the Work or designated portion thereof that the Owner agrees to accept separately is substantially complete, the Owner will prepare a Certificate of Substantial Completion which 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 that the Owner agrees to accept separately unless otherwise provided in the Certificate of Substantial Completion. 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.

9.8.3 Upon Substantial Completion of the Work or designated portion thereof that the Owner agrees to accept separately and upon application by the Contractor and approval by the Owner, the Owner shall make payment for such Work or portion thereof as provided in the Contract Documents. Subject to receipt of acceptable lien releases, within 35 days from the date of Substantial Completion of the Work, the Owner shall pay the retainage to the Contractor less 150% of the estimated value of Work yet to be completed in accordance with the Contract.

9.9 PARTIAL OCCUPANCY OR USE

9.9.1 The Owner and separate contractors may occupy or use any completed or partially completed portion of the Work at any stage of construction regardless whether the Contract Time has expired (“Partial Occupancy”). Such Partial Occupancy may commence whether or not the applicable portion of Work is Substantially Complete.

9.9.2 In each instance, when the Owner elects to exercise its right of Partial Occupancy, the Owner will give the Contractor advance written notice of its election to take the portion or portions involved. Immediately prior to such Partial Occupancy or use, the Owner and 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.

9.9.3 Partial Occupancy shall not: (1) constitute final acceptance of any Work, (2) relieve the Contractor for responsibility for loss or damage because of or arising out of defects in or malfunctioning of, any Work, material, or equipment, nor from any other unfulfilled obligations or responsibilities under the Contract Documents, or (3) commence any warranty period under the Contract Documents, provided that Contractor shall not be liable for ordinary wear and tear resulting from the Partial Occupancy.

9.9.4 In the event of Partial Occupancy prior to Substantial Completion, mutually acceptable arrangements shall be made between the Owner and Contractor in respect of the operation and cost of necessary security, maintenance and utilities.

9.9.5 If the Contractor claims that delay or additional cost is involved because of Partial Occupancy by the Owner, Contractor shall make such Claim as provided elsewhere in the Contract Documents.

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection and, when the Owner finds the Work acceptable under the Contract Documents and the Contract fully performed, the Owner will promptly approve the final Application for Payment. All warranties and guaranties required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Owner as part of the final Application for Payment.
9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner (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 satisfactory to the Owner that the insurance will 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) signed certificates from all material suppliers stating that the materials conform to the Contract Documents; and (7) evidence of compliance with all requirements of the Contract Documents, including but not limited to delivery to Owner of Contractor’s general warranty and a final waiver of liens covering all Work including that of all Subcontractors, vendors, labor, materials, and services. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys’ fees.

9.10.3 The making of final payment shall constitute a waiver of Claims by the Owner as provided in Subparagraph 4.3.5.

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 on payee’s final Application for Payment. Such waivers shall be in addition to the waiver described in Subparagraph 4.3.5.

9.10.5 Within 35 days from the date of final completion of the Work, the Owner shall pay the retainage to the Contractor, except in the event of a dispute between the Owner and the Contractor, the Owner may continue to withhold an amount not to exceed 150 percent of the estimated value of the issue in dispute.

9.11 LIQUIDATED DAMAGES

9.11.1 Should the Contractor fail to complete the Work within the Contract Time, the Owner will sustain damage due to the following:

9.11.1.1 Lost profits resulting from delay in occupancy.

9.11.1.2 Interest on money borrowed for construction payments.

Contractor acknowledges that the Owner’s damages are likely to be extremely difficult or impossible to calculate with certainty.

9.11.2 Therefore, the parties agree that the Contractor shall pay the Owner, as liquidated damages and not as penalty, an amount as follows, which shall be considered to be the amount of the damage sustained by the Owner on account of the foregoing reasons.

9.11.2.1 The amount of liquidated damages shall be Five Hundred Dollars ($500) for each and every calendar day beyond the expiration of the Contract Time that the Work is not available for beneficial use as intended.

9.11.2.2 The amount of liquidated damages may be more than $500 a day if a higher amount is set forth elsewhere in the Contract Documents.

9.11.3 The Owner may deduct the sum of such liquidated damages from any monies due or that may become due the Contractor; or, if such monies are insufficient, the Contractor or his surety or sureties shall pay the difference.

ARTICLE 10
PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

10.1.2 Unless otherwise provided in the Contract Documents, in the event the Contractor encounters on the Site material reasonably believed to be Hazardous Materials” (as defined below) which has not been rendered harmless, the Contractor shall immediately stop Work in the area affected and report the condition to the Owner in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the Owner and Contractor if in fact the materials are Hazardous Materials that have not been rendered harmless. The Work in the affected area shall be resumed in the absence of Hazardous Materials, or when it has been rendered harmless, upon written direction of the Owner. The term “rendered harmless” shall be interpreted to mean that levels of the Hazardous Materials are less than any applicable exposure standards set forth in Occupational Safety and Health Act (OSHA) regulations.

10.1.3 Contractor shall not cause or permit any “Hazardous Materials” (as defined herein) to be brought upon, kept or used in or about the job site except to the extent such Hazardous Materials are necessary for the prosecution of the Work or are required...
pursuant to the Contract Documents. Removal of such Hazardous Materials shall be undertaken within twenty-four (24) hours following Owner’s demand for such removal. Such removal shall be undertaken by Contractor at its sole cost and expense, and shall be performed in accordance with all applicable laws. Any damage to the Work, the job site or any adjacent property resulting from the improper use, or any discharge or release of Hazardous Materials shall be remedied by Contractor at its sole cost and expense, and in compliance with all applicable laws. Contractor shall immediately notify Owner of any release or discharge of any Hazardous Materials on the job site. Contractor shall be responsible for making any and all disclosures required under applicable “Community Right-to-Know” laws. Contractor shall not clean or service any tools, equipment, vehicles, materials or other items in such a manner as to cause a violation of any laws or regulations relating to Hazardous Materials. All residue and waste materials resulting from any such cleaning or servicing shall be collected and moved from the job site in accordance with all applicable laws and regulations. Contractor shall immediately notify Owner of any citations, orders or warnings issued to or received by Contractor, or of which Contractor otherwise becomes aware, which relate to any Hazardous Materials on the job site. As used in the Agreement, the term “Hazardous Materials” means any hazardous or toxic substances, materials and wastes listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) or listed by the Environmental Protection Agency as hazardous substances (40 CFR Park 302) and any amendments thereto, and any substances, materials or wastes that are or become regulated under federal, state or local law. Hazardous Materials (or substances) shall also include, but not be limited to: regulated substances, petroleum products, pollutants, and any and all other environmental contamination as defined by and in any and all federal, state and/or local laws, rules, regulations, ordinances or statutes now existing or hereinafter enacted relating to air, soil, water, environmental or health and safety conditions.

10.2 SAFETY OF PERSONS AND PROPERTY

10.2.1 The Contractor shall take all necessary precautions for safety of, and shall provide all necessary protection to prevent damage, injury or loss to:

10.2.1.1 all persons involved in or affected by the Project;

10.2.1.2 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

10.2.1.3 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 give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss. The Contractor shall provide all facilities and shall follow all procedures required by OSHA including, but not limited to providing and posting all required posters and notices and shall otherwise be responsible for all other mandatory safety laws. Contractor shall indemnify Owner for any fines or penalties assessed against Owner due to Contractor’s failure to comply with any applicable law including OSHA. Failure to comply with OSHA regulations and/or failure to follow safe working practices may result in immediate termination for cause as described in Subparagraph 14.2.1.

10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, all necessary 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 the Owner reasonable advance notice 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 Clauses 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 Clauses 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 in whole or in part to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor’s obligations under Article 11.

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.

10.2.7 The Contractor shall not load or permit any part of the construction or Site to be loaded so as to endanger its safety.

10.2.8 When all or a portion of the Work is suspended for any reason, the Contractor shall protect the Work as necessary from injury by any cause.
10.2.9 The Contractor shall promptly report in writing to the Owner all accidents arising out of or in connection with the Work which caused death, personal injury, or property damage, giving full details and statements of any witnesses. If death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner.

10.2.10 No one other than those directly involved in the demolition and construction or specifically designated by the Owner shall be permitted in the areas of the Work during demolition and construction activities.

10.2.11 Contractor shall not cause or permit any disruption to the streets and utilities serving any occupied portion of the Project, the remainder of the Project, or other properties without first obtaining the appropriate governmental approvals and Owner’s prior consent, which may be conditioned upon restrictions in the time, place and manner of such disruption. Owner and Contractor shall cooperate in implementing any street closures required by the Work.

10.3 EMERGENCIES

10.3.1 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 Paragraph 4.3, Paragraph 8.3, and Article 7.

10.3.2 Owner, in its sole discretion, if Contractor does, or omits to do, anything whereby safety may be endangered or whereby damage or injury may result to person or property (including the Work itself), after (1) day written notice to Contractor, without prejudice to any other remedy Owner may have, make good all Work, material, omissions or deficiencies, and may deduct the cost therefore from the amount included in the Contract Sum due or which may thereafter become due to Contractor, but no action taken by Owner hereunder shall affect any of the other rights or remedies of Owner granted by this Agreement or by law, or relieve Contractor from any consequences or liabilities arising from such acts or omissions.

ARTICLE 11
INSURANCE AND BONDS

11.1 CONTRACTOR’S INSURANCE

11.1.1 Contractor shall, without in any way altering Contractor’s liability under the Contract or applicable law, obtain, pay for, and maintain in a company or companies lawfully authorized by certificate of authority by the Director of the Department of Insurance to do business in the State of Idaho insurance for the coverages and amounts of coverage not less than those set forth below in the Schedule of Insurance Coverages and shall provide to the Owner acceptable certificates proving evidence of insurance issued by insurance companies satisfactory to the Owner to evidence such coverage before any equipment or personnel are brought to the Site or Work commences. All such insurance shall be written on an occurrence basis. Such certificate shall provide that there shall be no termination, nonrenewal, modification or expiration of such coverage without thirty (30) days’ prior written notice to the Owner. In the event of any failure by Contractor to comply with the provisions of this Paragraph, the Owner may, at its option, on notice to Contractor, suspend the Contract for cause until there is full compliance with this Paragraph and/or terminate the Contract for cause. Alternatively, the Owner may purchase such insurance at the Contractor’s expense, provided that the Owner shall have no obligation to do so and if the Owner shall do so, the Contractor shall not be relieved of or excused from the obligation to obtain and maintain such insurance amounts and coverages.

11.1.2 The Contractor shall name the Owner and Architect and the shareholders, officers, directors, consultants, agents and employees of either of the above-mentioned parties as additional insureds on the insurance policies, except the Workers Compensation policy, and shall provide the Owner with a certified copy of any and all applicable insurance policies upon request of the Owner. The Contractor shall obtain from the Architect the list of names to appear on the insurance policies.

11.1.3 Certificates of Insurance acceptable to the Owner shall be filed with the Owner and the Architect before commencement of the Work. These Certificates shall contain a provision that coverages afforded under the policies will not be canceled until at least 30 days prior written notice has been given to the Owner, the Architect and the Owner’s insurer.

11.1.4 In the event Contractor fails to obtain the required evidence of insurance from the Subcontractor and a claim is made or suffered, the Contractor shall indemnify, defend and hold harmless the Owner and Architect and the shareholders, officers, directors, consultants, agents, and employees of either of the above-mentioned parties from any and all claims for which the required insurance would have provided coverage. This indemnity obligation is in addition to any other indemnity obligation provided in the Contract.

11.1.5 The Contractor shall require that each of his Subcontractors obtain and maintain during the duration of his Subcontract adequate Liability Insurance of the types and in the amounts stipulated hereinbefore unless said Subcontractor is or would be covered under the Contractor’s insurance policies.

11.1.6 All policies shall provide that no cancellation of the policy or the endorsement shall be effective until the tenth day following making of written notices of such cancellation to the Owner and Architect.
11.1.7 **Indemnification.** Contractor agrees to indemnify and hold Owner and Architect harmless from any claims for personal injury or property damage arising out of or in any way involving the Work.

11.2 **SCHEDULE OF INSURANCE COVERAGE**

11.2.1 **Workers’ Compensation Insurance.** Coverage complying with the law of the states in which the Contractor’s Work is to be performed and Employer’s Liability insurance with a limit of $500,000 each accident, including occupational disease coverage with a limit of $500,000 per person subject to aggregate limit of $1,000,000 per annum.

11.2.2 **Comprehensive Automobile Liability Insurance.** $1,000,000 combined single limit of liability for bodily injuries, death and property damage resulting from any one occurrence, including all owned, hired and nonowned vehicles.

11.2.3 **Comprehensive General Liability Insurance.** $1,000,000 combined single limit of liability for bodily injuries, death and property damage, and personal injury resulting from any one occurrence, including the following coverages:

11.2.3.1 Premises and Operations;
11.2.3.2 Products and Completed Operations for three (3) years after completion of the Work;
11.2.3.3 Broad Form Comprehensive General Liability Endorsement to include Blanket Contractual Liability (specifically covering, but not limited to, the contractual obligations assumed by Contractor in Subparagraph 11.1.3 and Paragraph 11.8 hereof), Personal Injury (with employment and contractual exclusions deleted) and Broad Form Property Damage coverage (which shall include completed operations);
11.2.3.4 Independent Contractors;
11.2.3.5 Delete Exclusions relative to Collapse, Explosion and Underground Property Damage Hazards;
11.2.3.6 Cross Liability endorsement; and
11.2.3.7 Personal Injury.

The Comprehensive General Liability Policy shall include, but not be limited to, the following additional coverage: (a) Combined single limits for bodily injury and property damage of $1,000,000 each occurrence and $1,000,000 aggregate; and (b) Property Damage Liability Insurance to provide X, C, or U coverage as applicable.

11.2.4 **Contractual Liability Insurance.** Contractual Liability insurance with combined single limits for bodily injury and property damage of $1,000,000 each occurrence and $1,000,000 aggregate.

11.2.5 **Personal Injury Insurance.** Personal Injury Insurance (with employment exclusion deleted) shall provide coverage of $1,000,000 each occurrence and $1,000,000 aggregate.

11.2.6 **General Liability Coverages.** If the General Liability Coverages are provided by a Commercial Liability Policy, the (a) general aggregate shall be not less than $2,000,000, and it shall not be part of blanket coverage, but must apply to the Project only; (b) fire damage limit shall be at least $50,000 on any one fire; and (c) Medical Expense Limit shall be not less than $5,000 on any one person.

11.2.7 **Umbrella (Excess) Liability Insurance.** Umbrella Liability with limits of not less than $15,000,000 to be excess of 11.2.1 through 11.2.6 above. Such coverage shall be at least as broad as the primary coverages in 11.2.1 through 11.2.6 above, with any excess umbrella layers written on a strict following form basis over the primary umbrella. All such policies shall be endorsed to provide defense coverage obligations.

11.2.8 **Performance Bond and Labor and Material Payment Bond.**

11.2.8.1 If requested by the Owner, the Contractor and each Subcontractor designated by the Owner shall obtain a Performance Bond and Labor and Material Payment Bond in the amount of 100 percent of the applicable Contract Sum. Contractor shall deliver its required bonds not later than the date of execution of the Agreement and deliver the required Subcontractor bonds to Owner not later than the date of execution of the subcontract with any such Subcontractor or, if the Work is commenced prior thereto in response to a notice to proceed, the Contractor shall, prior to commencement of the Work, submit evidence satisfactory to Owner that such bonds will be issued.

11.2.8.2 The bonds shall in all respects conform to the requirements of the law of the state in which the Project is located and shall (1) name as obligees: the Owner, any lender(s) of the Owner secured in whole or in part by a lien on the Project, and the title insurance company(ies) which has (have) issued title policies to the Owner or its lender(s), (2) be in a form and be issued by a licensed surety satisfactory to the Owner, (3) be in an amount equal to 100 percent of the applicable Contract Sum, and (4) be automatically increased in the amount of any additive Change Orders and Construction Change Directives signed by the Owner and surety shall consent to and waive notice of any addition, alteration, omission, change, or other modification of the Contract Documents that singularly or in the aggregate does not exceed ten percent (10%) of the Contract Sum.
11.2.8.3 The premium for bonds required above shall be reimbursed by the Owner to Contractor unless the premium was included in Contractor’s bid and is included in the Contract of Construction as part of the price.

11.2.8.4 The Owner shall be notified by the Contractor, in writing, of all communications with the surety.

11.2.8.5 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 permit a copy to be made.

11.3 **BUILDER’S RISK INSURANCE**

Owner shall procure, pay for, and maintain all-risk builder’s risk insurance as follows:

11.3.1 Owner shall carry all-risk builder’s risk insurance (subject to a combined deductible per loss not to exceed $50,000) for the full insurable value of all labor and material incorporated into the construction of the Work, while at the Construction Site and/or staging area awaiting erection and during erection, until completion and acceptance. Insurance is to cover real and personal property after it is received at the Construction Site and/or staging area (but not while otherwise stored off-Site or in transit). The policy so purchased shall insure Owner, the Contractor and Subcontractors as their interests may appear and shall be so written as to provide for reimbursement, in the event of claim for loss or damage, for the entire cost, less the deductible amount as specified above, of repairing or replacing, reconditioning, or re-erecting the property lost or damages with materials of similar kind and quality, including, but not by way of limitation, the cost of materials, labor, supervision, engineering, transportation, insurance premium and taxes.

11.3.2 Contractor shall be responsible for a deductible of $25,000 per loss. Owner shall be responsible for the difference between $25,000 and $50,000 or less, as the case may be, per loss.

11.3.3 Any insured loss or claim of loss pursuant to this Paragraph 11.3 shall be adjusted by the Owner, and any settlement payments shall be made payable to the Owner as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgagee clause. Upon the occurrence of an insured loss or claim of loss, monies received will be held by Owner who shall make distribution in accordance with an agreement to be reached in such event between Owner and Contractor. If the parties are unable to agree between themselves on the settlement of the loss, such dispute shall be submitted to a court of competent jurisdiction to determine ownership of the disputed amounts but the Work of the Project shall nevertheless progress during any such period of dispute without prejudice to the rights of any party to the dispute.

11.3.4 Owner shall not insure nor be responsible for any loss or damage to property of any kind owned, rented or leased by the Contractor, Subcontractors, or their employees, servants or agents, other than property which will become a part of the permanent construction.

11.3.5 Notwithstanding anything contained in the Contract to the contrary, the all-risk builder’s risk insurance carried by Owner hereunder contains certain exclusions. It is Contractor’s responsibility to evaluate the protection afforded by Owner’s all-risk builder’s risk insurance and to carry its own insurance against all losses not covered by said policy. A copy of Owner’s all-risk builder’s risk insurance will be available for Contractor’s inspection at Owner’s Project office.

11.4 **CONTRACTOR’S EQUIPMENT INSURANCE**

11.4.1 With respect to Contractor’s operations, Contractor shall purchase, maintain and pay for all-risk Contractor’s equipment floater on all machinery, tools, equipment and other similar property in an amount at least equal to their fair market value and any deductible shall be for the account of Contractor. This insurance coverage shall be the sole and complete means of recovery for any loss covered by such insurance.

11.5 **ADDITIONAL INSURANCE COVERAGE**

11.5.1 Contractor agrees for its own account, and further agrees that all subcontracts shall specify that, if broader coverage than is provided under this Article, or if higher limits are deemed necessary by the Contractor, that Contractor has either affirmatively elected to self assume the exposure or purchase additional insurance coverage, the additional cost of which shall under no circumstances be reimbursed directly or indirectly by Owner.

11.6 **OWNER’S LIABILITY INSURANCE**

11.6.1 The Owner shall be responsible for purchasing and maintaining its own liability insurance and, at its option, may purchase and maintain such insurance as will protect it against claims which may arise from operations under the Contract.

11.7 **RELEASE AND WAIVER**

11.7.1 Contractor hereby releases, and shall cause its Subcontractors and suppliers to release, the Owner, Architect and the directors, officers, shareholders, employees and agents of any of the above-mentioned parties (the “Released Parties”) from any and
all claims or causes of action whatsoever which Contractor and/or such parties might otherwise possess resulting in or from or in any way connected with any loss covered or which should have been covered by insurance, including the deductible portion thereof, maintained and/or required to be maintained by Contractor and/or its Subcontractors and suppliers pursuant to the Contract. This release is further intended to bind Contractor’s and such parties’ insurers providing the above stated insurance coverages, and Contractor agrees to inform and obtain permission from their insurers, and further agrees to require its Subcontractors and suppliers to inform and obtain permission from their insurers, to so release the Released Parties from any and all claims or causes of action as provided above, so as to effectively waive any subrogation rights of said insurers.

11.8 INDEMNIFICATION

11.8.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner, Architect, and the directors, officers, shareholders, consultants, employees and agents of any of them (the “Indemnified Parties”) from and against any and all loss, cost, expense, damage, injury, liability, claim, demand, penalty, fine or cause of action (including attorneys’ fees), directly or indirectly arising out of, resulting from or relating to (in whole or in part), (1) the Work performed hereunder, (2) the Contractor’s failure to perform its obligations under the Contract Documents or (3) the act or omission of Contractor, a Subcontractor or any individual partnership, joint venture or corporation (a) directly or indirectly employed by Contractor or a Subcontractor or (b) for whose act or omissions Contractor or a Subcontractor may be liable (excluding property damage to the Work itself, covered by the Owner’s all-risk builder’s risk insurance, subject to Contractor’s liability for any deductible amounts thereunder). The obligations of Contractor under this indemnification shall apply to all matters except those arising solely from the wanton and willful negligence or the malicious acts or omissions of the Owner. Further, the obligations of the Contractor under this indemnification shall not extend to the liability of the Architect, its agents or employees, arising out of (1) the preparation or approval of maps, Drawings, opinions, reports, surveys, Change Orders, designs or Specifications or (2) the giving of or the failure to give directions or instructions by the Architect, its agents or employees provided such giving or failure to give is the primary cause of the injury or damage. Contractor shall promptly advise Owner in writing of any action, administrative or legal proceeding or investigation as to which this indemnification may apply, and Contractor, at Contractor’s expense, shall assume on behalf of Owner and conduct with due diligence and in good faith the defense thereof with counsel satisfactory to Owner; provided, that Owner shall have the right to be represented therein by advisory counsel of its own selection and at its own expense; and provided further, that if the defendants in any such action include both Contractor and Owner and Owner shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to Contractor, the Owner shall have the right to select separate counsel to participate in the defense of such action on its own behalf at Contractor’s expense. In the event of failure by Contractor to fully perform in accordance with this indemnification Paragraph, the Owner, at its option, and without relieving Contractor of its obligations hereunder, may so perform, but all costs and expenses so incurred by the Owner in that event shall be reimbursed by Contractor to the Owner, together with interest on the same from the date any such expense was paid by the Owner until reimbursed by Contractor, at the rate of interest provided to be paid on judgments by the law of the jurisdiction to which the interpretation of the Contract is subject. The obligations of the Contractor under this Section shall survive the expiration of the Contract and specifically shall survive the limitations contained in Subsection 4.3.5 hereof.

11.8.2 In claims against any of the Indemnified Parties by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts or omissions they may be liable, the indemnification obligation under this Paragraph 11.8 shall not be limited by a limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under Workers’ or Workmen’s Compensation acts, disability benefits acts, or other employee benefit acts.

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 to requirements specifically expressed in the Contract Documents, it must, if required in writing by the Owner, be uncovered for the Owner’s observation and be replaced at the Contractor’s expense without change in the Contract Time or Contract Sum.

12.1.2 If a portion of the Work has been covered which the Owner has not specifically requested to observe 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 charged to the Owner. If such Work is not in accordance with the Contract Documents, the Contractor shall pay such costs 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 The Contractor shall promptly correct Work rejected by the Architect or Owner or failing to conform to the requirements of the Contract Documents, whether observed before or after Substantial Completion and whether or not fabricated, installed or completed. The Contractor shall bear costs of correcting such rejected Work, including additional testing and inspections and compensation for the Architect’s services and expenses made necessary thereby. If, the Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, the Contractor shall cause such item to be restored to “like new” condition at no expense to the Owner.

12.2.2 If, within one year after the date of Substantial Completion of the entire Work, unless otherwise provided in a Certificate of Partial Substantial Completion approved by the parties or as may be prescribed by law or in equity, 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 specific, written acceptance of such condition. Upon completion of any Work under or pursuant to this Paragraph, the one year correction period in connection with the Work requiring correction shall be renewed and recommenced. [This period of one year shall be extended with respect to
portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.] This obligation under this Subparagraph 12.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

12.2.3 The Contractor shall remove from the Site portions of the Work which 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 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Owner, the Owner may remove it and store the materials or equipment at the Contractor’s expense. If the Contractor does not pay costs of such removal and storage within ten days after written notice, the Owner may upon ten additional days’ written notice sell such materials and equipment at auction or at private sale and shall account for the net proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect’s services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

12.2.5 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused in whole or in part by the Contractor’s correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.2.6 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents or under law or in equity. Establishment of the time period as described in Subparagraph 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor’s liability with respect to the Contractor’s obligations other than specifically to correct the Work.

12.3 ACCEPTANCE OF NONCONFORMING WORK

12.3.1 If the Owner prefers to accept Work which 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

13.1.1 The Contract shall be governed by the law of the place where the Project is located.

13.2 SUCCESSORS AND ASSIGNS

13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as set forth in the Agreement, neither party to the Contract shall assign the Contract as a whole without written consent of the other, nor shall Contractor assign any monies due or to become due to it under the Contract without the prior written consent of the Owner. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract. Any purported assignment of the Contract without the necessary consent shall be void and not merely a breach of the Contract.

13.3 WRITTEN NOTICE

13.3.1 Unless otherwise provided in this Agreement, all notices or demands by any party shall be in writing and either personally served or sent by regular United States mail, postage prepaid, to the authorized representative of the party to be notified at its address set forth below:  Address of Owner:  190 East Bannock, Boise, Idaho 83712, Attn:  Construction Department.  Address of Contractor:  

13.3.2 A party may change its representative and the address at which it is to receive notices by giving notice to the other parties. All notices or demands sent in accordance with this Paragraph shall be deemed received on the earlier of the date of actual receipt or four business days after the date postmarked on the envelope containing the notice.

13.4 RIGHTS AND REMEDIES

13.4.1 Except as otherwise expressly provided in the Contract Documents, 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 or in equity, and any such rights and remedies shall survive the acceptance of the Work and/or any termination of the Contract Documents.
13.5 TESTS AND INSPECTIONS

13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect and Owner timely notice of when and where tests and inspections are to be made so the Architect and Owner may observe such procedures. The Architect, Owner, and Contractor shall be afforded a reasonable opportunity to attend, observe, and witness all inspections and tests of the Work. The conduct of any inspection or test and the receipt of any approval shall not operate to relieve the Contractor from its obligations under the Contract Documents unless specifically so stated by Owner in writing.

13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 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 Architect and Owner of when and where tests and inspections are to be made so the Architect and Owner may observe such procedures. The Owner shall bear such costs except as provided in Subparagraph 13.5.3.

13.5.3 If such procedures for testing, inspection or approval under Subparagraphs 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, the Contractor shall bear all costs made necessary by such failure including those of repeated procedures and compensation for the Architect’s services and expenses. 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, or made necessary by Contractor’s failures, or 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 Architect and Owner are to observe tests, inspections or approvals required by the Contract Documents, the Architect and Owner will do so promptly and, where practicable, at the normal place of testing.

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

13.6 INTEREST

13.6.1 Payments due and unpaid under the Contract Documents shall not bear interest. To the extent permitted by law, the Contractor waives any statutory right to interest.

13.7 GENERAL PROVISIONS

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

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

13.7.3 Each party agrees to do all acts and things and to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of the Contract Documents.

13.7.4 Any specific requirement in this Contract that the responsibilities or obligations of the Contractor also apply to a Subcontractor is added for emphasis and are also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor’s responsibilities or obligations shall not be construed to diminish, abrogate or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

13.7.5 Contractor shall save and keep Owner and Owner’s property free from all mechanic’s and materialmen’s liens and all other liens and claims, legal or equitable, arising out of Contractor’s Work hereunder. If any such lien or claim is filed by anyone claiming by, through, or under Contractor, Contractor shall remove and discharge such lien or claim within ten days of the filing thereof. Notwithstanding the
foregoing, the Owner reserves the right to settle any disputed mechanic’s or materialman’s lien claim by payments to the lien claimant or by such other means as the Owner, in the Owner’s sole discretion, determines is the most economical or advantageous method of settling the dispute. The Contractor shall promptly reimburse the Owner, upon demand, for any payments so made.

13.7.6 The Contractor and all Subcontractors shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The Contractor shall take affirmative action to insure that employees are treated without regard to their race, religion, color, sex, national origin, or age. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the Contractor’s policies of nondiscrimination.

13.7.7 Each party to this Contract has had an opportunity to participate in the drafting of the Contract and, as a result, the Contract should not be construed for or against any party.

13.7.8 Any material specified by reference to the number, symbol or title of a specific standard such as that of the American Society for Testing Materials (ASTM), a Product or Commercial Standard, Federal Specification or other similar standards, shall comply with the requirements of the dated revisions stated in the specifications, or where the Specifications contain no revision date, shall comply with the requirements of the latest revision thereof and any supplement or amendment thereto, in effect on the date of receipt of bids. The standards referred to, except as specifically modified in the specifications, shall have the same force as if they were printed in full context within the Specifications.

13.7.9 Where it is required in the Specifications that materials, products, processes, equipment or the like be installed or applied in accord with manufacturer’s instructions, directions or specifications or words to this effect, it shall be construed to mean that said application or installation shall be in strict accord with current printed instructions furnished by the manufacturer of the material concerned for use under conditions similar to those at the job site. Unless otherwise stated, Contractor shall furnish one (1) copy of instructions to the Owner and one (1) copy to the Architect.

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 continuous period of 60 days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor, for any of the following reasons:

14.1.1.1 issuance of an order of a court or other public authority having jurisdiction or

14.1.1.2 an act of government, such as a declaration of national emergency, making material unavailable.

14.1.2 If one of the above reasons exists, the Contractor may, upon 24 days’ written notice to the Owner, terminate the Contract, unless the reason is cured prior to the expiration of the notice, and recover from the Owner payment for the Work properly executed in accordance with the Contract Documents and for payment for costs directly related to Work thereafter performed by Contractor in terminating such Work including reasonable demobilization and cancellation charges provided said Work is authorized in advance by Owner.

14.1.3 If the Work is stopped for a period of 60 days or if repeated suspensions, delays or interruptions by the Owner as described in Paragraph 14.3 constitute in the aggregate the lesser of an amount equal to the Contract Time or 120 days in any one year period 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 persistently failed to fulfill the Owner’s obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon fourteen additional days’ written notice to the Owner and the Architect, terminate the Contract, unless the Owner’s obligations are fulfilled prior to the expiration of the notice period, and recover from the Owner as provided in Subparagraph 14.1.2.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 The Owner may terminate the Contract if the Contractor:

14.2.1.1 refuses or fails to supply enough properly skilled workers or proper materials or equipment;

14.2.1.2 fails to make payment to Subcontractors for materials and/or equipment or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

14.2.1.3 persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction;

14.2.1.4 breaches any warranty made by the Contractor under or pursuant to the Contract Documents;

14.2.1.5 fails after commencement of the Work to proceed continuously with the construction and completion of the Work for more than 10 days, except as permitted under the Contract Documents; or
14.2.1.6 otherwise does not fully comply with the Contract Documents.

14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor’s surety, if any, seven days’ written notice, terminate the services of the Contractor and may:

14.2.2.1 take possession of the Site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

14.2.2.2 accept assignment of subcontracts pursuant to Paragraph 5.4; and

14.2.2.3 finish the Work by whatever method the Owner may deem expedient.

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

14.2.4 To the extent the costs of completing Work, including compensation for additional professional services and expenses, exceed those costs which would have been payable to Contractor to complete the Work except for the Contractor’s default, the Contractor will pay the difference to the Owner, and this obligation for payment shall survive termination of the Contract. Such costs incurred by the Owner will be determined by the Owner and confirmed by the Architect.

14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

14.3.1 In addition to Owner’s right to suspend, delay, or interrupt Contractor from any part of Work pursuant to the Contract Documents (including, without limitation, pursuant to subparagraph 3.10.6), Owner may, without cause, suspend, delay, or interrupt any part of Work or any subcontract or all Work for any reason whatsoever for such period of time as the Owner may determine by giving seven (7) days’ prior written notice to the Contractor specifying the part of Work or subcontract to be suspended, delayed, or interrupted and the effective date of such suspension, delay, or interruption, as the case may be. Contractor shall continue to prosecute the part of Work not suspended, delayed, or interrupted and shall properly protect and secure that part of Work so suspended, delayed, or interrupted, so far as is necessary in Owner’s reasonable opinion. Notwithstanding Subparagraph 8.3.3 hereof, if any part of Work or subcontract is so suspended, delayed, delayed, or interrupted, Contractor shall be entitled to payment of reasonable standby fees (or at Owner’s option, payment for demobilization and subsequent remobilization) and of costs directly associated with protecting and securing the affected Work, provided said costs are authorized in advance by Owner. No payment shall be made by Owner, however, to the extent that such Work or subcontract is, was, or could have been suspended, delayed, or interrupted under the Contract Documents or an equitable adjustment is made or denied under another provision of the Contract. In case of such suspension, delay, or interruption, Owner will issue a Construction Change Directive or authorize a Change Order making any required adjustment to the date of Substantial Completion and/or the Contract Sum. For the remainder of the Work, the Contract Documents shall remain in full force and effect.

14.4 OWNER’S TERMINATION FOR CONVENIENCE

14.4.1 The Owner may, at any time, terminate the Contract in whole or in part for the Owner’s convenience and without cause. Termination by the Owner under this Paragraph shall be by a notice of termination delivered to the Contractor specifying the extent of termination and the effective date.

14.4.2 Upon receipt of a notice of termination for convenience, the Contractor shall immediately, in accordance with instructions from the Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this Paragraph:

14.4.2.1 cease operation as specified in the notice;

14.4.2.2 place no further orders and enter into no further subcontracts for materials, labor, services or facilities except as necessary to complete continued portions of the Contract;

14.4.2.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all subcontracts and orders to the extent they relate to the Work terminated;

14.4.2.4 proceed to complete the performance of Work not terminated; and

14.4.2.5 take actions that may be necessary, or that the Owner may direct, for the protection and preservation of the terminated Work.

14.4.3 Upon such termination, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination and for items properly and timely fabricated off the Project Site, delivered and stored in accordance with the Owner’s instructions. In its sole discretion, the Owner may elect to pay the Contractor for Work performed based upon the percentage of completion and the schedule of values submitted by the Contractor to the Owner or based upon actual costs incurred in the manner provided for work added by a Construction Change Directive. The Owner shall be entitled to review the Contractor’s costs incurred prior to making its election. The Contractor hereby waives and forfeits all other Claims for payment and damages, including, without limitation, anticipated profits.
14.4.4 The Owner shall be credited for (1) payments previously made to the Contractor for the terminated portion of the Work, (2) claims which the Owner has against the Contractor under the Contract and (3) the value of the materials, supplies, equipment or other items that are to be disposed of by the Contractor that are part of the Contract Sum.

14.4.5 Contractor’s right to payment shall be subject to all of the requirements specified in this Contract for final payment which are applicable under the circumstances including, without limitation, receipt of satisfactory lien waivers.