Exhibit: "A"

General Conditions of the Contract for Construction

Between Construction Manager or Contractor and Subcontractor

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ARTICLE 1
GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Construction Manager / or Contractor and the Subcontractor (hereinafter the Agreement) and consist of (1) the Agreement between the Construction Manager / or Contractor and the Subcontractor including the Conditions of the Contract between the Construction Manager / or Contractor and the Subcontractor (General, Supplementary and other Conditions) and any exhibits; (2) Drawings, Specifications, Addenda issued prior to execution of the Contract, and other documents listed in the Agreement; (3) Terms and conditions contained withing the Agreement between the Owner and Construction Manager / Contractor which may impact and cause the Agreement between the Construction Manager / or Contractor and the Subcontractor to be altered as not to form a conflict between the two agreements which the Construction Manager / or Contractor has entered into. The Contract Documents do not include: the advertisement or invitation to bid, Instructions to Bidders, sample forms, proposals, other information furnished by the Construction Manager / or Contractor or the Subcontractor in anticipation of receiving bids or proposals; the Subcontractor's bid, estimates, proposals, notes, exclusions, or other rider documents prepared prior to execution of the Contract and not enumerated in the list of contract documents are also explicitly excluded. Any documents or correspondence issued prior to the execution of the contract are regarded as instruments of negotiation, the contract and its exhibit documents shall solely and explicitly define the scope of the contract.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Construction Manager / or Contractor and the Subcontractor. The Architect and Owner shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's and Owner'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, permits, fees, testing, and services provided or to be provided by the Construction Manager / or Contractor to fulfill the Subcontractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

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

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, quantity of materials, orientation, location, and dimensions of components that comprise of the Work, generally including plans, elevations, sections, details, schedules and diagrams. The Drawings shall be enumerated by either exhibit or modification to the contract.

§ 1.1.6 THE SPECIFICATIONS
The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services. The Specifications shall be enumerated by either exhibit or modification to the contract.

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

§ 1.1.8 INITIAL DECISION MAKER
The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2 and certify termination of the Agreement under Section 14.2.2.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS
§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Construction Manager / or Contractor and the Subcontractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Subcontractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

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

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Abbreviations shall be defined by a lexicon contained in the Contract Documents. In the absence of such lexicon, the Subcontractor shall request the meaning of any abbreviations to be included in the Contract Documents prior to execution of the contract, otherwise Construction Manager / or Contractor shall have sole discretion in defining the meaning of any abbreviations in the Contract Documents.

§ 1.2.4 In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities:

Change Orders,
Amendments,
Terms and conditions contained withing the Agreement between the Owner and Construction Manager / Contractor,
The Agreement,
The Supplementary Conditions (including contract riders),
The General Conditions of the Contract for Construction,
Division 1 of the Specifications,
Drawings,
Divisions 2–49 of the Specifications,
Other documents specifically enumerated in the Agreement as part of the Contract Documents,

In the event of conflicts or discrepancies among two or more of the same type of Contract Documents; Documents with those of later date having precedence over those of earlier date,

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

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

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS & OTHER INSTRUMENTS OF SERVICE
§ 1.5.1 The Architect and the Architect’s consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Construction Manager / or Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect’s or Architect’s consultants’ reserved rights.

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

§ 1.5.3 The Contract documents and any other any other information or documentation necessary to complete The Work of the contract is confidential and shall only be for the Subcontractor to complete The Work of the Contract and for no other purpose. Subcontractors shall not use or disclose such Confidential information for any other purpose, for its own benefit or for the benefit of any third party. This Agreement is not a license or assignment of any ownership interest in any confidential information, or any other rights.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM
The parties shall be entitled to transmit Instruments of Service or any other information or documentation in digital form, they shall do so at their own risk and shall ensure that transmissions shall not invalidate any confidentiality.

§ 1.7 DESIGN-BUILD BASIS
In the event the term “Design-Build Basis” is utilized in the scope of work, it shall be understood that the Scope described in the Contract Documents is suitable for defining the full and complete intent of the Work, however requires additional design, engineering, or details to ensure compliance and constructability. The Subcontractor shall prepare plans, calculations and specifications which accurately and completely describe the systems, methods, and materials necessary to comply with the contract documents, applicable codes, and regulations.

ARTICLE 2
OWNER AND CONSTRUCTION MANAGER / CONTRACTOR

§ 2.1 GENERAL

§ 2.1.1 The Construction Manager / 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 representative that executes the Agreement on behalf of Construction Manager / Contractor shall have express authority to bind the Construction Manager / Contractor with respect to all matters requiring the Construction Manager / Contractor's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Construction Manager / Contractor" means the Construction Manager / Contractor or the Construction Manager / Contractor's authorized representative.

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

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

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Subcontractor may request in writing that the Construction Manager / Contractor provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Subcontractor may only request such evidence if (1) the Construction Manager / Contractor fails to make payments to the Sub Contractor as the Contract Documents require; (2) the Owner fails to make payments to the Construction Manager / Contractor as the Contract Documents require; (3) a change in the Work materially changes the Contract Sum; or (4) the Subcontractor identifies in writing a reasonable concern regarding the Construction Manager / Contractor's ability to make payment when due. The Construction Manager / Contractor shall furnish such evidence provided by the Owner. However, shall not be a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Construction Manager / Contractor furnishes the evidence provided by the Owner, the Owner shall not materially vary such financial arrangements without prior notice to the Construction Manager / Contractor and Subcontractor.

§ 2.2.2 Except for permits and fees that are otherwise not the responsibility of the Subcontractor under the Contract Documents, including those required under Section 3.7.1, the Construction Manager / Contractor shall secure and pay for necessary Building Permits and building permit related Inspections. The Owner shall secure and pay for all other approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner by means of the Construction Manager / Contractor or Architect shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site if available and as provided by The Owner. The Construction Manager /

Contractor and Subcontractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Construction Manager / Contractor shall furnish to the Subcontractor electronic copies of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 CONSTRUCTION MANAGER / CONTRACTOR'S RIGHT TO STOP THE WORK

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

§ 2.4 CONSTRUCTION MANAGER / CONTRACTOR'S RIGHT TO CARRY OUT THE WORK

If the Subcontractor defaults or neglects to carry out the Work in accordance with the Contract Documents or project schedule and fails to make corrective action, or accelerate the work within a five-day period after written notice from the Construction Manager / Contractor, the Construction Manager / Contractor may, without prejudice to other remedies it may have, correct such deficiencies. In such case the Construction Manager / Contractor shall have the right to offset an appropriate Change Order shall be issued deducting from payments then or thereafter due the Subcontractor the cost of correcting such deficiencies or accelerating the work, including Construction Manager / Contractor's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Construction Manager / Contractor and amounts charged to the Subcontractor are both not subject to prior approval of the Architect. If payments then or thereafter due the Subcontractor are not sufficient to cover such amounts, the Subcontractor shall pay the difference to the Construction Manager / Contractor.

§ 2.4 CONSTRUCTION MANAGER / CONTRACTOR'S RIGHT TO SET OFF

If the Subcontractor falls to perform its obligations under the Contract and becomes obligated to pay Construction Manager / Contractor a sum of money which exceeds the amount of money retained by Construction Manager / Contractor under the terms of this Contract, Construction Manager / Contractor may, in addition to the other remedies provided for herein, at its option, withhold or deduct the amount of money due from Subcontractor under this Contract from the monies Construction Manager / Contractor may be obligated to pay to Subcontractor under any other contract between Construction Manager / Contractor and Subcontractor.

ARTICLE 3
SUBCONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Subcontractor 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 Subcontractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Subcontractor shall designate in writing a representative who shall have express authority to bind the Subcontractor with respect to all matters under this Contract. The term "Subcontractor" means the Subcontractor or the Subcontractor's authorized representative.

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

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

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY SUBCONTRACTOR

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

§ 3.2.2 Because the Contract Documents are complementary, the Subcontractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner or Construction Manager / Contractor pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Subcontractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Subcontractor shall promptly report to the Construction Manager / Contractor any errors, inconsistencies or omissions discovered by or made known to the Subcontractor as a request for information. It is recognized that the Subcontractor's review is made in the Subcontractor's capacity as a Subcontractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

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

§ 3.2.4 If the Subcontractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Subcontractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Subcontractor shall make Claims as provided in Article 15. If the Subcontractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Subcontractor shall pay such costs and damages to the Construction Manager / Contractor as would have been avoided if the Subcontractor had performed such obligations. If the Subcontractor performs those obligations, the Subcontractor shall not be liable to the Construction Manager / Contractor, Owner, or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences

between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Construction Manager / Contractor shall generally supervise and direct the work. The Subcontractor shall provide direct management of their workforce, equipment and materials, using the Subcontractor's best skill and attention. The Subcontractor shall be solely responsible for, and have control over, construction means, methods, techniques, and procedures for coordinating all portions of the Work under their Contract and ensure that work is performed in accordance with the phasing, schedule, and project specific instructions defined by the Construction Manager / Contractor. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Subcontractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Subcontractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Subcontractor shall give timely written notice to the Construction Manager / Contractor and shall not proceed with that portion of the Work without further written instructions from the Owner and Architect. If the Subcontractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Owner and Architect, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

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

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

§ 3.3.4 The Subcontractor shall be responsible for hot work, fire watch, police details, security details, 3rd party testing / certifications, municipal permits license fees, impairments to systems (including life safety), and facility specific training / badging as it relates to their work.

§ 3.3.5 Presence of Construction Manager / Contractor Representative; Daily Check-In and Hazard Analysis

.1 The Subcontractor shall not be permitted to commence, continue, or perform any portion of the Work on the Project site unless a designated representative of the Construction Manager / Contractor representative is present on site.

.2 Prior to beginning any Work each day (or prior to the start of any new shift or work activity), every worker, supervisor, and other person employed by or under the control of the Subcontractor (including Sub-subcontractors) shall:

- **a.** Check in with the on-site A. Autiello Construction Co., Inc. representative
- **b.** Review the Daily Hazard Analysis (or Job Hazard Analysis) applicable to the work to be performed that day; and
- **c.** Review the specific Work to be performed, including all operational procedures, sequencing, and any site-specific restrictions or requirements.

.3 It is the sole responsibility of the Subcontractor to ensure that every worker under its control fully complies with the check-in, Daily Hazard Analysis review, and operational-procedure review requirements set forth above before performing any Work. The Subcontractor shall not allow any worker to begin Work until these steps have been completed and confirmed.

.4 The Subcontractor remains fully responsible for ensuring that all prerequisite safety requirements are satisfied and that all necessary site-specific training, orientations, permits, badges, access credentials, and any other site-access prerequisites have been obtained and remain current for every worker under its control prior to their arrival on site. Failure to satisfy these requirements shall not entitle the Subcontractor to any extension of time or additional compensation.

.5 The Construction Manager / Contractor reserves the right to refuse site access or stop Work by any individual who has not completed the required check-in, Daily Hazard Analysis review, or operational-procedure review, or who lacks required training, permits, or badging. Any resulting delay or cost shall be the sole responsibility of the Subcontractor.

.6 This Section 3.3.5 is intended to supplement (and not replace) the Subcontractor's existing obligations under Article 3, Article 10, and any Project-specific safety plans or site rules.

§ 3.4 LABOR AND MATERIALS

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

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect and in accordance with Sections 3.12.8 or 7.4, the Subcontractor may make substitutions by the consent of the Construction Manager / Contractor, after evaluation by the Architect and Owner and in accordance with a Change Order or Construction Change Directive.

§ 3.4.3 The Subcontractor shall enforce strict discipline and good order among the Subcontractors 's employees and other persons carrying out the Work. The Subcontractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them. The Subcontractor shall only employ persons capable of working harmoniously with all trades, crafts, and any other persons associated with the contract regardless of labor affiliation. The Subcontractor shall indemnify, hold harmless, and defend against any strike, work stoppage, or other labor disturbance.

§ 3.5 WARRANTY

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

normal usage. If required by the Architect, the Subcontractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.6 TAXES

The Subcontractor shall pay for sales, consumer, use and similar taxes for the Work provided by the Subcontractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect, unless otherwise waived or exempted in writing by the Owner and Construction Manager / Contractor.

§ 3.6.1 Any Subcontractor performing work in a state which it does not maintain a regular place of business, is organized under the laws of another state, and does not file taxes with the state it is performing work in, shall be subject to foreign entity requirements of the state.

§ 3.7 PERMITS, FEES, NOTICES AND COMPLIANCE WITH LAWS

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

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

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

§ 3.7.4 Concealed or Unknown Conditions. If the Subcontractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Subcontractor shall promptly provide notice to the Construction Manager / Contractor before conditions are disturbed and in no event later than 5 days after first observance of the conditions. The Construction Manager / Contractor will direct the Architect to promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Subcontractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Construction Manager / Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15.

§ 3.7.5 If, in the course of the Work, the Subcontractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Subcontractor shall immediately suspend any operations that would affect them and shall notify the Construction Manager / Contractor. Upon receipt of such notice, the Construction Manager / Contractor shall notify the Owner, and the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Subcontractor and Construction Manager /

Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contract Sum shall include 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 Construction Manager / Contractor may direct, but the Subcontractor shall not be required to employ persons or entities to whom the Subcontractor has reasonable objection.

3.8.2 Unless otherwise provided in the Contract Documents,

.1 Allowances shall cover the cost to the Subcontractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;

.**2** Shall not be subject to additional markups including but not limited to insurance, overhead and profit;

.3 Costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and

.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 Section 3.8.2.1 and (2) changes in Subcontractor's costs under Section 3.8.2.2.

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

§ 3.9 SUPERINTENDENT & FORMAN

§ 3.9.1 The Construction Manager / Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during portions of the Work. The superintendent shall represent the Construction Manager / Contractor, and communications given to the superintendent shall be as binding as if given to or by the Construction Manager / Contractor except in the instance that may change the cost or scope of the contract.

§ 3.9.2 The Subcontractor, as soon as practicable after award of the Contract, shall furnish in writing to the Construction Manager / Contractor the name and qualifications of a proposed project manager, superintendent, and/or foreman. The Construction Manager / Contractor may reply at any time to the Subcontractor in writing stating whether the Construction Manager / Contractor has reasonable objection to any proposed personnel.

§ 3.9.3 The Subcontractor shall not employ a proposed project manager, superintendent, and/or foreman to whom the Construction Manager / Contractor has made reasonable and timely objection. The Subcontractor shall not change the project manager, superintendent, and/or foreman without the Construction Manager / Contractor's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONSTRUCTION SCHEDULES

§ 3.10.1 The Construction Manager / Contractor, shall promptly after awarding the Contract, issue a construction schedule for the Work. The schedule shall not exceed time limits current under 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, it is the requirement of the Subcontractor to commence and complete the work no latter then the dates associated with the schedule. Due to conditions beyond their control the Construction Manager / Contractor may require the Subcontractor to accelerate, delay, or change the sequence of Work to accommodate the conditions of the Work and Project at no additional cost to the Construction Manager / Contractor.

§ 3.10.2 The Construction Manager / Contractor shall prepare a submittal schedule, promptly after awarding the Contract and thereafter as necessary to maintain a current submittal schedule and shall submit the schedule(s) for the Architect's review for conformance with the Contract Documents. The Architect's review shall not unreasonably be delayed or withheld. The Subcontractor shall prepare and issue all submittals (1) in coordination with the Construction Manager / Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. The Subcontractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

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

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Construction Manager / Contractor shall maintain at the site for record one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. The Subcontractor shall be responsible to provide all necessary information and documentation to the Construction Manager / Contractor on a periodic basis as necessary to fulfill this requirement of the Contract. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents and shall be utilized as an instrument of coordination. Their purpose is to demonstrate the way by which the Subcontractor to conform to the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7.

Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals may be returned by the Architect without action.

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

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

§ 3.12.7 The Construction Manager / Contractor shall not require review of Shop Drawings, Product Data, Samples or similar submittals as a prerequisite for the procurement of equipment or materials. It is the responsibility of the Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to ensure that all materials are procured in accordance with the project schedule. Any delay or failure to receive a submittal review shall not serve as causation for delay.

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

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

§ 3.12.10 The Subcontractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work, or unless the Subcontractor needs to provide such services in order to carry out the Subcontractor's responsibilities in accordance with appliable codes and regulations. The Subcontractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional. The Construction Manager / Contractor, Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Subcontractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for

conformance with information given and the design concept expressed in the Contract Documents. The Subcontractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

The Subcontractor shall confine operations at the site to areas permitted by the Construction Manager / Contractor and shall not unreasonably encumber the site with materials or equipment. The storage and security of materials and equipment stored onsite shall be the responsibility of the subcontractor, The Construction Manager / Contractor shall take no responsibility for any materials or equipment stored onsite. The Subcontractor shall conform with all applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents when on the site.

§ 3.14 CUTTING AND PATCHING

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

§ 3.14.2 The Subcontractor 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 Subcontractor shall not cut or otherwise alter such construction by another contractor except with written consent of the Construction Manager / Contractor; such consent shall not be unreasonably withheld. The Subcontractor shall not unreasonably withhold from the Construction Manager / Contractor or a separate contractor the Subcontractor's consent to cutting or otherwise altering the Work.

§ 3.15 CLEANING UP

§ 3.15.1 The Subcontractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. It is the responsibility of the subcontractor to cleanup the site on a daily basis and dispose of all debris in the Construction Manager / Contractor provided recepticals, unless explicitly expensed in the contract that the Subcontractor shall dispose of their own waste or any specific component. At completion of the Work, the Subcontractor shall remove waste materials, rubbish, the Subcontractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Subcontractor fails to clean up within a twenty-four hours' after the Construction Manager / Contractor has provided written notice, the Construction Manager / Contractor may do so and be entitled to reimbursement from the Subcontractor.

§ 3.16 ACCESS TO WORK

The Subcontractor shall provide the Construction Manager / Contractor, Owner, and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Subcontractor shall pay all royalties and license fees. The Subcontractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Construction Manager / Contractor, 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 Subcontractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Subcontractor shall promptly notify the Construction Manager / Contractor, Owner, and Architect.

§ 3.18 INDEMNIFICATION

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

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

ARTICLE 4
ARCHITECT

§ 4.1 GENERAL

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

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

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

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 Depending on the terms of the agreement between the Owner and the Construction Manager / Contractor and the Owner and the Architect; Either the Construction Manager / Contractor or Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative. The Construction Manager / Contractor or Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise required by the applicable laws and regulations, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Construction Manager / Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

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

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION
Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, all communications between the Subcontractor, other Subcontractors, Owner, and The Architect shall be though the Construction Manager / Contractor. Communications by and with the Architect's consultants shall be through the Architect and Construction Manager / Contractor. The Construction Manager / Contractor shall have the unrestricted ability to directly communications by and with The Subcontractor's Sub-subcontractors and material suppliers at any time for any purpose as if the Sub-subcontractors and material suppliers were directly contracted with the Construction Manager / Contractor. Communications by and with the Owners separate contractors shall be through the Owner and Construction Manager / Contractor.

§ 4.2.5 Based on the Owner's Architect or the Construction Manager / Contractor evaluations of the Construction Manager's or Subcontractor's Applications for Payment, the Owner will review and certify the amounts due the Construction Manager / Contractor and the Construction Manager / Contractor's Subcontractors and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Owner, Owner's Architect, and Construction Manager / Contractor has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 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 Construction Manager, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Construction Manager / Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in

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

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

§ 4.2.9 If provided in the Agreement between the Owner and Construction Manager / Contractor. The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Subcontractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10; Otherwise written warranties, as-build drawings and related documents shall be issued on or before the municipal issuance of the Certificate of Occupancy.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 If provided in the Agreement between the Owner and Construction Manager / Contractor the Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents otherwise it will be the responsibility of the Construction Manager / Contractor. The response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

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

§ 4.2.13 If provided in the Agreement between the Owner and Construction Manager / Contractor the Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or

otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5
SUBCONTRACTORS AND SUB-SUBCONTRACTORS

§ 5.1 DEFINITIONS

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

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

§ 5.2 AWARD OF SUB-SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Subcontractor, as soon as practicable after award of the Contract, shall furnish in writing to the Construction Manager / Contractor the names of persons or entities (Sub-subcontractors) including those who are to furnish materials or equipment fabricated to a special design, proposed for each principal portion of the Work. The Construction Manager / Contractor may reply to the Subcontractor in writing stating whether the Construction Manager / Contractor has reasonable objection to any such proposed person or entity.

§ 5.2.2 The Subcontractor shall not contract with a proposed person or entity (Sub-Subcontractor) to whom the Construction Manager / Contractor has made reasonable and timely objection. The Subcontractor shall not be required to contract with anyone to whom the Subcontractor has made reasonable objection to the Construction Manager / Contractor.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity (Sub-subcontractor) proposed by the Subcontractor, the Subcontractor shall through the Construction Manager / Contractor propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Sub-subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Sub-subcontractor’s Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change if requested by the Construction Manager / Contractor and has acted promptly and responsively in submitting the request.

§ 5.2.4 The Subcontractor shall not substitute a Sub-subcontractor, person or entity previously selected if the Construction Manager / Contractor makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Construction Manager / Contractor shall require each Subcontractor, to the extent of the Work to be performed by the

Subcontractor, to be bound to the Construction Manager / Contractor by terms of the Contract Documents, and to assume toward the Construction Manager / Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Construction Manager / 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 Construction Manager / Contractor that the Construction Manager / Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Construction Manager / Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Construction Manager / Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUB-SUBCONTRACTS

§ 5.4.1 Each Sub-subcontract agreement for a portion of the Work is assigned by the Subcontractor to the Construction Manager / Contractor, provided that:

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

When the Construction Manager / Contractor accepts the assignment of a Sub-subcontract agreement, the Construction Manager / Contractor assumes the Subcontractor's rights and obligations under the Sub-subcontract.

§ 5.4.2 Upon such assignment to the Construction Manager / Contractor under this Section 5.4, the Construction Manager / Contractor may further assign the Sub-subcontract to a successor Subcontractor or other entity. If the Construction Manager / Contractor assigns the Sub-subcontract to a successor Subcontractor or other entity, the Construction Manager / Contractor shall nevertheless remain legally responsible for all of the successor Subcontractor's obligations under the Sub-subcontract.

ARTICLE 6
CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 6.1.1 The 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 Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. The Subcontractor shall understand that the Owners separate Contractors are not under the care custody or control of the Construction Manager / Contractor, therefore If the Subcontractor presents to the

Construction Manager / Contractor claims that delay or additional cost is involved because of such action by the Owner, the Construction Manager / Contractor shall make such Claim on behalf of the subcontractor as provided in Article 15.

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

§ 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 Construction Manager / Contractor, who shall cooperate with them. The Construction Manager / Contractor and their Subcontractor's shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Construction Manager / Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Construction Manager / Contractor, the Construction Manager / Contractor's Subcontractor, separate contractors and the Owner until subsequently revised.

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

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Construction Manager / 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 Construction Manager's construction and operations with theirs as required by the Contract Documents.

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

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

§ 6.2.3.1 The Subcontractor understands that if the date of substantial completion or milestone for each phase of work as defined by the project schedule attached to the contract, and as may be amended by subsequent change order, is not attained. The Owner and Construction Manager / Contractor will suffer damages which are difficult to determine and accurately to specify. The Subcontractor agrees that if the

work is not completed in accordance with the Contract Documents the Subcontractor shall pay the Construction Manager / Contractor three quarters of one percent (0.75%) of the contract value as liquidated damages and not as a penalty for each day that completion extends beyond the date of completion of their work per the project schedule. The liquidated damages provided herein shall be in lieu of all liability for any penalties or other damages incurred by the Construction Manager / Contractor from the Owner which are occasioned by any delay in achieving full functional use of the premises.

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

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

§ 6.3 OWNER'S RIGHT TO CLEAN UP

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

ARTICLE 7
CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by a Prime Change Order, Prime 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. Subcontractor Change Orders and Change Directives shall serve a similar purpose in and between the Construction Manager / Contractor and Subcontractor.

§ 7.1.2 A Prime Change Order shall be based upon agreement among the Owner, and Construction Manager / Contractor; a Prime Construction Change Directive requires agreement by the Owner, Construction Manager / Contractor, and Architect in the event time is of the essence and the Construction Manager / Contractor is unable to prepare resulting change in cost or time prior to executing the work.

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

§ 7.2 CHANGE ORDERS

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

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

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

- **.1** Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- **.2** Unit prices stated in the Contract Documents or subsequently agreed upon;
- **.3** Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee;
- **.4** On a time and materials basis with a mutually agreeable pre-defined rate for labor, markup and overhead expenses; or
- **.5** As provided in Section 7.3.7.

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

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

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

§ 7.3.7 If the Subcontractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Construction Manager / Contractor shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Subcontractor shall keep and present, in such form as the Construction Manager / Contractor may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

.1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.2 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Subcontractor or others;

.4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.5 Additional costs of supervision and field office personnel directly attributable to the change.

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

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

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

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has 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 will be effected by written order signed by the Architect and shall be binding.

ARTICLE 8
TIME

§ 8.1 DEFINITIONS

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

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

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

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

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Subcontractor confirms that the Contract Time is a reasonable period for procuring all necessary equipment and materials and performing the Work.

§ 8.2.2 The Subcontractor shall not knowingly, 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 Subcontractor to the Construction Manager / Contractor. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Subcontractor agrees to commence, pursue diligently and complete the work in such sequence and order and according to such schedules as Construction Manager / Contractor shall establish from time to time during the course of the work, and shall perform the work so as not to delay any other trades or contractors, time being of the essence of this Agreement. Subcontractor shall furnish information requested by the Construction Manager / Contractor in connection with monitoring and updating the schedule and shall immediately notify Construction Manager / Contractor in writing of any interruption of the work or late delivery which causes or may cause a delay in Subcontractor's performance. No extension of completion date shall be permitted unless approved in writing by the Construction Manager / Contractor and Owner, and Subcontractor shall be responsible for any losses or penalties incurred by Construction Manager / Contractor as a result of delays in completing Subcontractor's work. If Construction Manager / Contractor determines that the Subcontractor is behind schedule or will not be able to maintain the schedule, Subcontractor shall submit a remedial plan to recover, shall work overtime, shift work, or work in an altered sequence, if deemed necessary, in the judgment of the Construction Manager / Contractor to maintain the progress of the work. Any such overtime, acceleration, shift or altered sequence work required to maintain progress or to complete the work on a timely basis shall be at Subcontractor's expense and shall not entitle Subcontractor to an extension of time or additional compensation. Construction Manager / Contractor may supplement Subcontractor's forces, at Subcontractor's expense, if deemed necessary by the Contractor to maintain the Project schedule. Subcontractor shall be liable to the Contractor for any delay or damages, including consequential or liquidated damages, threatened or assessed against the Contractor to the extent caused by the Subcontractor.

§ 8.2.4 To the fullest extent permitted by applicable law, Construction Manager / Contractor shall have the right at any time to delay or suspend the work or any part thereof without incurring liability therefor. An extension of time shall be the sole and exclusive remedy of Subcontractor for any delays or suspensions suffered by Subcontractor, but only to the extent that a time extension is obtained from the Owner, and Subcontractor shall have no right to seek or recover from Construction Manager / Contractor any damages or losses, whether direct or indirect, arising from or related to any delay or acceleration to overcome delay, and/or any impact or effect of such delays on the Work.

§ 8.2.5 Subcontractor shall cooperate fully with Construction Manager / Contractor in providing promptly any information requested by Construction Manager / Contractor in connection with preparation of schedules for the Project, including, but not limited to, detailed information concerning the sequence, beginning and ending dates of activities, cost breakdowns related to such activities, and any information requested for Critical Path Method scheduling if used for the Project. The costs of all such activities on the part of Subcontractor are included in the Agreement amount.

§ 8.2.6 In the event of any dispute under this Agreement or as to the work to be performed, Subcontractor shall continue to diligently perform the work as directed by Construction Manager / Contractor without interruption, deficiency or delay.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Subcontractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner; or of a separate contractor employed by the Owner; or by changes ordered in the Work; or inclement weather, fire, unavoidable casualties beyond the Subcontractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Construction Manager / Contractor determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as may be determined.

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

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

ARTICLE 9
PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

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

§ 9.2 SCHEDULE OF VALUES

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

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Subcontractor shall submit to the Construction Manager / Contractor an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. Such application shall be notarized, and supported by such data substantiating the Subcontractor's right to payment as the Owner or Architect may require of the Construction Manager / Contractor, such as copies of invoices, Bonds, and Certificates of insurance from sub-subcontractors and material suppliers.

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

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

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. Payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing provided that a payment and performance bond is provided for the entire value of the materials and equipment at no additional expense to the Construction Manager / Contractor or Owner. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Construction Manager / Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

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

§ 9.3.4 Unless otherwise provided in the Contract Documents and explicitly authorized by the Owner, deposit payments shall not be made to the Subcontractor.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 In the event the requested value of the work submitted to the Construction Manager / Contractor by the Subcontractor is questioned. The Construction Manager / Contractor will, either issue notice to the Subcontractor for such amount as the Construction Manager / Contractor determines is properly due, or notify the Subcontractor in writing of the Architect and Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

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

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Construction Manager / Contractor, Architect, and Owner may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the interests of the Owner, as

required by Section 9.4.2 cannot be made. If payment in the amount of the Application is unable to be certified, the Construction Manager / Contractor will notify the Subcontractor as provided in Section 9.4.1. If the Subcontractor or Construction Manager / Contractor and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount for which the Owner finds acceptable. Certificate for Payment may also be withheld because of subsequently discovered evidence, that may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary to protect the Owner or Construction Manager / Contractor from loss for which the Subcontractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

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

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

§ 9.5.3 If the Construction Manager / Contractor or Owner withholds certification for payment under Section 9.5.1.3, the Owner or Construction Manager / Contractor may, at its sole option, issue joint checks to the Subcontractor and to any Sun-subcontractor or material or equipment suppliers to whom the Subcontractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Construction Manager / Contractor or Owner makes payments by joint check, the Construction Manager / Contractor shall notify the Subcontractor and the Subcontractor will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 The Owner make payment in the manner and within the time provided in the Contract Documents.

§ 9.6.2 The Construction Manager / Contractor shall pay each Subcontractor in a timely manner after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Construction Manager / Contractor on account of the Subcontractor's portion of the Work. The Construction Manager / Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Construction Manager / Contractor shall be entitled to the highest priority of payment. The Construction Manager / Contractor shall have discretion over the order and priority of Subcontractor payments are to be issued. Receipt by Construction Manager / Contractor of payment from the Owner for Subcontractor's Work is not a condition precedent to Construction Manager / Contractor's obligation to pay Subcontractor all payments owed under this Subcontract. The Parties agree that this provision

supersedes all others in this Agreement that condition payment to Subcontractor on Construction Manager / Contractor's receipt of payment from the Owner.

§ 9.6.4 The Construction Manager / Contractor has obligation to obtain written evidence from the Subcontractor that the Subcontractor has properly paid Sub-subcontractors and material and equipment suppliers amounts paid by the Owner to the Construction Manager / Contractor for subcontracted Work. If the Construction Manager / Contractor fails to furnish such evidence, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. The Owner shall not have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

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

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

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

§ 9.7 FAILURE OF PAYMENT

If the Owner does not pay the Construction Manager / Contractor within seven days after the date established in the Contract Documents, the amount the agreed upon amount in the requisition or awarded by binding dispute resolution, then the Construction Manager / Contractor may, upon seven additional days' written notice to the Owner and Subcontractor, stop the Work including that of the Subcontractor 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 Subcontractor's reasonable costs of shut-down, delay and start-up as provided for in the Contract Documents.

§ 9.8 SUBSTANTIAL COMPLETION

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

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

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

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect may prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Construction Manager / Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Construction Manager / Contractor and Subcontractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. In the absence of the Certificate of Substantial Completion issued by the Architect, Substantial Completion shall be established upon satisfaction of the items described in Section 9.8.3.

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

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Construction Manager / Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Construction Manager / Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Construction Manager / Contractor considers a portion substantially complete, the Construction Manager / Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Construction Manager / Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Construction Manager / Contractor or, if no agreement is reached, by decision of the Architect.

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

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

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

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

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Construction Manager / Contractor submits to (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Construction Manager / Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (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. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Construction Manager / Contractor may furnish a bond at the Subcontractors expense satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Subcontractor through the Construction Manager / 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 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Construction Manager / Contractor, subcontractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Construction Manager / Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Construction Manager / Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

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

- **.1** liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- **.2** failure of the Work to comply with the requirements of the Contract Documents; or
- **.3** terms of special warranties required by the Contract Documents.

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

ARTICLE 10
PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 10.2 SAFETY OF PERSONS AND PROPERTY

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

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

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

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

§ 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 Subcontractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

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

§ 10.2.6 The Subcontractor shall designate a responsible member of the Subcontractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Subcontractor's foreman unless otherwise designated by the Subcontractor to the Construction Manager / Contractor.

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

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

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

§ 10.3.2 Upon receipt of the Subcontractor's written notice, the Construction Manager / Contractor or Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Subcontractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Construction Manager / Contractor or Owner shall furnish in writing to the Subcontractor the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Subcontractor will promptly reply to the Construction Manager / Contractor in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Construction Manager / Contractor or Owner. If Subcontractor has an objection to a person or entity proposed by the Construction Manager / Contractor or Owner, the Construction Manager / Contractor or Owner shall propose another to whom the Subcontractor have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Construction Manager / Contractor and Subcontractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Subcontractor's reasonable additional costs of shut-down, delay and start-up.

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

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Subcontractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract

Documents, except to the extent of the Construction Manager / Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Subcontractor shall indemnify the Owner and Construction Manager / Contractor for the cost and expense the Owner incurs (1) for remediation of a material or substance the Subcontractor brings to the site and negligently handles, or (2) where the Subcontractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

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

§ 10.4 EMERGENCIES

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

ARTICLE 11
INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Subcontractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Subcontractor from claims set forth below which may arise out of or result from the Subcontractor's operations and completed operations under the Contract and for which the Subcontractor may be legally liable, whether such operations be by the Subcontractor or by a Sub-subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- **.1** Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- **.2** Claims for damages because of bodily injury, occupational sickness or disease, or death of the Subcontractor's employees;
- **.3** Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Subcontractor's employees;
- **.4** Claims for damages insured by usual personal injury liability coverage;
- **.5** Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- **.6** Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- **.7** Claims for bodily injury or property damage arising out of completed operations; and
- **.8** Claims involving contractual liability insurance applicable to the Subcontractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage

required to be maintained after final payment, and, with respect to the Subcontractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Construction Manager / Contractor and Owner shall be filed with the Construction Manager / Contractor prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Subcontractor and Construction Manager / Contractor's with reasonable promptness.

§ 11.1.4 The Subcontractor and Construction Manager / Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's consultants as additional insureds for claims caused in whole or in part by the Subcontractor or Construction Manager / Contractor's negligent acts or omissions during the Subcontractor or Construction Manager / Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Subcontractor or Construction Manager / Contractor's completed operations.

§ 11.2 OWNER'S LIABILITY INSURANCE

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

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Construction Manager / Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's, Construction Manager / Contractor's, and Subcontractor's services and expenses required as a result of such insured loss.

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

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

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

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

§ 11.3.2 BOILER AND MACHINERY INSURANCE

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

§ 11.3.3 LOSS OF USE INSURANCE

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

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

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

§ 11.3.6 Before an exposure to loss may occur, the Owner shall file with the Construction Manager / Contractor a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Construction Manager / Contractor.

§ 11.3.7 WAIVERS OF SUBROGATION

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

§ 11.3.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Construction Manager / Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Construction Manager / Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

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

§ 11.3.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved in the manner selected by the Owner and Construction Manager / Contractor as the method of binding dispute resolution in the Agreement. If the Owner and Construction Manager / Contractor have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Construction Manager / Contractor and Owner shall have the right to require the Construction Manager / Contractor or Subcontractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or for payment conditions described in Section 11.4.3.

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

§ 11.4.3 In the event that a Subcontractor shall require a deposit, pre-payment, or progress payment for materials, labor, or other project costs prior to it being stored or completed onsite, the Subcontractor or Material supplier shall furnish at no expense to the Construction Manager / Contractor a payment and performance bond for the total value of the Work.

ARTICLE 12
UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

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

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, or inspected by a t the Architect may request to see such Work and it shall be uncovered by the Subcontractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Subcontractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Subcontractor's obligations under Section 3.5, if, within the warrantee period after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of 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 Subcontractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Construction Manager a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the warrantee period for correction of Work, if the Owner fails to notify the Construction

Manager / Contractor and give the Subcontractor an opportunity to make the correction, the Owner waives the rights to require correction by the Subcontractor and to make a claim for breach of warranty. If the Subcontractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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

§ 12.2.2.3 The warrantee period for correction of Work shall not be extended by corrective Work performed by the Subcontractor pursuant to this Section 12.2.

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

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

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Subcontractor has under the Contract Documents. Establishment of the warrantee period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Construction Manager / Contractor and Subcontractor 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 Subcontractor's liability with respect to the Subcontractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13
MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Construction Manager / Contractor and Subcontractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make

such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

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

§ 13.3 WRITTEN NOTICE

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

§ 13.4 RIGHTS AND REMEDIES

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

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

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Subcontractor 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 Construction Manager / Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Contract Documents shall identify who shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Subcontractor.

§ 13.5.2 If the Construction Manager / Contractor or Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Construction Manager / Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Construction Manager / Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all

costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Subcontractor's expense.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Subcontractor for their respective portions of the Work and promptly delivered to the Construction Manager / Contractor.

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

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

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at such rate as the parties may agree upon in writing or, in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. In the event of a non-payment dispute between the Construction Manager / Contractor and Owner the Subcontractor shall waive all interest payments due to the Subcontractor by the Construction Manager / Contractor.

§ 13.7 TIME LIMITS ON CLAIMS

The Construction Manager / Contractor and Subcontractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law. The Construction Manager / Contractor and Subcontractor waive all claims and causes of action not commenced in accordance with this Section 13.7.

§ 13.8 NO PUBLICITY OR ADVERTISEMENT

§ 13.8.1 The Subcontractor or any Related Parties to the Subcontractor shall not be permitted to post, put up, or affix any advertising signs, banners, placards, or similar Articles on the Project Site, without expressed written consent by the Construction Manager / Contractor.

§ 13.8.2 The Subcontractor or any Related Parties to the Subcontractor shall not use the name or logo in any manner that would give the appearance that the Construction Manager / Contractor, Architect, or Owner is endorsing Subcontractor. Subcontractor shall not in any way contract any unrelated party on behalf of or in the name of Construction Manager / Contractor, Architect, or Owner. Subcontractor shall not release any informational pamphlets, notices, press releases, research reports, news articles, website, e-mail, or social media posts, or similar public notices concerning the Construction Manager / Contractor, Architect, and Owner or its projects without expressed written consent.

§ 13.9 AUDITS AND RECORDKEEPING

§ 13.9.1 The Subcontractor shall maintain accurate, up-to-date, and complete records which relate directly or indirectly to its Work of the Contract in a form suitable for inspection by the Construction Manager / Contractor throughout the project and for a period of one year after its completion or longer if required by law..

§ 13.9.2 The Construction Manager / Contractor at no expense, shall have the right to conduct a detailed audit of the Subcontractor's records (including records made by Sub-subcontractors, suppliers, and

vendors pertaining to the Work of this Project) at any time without restriction including in the event of an additional cost or time claim.

§ 13.9.3 The Subcontractor will cooperate fully and will cause all Related Parties and all of the Subcontractor's Sub-subcontractors to cooperate fully in furnishing original, physical and electronic copies of records to the Construction Manager / Contractor in an expeditious manner any and all such information, materials and data.

§ 13.9.4 Records subject to audit, examination, and copying shall include but not be limited to accounting records (hard copy as well as computer readable data), written policies and procedures, subcontract files (including proposals of successful and unsuccessful vendors, bid recaps, etc.), original estimates, estimating worksheets, material inventory and cost records, correspondence, change order files (including documentation covering negotiated settlements), back-charge logs and supporting documentation, general ledger entries detailing cash and trade discounts earned, insurance rebates and commitments, notes, daily diaries, reports, drawings, photographs, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in the Construction Manager / Contractor's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document (all the forgoing herein referred to as "Records").

§ 13.9.6 If any inspection or audit of the Records by the Construction Manager / Contractor reveals an overcharge, the Subcontractor shall promptly revise any claims for additional cost, or reimburse the Construction Manager / Contractor for such overcharge.

ARTICLE 14
TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONSTRUCTION MANAGER / CONTRACTOR

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

- **.1** Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- **.2** An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- **.3** Because the Architect or Owner has not issued a Certificate for Payment and has not notified the Construction Manager / Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- **.4** The Owner has failed to furnish to the Construction Manager promptly, upon the Construction Manager / Contractor 's request, reasonable evidence as required by Section 2.2.1.

§ 14.1.2 The Construction Manager / Contractor may terminate the Contract if, through no act or fault of the Construction Manager / Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect

contract with the Construction Manager / Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Construction Manager / Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

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

§ 14.1.4 The Subcontractor shall be afforded the same rights described in Section 14.1.1, 14.1.2, 14.1.3, or 14.1.4 as the Construction Manager / Contractor.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Construction Manager / Contractor

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

§ 14.2.2 When any of the above reasons exist, the Owner, upon certification by the Initial Decision Maker that sufficient cause exists to justify such action, may without prejudice to any other rights or remedies of the Owner and after giving the Construction Manager / Contractor and the Construction Manager / Contractor 's surety, if any, seven days' written notice, terminate employment of the Construction Manager / Contractor and may, subject to any prior rights of the surety:

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

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

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

§ 14.1.4 The Construction Manager / Contractor shall be afforded the same rights described in Section 14.2.1, 14.2.2, 14.2.3, or 14.2.4 as the Owner.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause. Therefore the Construction Manager / Contractor shall have the ability to terminate the Subcontractor's Contract for convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Construction Manager / Contractor and Subcontractor shall

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

§ 14.4.3 In case of such termination for the Owner's convenience, to the extent that the Construction Manager / Contractor shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work executed, the Subcontractor shall be entitled to the same.

§ 14.5 FORCE MAJEURE

The Subcontractor will not be responsible for delay resulting from its failure to perform if neither the fault nor the negligence of the subcontractor or its employees or agents contributed to the delay, and the delay is due directly to fire, explosion, earthquake, windstorm, flood, radioactive or toxic chemical hazard, war, military hostilities, terrorism, civil emergency, embargo, riot, strike, violent civil unrest, or other similar

cause wholly beyond the Subcontractor's reasonable control. The foregoing does not excuse delay which could have been avoided if the Subcontractor implemented any risk mitigation required by the Contract. In case of any delay the Subcontractor believes is excusable, the Subcontractor will notify the Construction Manager / Contractor in writing of the delay or potential delay and describe the cause of the delay within ten (10) calendar days after execution of the contract, The foregoing will constitute the Subcontractor's sole remedy or excuse with respect to delay. Providing notice in strict accordance with this paragraph is a condition precedent to such remedy. No claim for damages will be asserted by the Subcontractor. The Subcontractor will not be entitled to an increase in the Contract price or payment of any kind from the Construction Manager / Contractor for direct, indirect, consequential, impact or other costs, expenses or damages, including but not limited to costs of acceleration, inefficiency, or substitution arising because of delay, disruption, interference, or hindrance from any cause whatsoever. If performance is suspended or delayed, in whole or in part, due to any of the causes described in this paragraph, after the causes have ceased to exist the Subcontractor will perform at no increased cost.

ARTICLE 15
CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

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

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner, Subcontractor, or Construction Manager / Contractor must be initiated by written notice to the other party. Claims by either party must be initiated within fifteen days after occurrence of the event giving rise to such Claim or within fifteen days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

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

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Subcontractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. The Subcontractor's Claim shall include a full accounting of actual costs, including supplier cost information in detail satisfactory to the Construction Manager / Contractor. Any claims related to errors or omissions in the Contract Documents shall not be subject to overhead, profit or other burdens in excess of the actual damages incurred by the Subcontractor directly related to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Subcontractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Subcontractor's Claim shall include a full accounting of

actual costs insured by the Subcontractor and an estimate of cost and of probable effect of delay on progress of the Work. Any claims related to delays shall not be subject to overhead, profit or other burdens in excess of the actual damages incurred by the Subcontractor directly related to the Claim. In the case of a continuing delay, only one Claim is necessary.

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

§ 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

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

.1 damages incurred for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.6 shall be deemed to preclude an award of other damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall not be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Construction Manager / Contractor and the Subcontractor or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within 30 days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

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

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within 10 days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker

when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

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

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

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation or binding dispute resolution within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to respond within 60 days of receipt, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

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

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

§ 15.2.9 In the event of a dispute between the Construction Manager / Contractor and the Owner, the Construction Manager / Contractor shall:

- **.1** Make written notice to the Subcontractor, it shall be the Subcontractors responsibility to promptly take all necessary legal action to preserve their rights under the contact and to comply with applicable laws;
- **.2** Be held harmless from further litigation by the subcontractor related to the claim; and
- **.3** Be extended payment terms as to mitigate any unrecoverable interest expense for monies owed.

§ 15.2.9.1 The Construction Manager / Contractor shall be able to deduct the proportionate and reasonable costs of any action or proceeding commenced to enforce any provision of this agreement or the agreement between the Construction Manager / Contractor and the Owner on behalf of the Subcontractor, The costs incurred include reasonable attorney's fees and expenses; court, arbitration, and mediation fees; document reproduction, postage, testing, inspection, expert witness, and any other expenses including interest from the value of the recovery owed to the Subcontractor.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall not be subject to mediation as a condition precedent to binding dispute resolution.

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

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

§ 15.4 BINDING DISPUTE RESOLUTION

§ 15.4.1 WAIVER OF JURY TRIAL

The Construction Manager / Contractor and the Subcontractor hereby irrevocably waive, to the fullest extent permitted by applicable law, any right either of them may have to a trial by jury in any legal proceeding, action, or proceeding directly or indirectly arising out of or relating to this Agreement, the Contract Documents, or the Work.

§ 15.4.2 AGREEMENT TO BINDING ARBITRATION

Any Claim, dispute, or other matter in controversy arising out of or related to the Contract that is not resolved by negotiation or mediation shall be resolved exclusively by binding arbitration in accordance with the procedure set forth in this Section 15.4. The arbitration shall be the sole and exclusive method of binding dispute resolution. The parties expressly agree that this procedure supersedes any contrary provisions regarding arbitration administration, rules, or procedures that may appear elsewhere in the Contract Documents (including any reference to the American Arbitration Association or its Construction Industry Arbitration Rules).

§ 15.4.3 SELECTION OF ARBITRATOR

.1 Within fourteen (14) days after a party delivers a written demand for arbitration, each party shall submit to the other a list of up to three (3) proposed arbitrators.

.2 The parties shall then attempt in good faith to mutually select a single arbitrator from the combined list of proposed arbitrators.

.3 If the parties are unable to agree upon a single arbitrator from the initial lists, each party shall, within seven (7) days, submit a new list of up to three (3) proposed arbitrators, none of whom appeared on any prior list. The parties shall again attempt to mutually select a single arbitrator from the new combined list.

.4 This process of submitting new lists (excluding all previously proposed individuals) and attempting mutual selection shall continue until the parties have mutually agreed upon a single arbitrator.

.5 The selected arbitrator shall be a neutral individual with substantial experience in construction industry disputes.

§ 15.4.4 SUBMISSION OF CLAIMS AND PROCEEDINGS

.1 Once the arbitrator has been selected, each party shall simultaneously submit to the arbitrator, in writing, all of its claims, counterclaims, defenses, and supporting documentation, together with a written statement of its arguments and legal authorities.

.2 No oral arguments, hearings, or live testimony shall be conducted or permitted. The

arbitration shall be conducted solely on the written submissions and any supplemental written materials requested by the arbitrator.

.3 The arbitrator may, at any time prior to issuing the final award, request supplemental written information, clarification, or additional documentation from either or both parties. The parties shall respond to any such request within the time period set by the arbitrator.

§ 15.4.5 COSTS AND FEES

.1 Each party shall be solely responsible for its own attorneys' fees, expert fees, and all other costs of preparing and presenting its case.

.2 The fees and expenses of the arbitrator, and any administrative costs of the arbitration, shall be shared equally by the parties. Such shared costs shall be paid in advance of the issuance of the arbitrator's award (or as otherwise directed by the arbitrator).

.3 The arbitrator shall have no authority to award attorneys' fees or costs to either party, or to override, modify, or disregard any prevailing-party, fee-shifting, or cost-recovery provision contained in the Contract Documents (including any rights of the Construction Manager / Contractor under Section 15.2.9.1 or similar provisions).

§ 15.4.6 FINALITY AND ENFORCEMENT

The arbitrator's award shall be final and binding upon the parties. Judgment upon the award may be entered and enforced in any court of competent jurisdiction. The parties agree that the award shall be enforceable under the Federal Arbitration Act and applicable state law.

§ 15.4.7 CONTINUATION OF WORK

Pending final resolution of any Claim by arbitration under this Section 15.4, the Subcontractor shall continue to perform the Work diligently and in accordance with the Contract Documents, and the Construction Manager / Contractor shall continue to make payments in accordance with the Contract Documents, except as otherwise provided in Section 9.7 or Article 14.

§ 15.4.8 PREVAILING PARTY

The arbitrator shall make a binary determination of which party is the prevailing party. In making this determination, the arbitrator shall decide which party prevailed on the substantial majority of the claims and counterclaims asserted (or, if the number of claims is equal, which party prevailed on the claims having the greater aggregate value or significance). There shall be only one prevailing party.

The prevailing party shall be entitled to recover from the non-prevailing party: (a) its reasonable attorneys' fees, costs, and expenses incurred in connection with the arbitration; and (b) reimbursement of all fees and expenses of the arbitrator and any administrative costs of the arbitration that the prevailing party paid pursuant to Section 15.4.4.2.