AGENDA ITEM or FINAL CONTRACT REVIEW SUBMITTAL FORM

Agenda Item: Contractor Agreement; Christopher Klein Constructi

Action Requested: County Manager Signature

Parties to the Agreement: BOCC and Christopher Klein Construction

Term Begins: 11-20-17 **Term Ends:** 5/30/2018 **Grant Contract #:**

Summary:

This Contract Agreement is for the Family Services Building Remodel, Phase II.

Fiscal Impact: $1,278,382.00

Submitted by: Office of the County Attorney **Submitter's Email Address:** rmagruder@gunnisoncounty.org

Finance Review: (●) Required ( ) Not Required

Comments:
No concerns, ln

Reviewed by: GUNCOUNTY1\lNienhueser Discharge Date: 11/17/2017

County Attorney Review: (●) Required ( ) Not Required

Comments:
ok db 11/16/17

Reveiwed by: Discharge Date: 11/16/2017 Certificate of Insurance Required Yes (●) No ( )

County Manager Review:

Comments:

Reveiwed by: GUNCOUNTY1\mbirnie Discharge Date: 11/17/2017

(●) Consent Agenda ( ) Regular Agenda ( ) Worksession Time Allotted: 0

Agenda Date: 11/21/2017

Revised April 2015

CONTRACTOR AGREEMENT

THIS CONTRACTOR AGREEMENT ("Agreement") is entered into the ____ day of November, 2017, by and between the BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF GUNNISON, COLORADO, whose address is 200 East Virginia, Gunnison, Colorado 81230 ("Gunnison County") and CHRISTOPHER KLEIN CONSTRUCTION, INC., a Colorado corporation, whose address is 487 Blackfoot Trail, Gunnison, Colorado 81230 ("Contractor").

A. RECITALS

The Contractor would like to provide construction services for the Gunnison County Family Services Building Remodel, Phase II ("Project"). The Project is located at 225 N. Pine, Gunnison, Colorado.

Gunnison County desires to engage Contractor to provide construction services for the Project according to the terms and conditions of this Agreement.

B. AGREEMENT

NOW THEREFORE, in consideration of the recitals above and the terms and conditions hereinafter set forth, the parties agree as follows:

1. TERM.

The term of this Agreement shall commence on November 27, 2017 and shall terminate on June 6, 2018 unless sooner terminated or replaced as provided herein ("Term").

2. SERVICES.

During the Term of this Agreement Contractor shall furnish all labor, supervision, and equipment to commence, diligently pursue, and fully and timely complete the services identified in the following:

A. Final Construction Plans for the Project prepared by Ben White Architecture titled: *Family Services Renovation*, dated November 1, 2017, consisting of 17 pages ("Final Construction Plans"); and

B. Final Electrical Plans for the Project prepared by _____ _____titled:_____, _____dated _____, 2017; and

C. *Gunnison County Family Services Building Section 8 Final Guaranteed Maximum Price Proposal and Contract Time* attached hereto and incorporated herein by reference as Appendix "A"; and

D. *Christopher Klein Construction, Inc. Estimate #2017-20,* dated October 4, 2017 attached hereto and incorporated herein by reference as Appendix "B"; and

E. Project schedule titled: *Family Services Schedule*, dated October 5, 2017, attached hereto and incorporated herein by reference as Appendix "C"; and

F. Door and Hardware Schedule, dated September 18, 2017 attached hereto and incorporated herein by reference as Appendix "D" (collectively "Services").

Contractor shall work collaboratively with Resource Engineering Group, Inc. to provide Services for the Project within the constraints of the Project Budget as identified and preapproved in writing by Gunnison County.

All Services shall be performed in a timely manner and in accordance with generally accepted standards for Contractor's profession and all applicable federal, state and local laws and regulations, ordinances and codes affecting the Services or the subject matter thereof and pursuant to the *Conditions of the Contractor Agreement for Construction* attached hereto and incorporated herein by reference as Appendix "E". Contractor has made itself informed of, and acknowledges the Project conditions. Contractor further understands and acknowledges that this is a non-exclusive Agreement, and Gunnison County may contract with additional or other providers able to furnish the same or similar services as it deems appropriate to do so.

Any proposed changes and/or amendments to the Services shall be submitted in writing to Gunnison County and shall not be permitted without prior written approval of Gunnison County.

3. <u>COMPENSATION AND EXPENSES.</u>

In exchange for Contractor's performance of Services Gunnison County shall pay Contractor fees not to exceed, without prior written consent by Gunnison County, the Final Guaranteed Maximum Price of One Million Two Hundred Seventy Eight Thousand Three Hundred Eighty Two and No/100 U.S. Dollars ($1,278,382.00) ("Compensation").

Compensation shall not exceed Contractor's cost estimate as identified in Appendix "B" herein without prior written approval from the owner in the form of a change order(s).

The Compensation shall compensate Contractor for all charges, expenses, overhead, payroll costs, employee benefits, insurance, subsistence, and profits.

Gunnison County shall internally allocate and reserve an additional 5% in the amount of Sixty Three Thousand Nine Hundred Nineteen and No/100 U.S. Dollars ($63,919.00) as means for providing a contingency fund for this Agreement ("Contingency"). The Contingency shall be used ONLY upon prior written approval by Gunnison County. Contractor must submit to Gunnison County a written request for Contingency to include relevant engineering, product data, materials and/or subcontractor's quotes and explanations for the need of Contingency.

Compensation for Services shall be paid by Gunnison County within thirty (30) days upon receipt of Contractor's invoice. Payments shall be mailed to: Christopher Klein Construction, Inc., 487 Blackfoot Trail, Gunnison, Colorado 81230.

4. INSURANCE.

Contractor agrees that at all times during the Term of this Agreement that Contractor shall carry and maintain, in full force and effect and at its sole cost and expense, the following insurance policies. Within thirty (30) days of the execution of this Agreement, Contractor will provide insurance certificates to Gunnison County, listing Gunnison County as an additional insured, for the coverage's required herein which shall state that such policies shall not be materially changed or cancelled without thirty (30) days prior notice to Gunnison County.

A. Worker's Compensation Insurance in accordance with Colorado and Federal law which adequately protects all labor employed by Contractor during the term of this Agreement.

B. Comprehensive General Liability Insurance or the equivalent, to include errors and omissions, in an amount not less than $1,000,000 each occurrence and $2,000,000 aggregate for Bodily Injury Liability and $500,000 for Property Damage Liability.

C. Comprehensive automobile liability insurance on all vehicles used in the Services, in an amount no less than one hundred fifty thousand dollars for any injury to one person in any single occurrence and in an amount no less than six hundred thousand dollars for any injury to two or more persons in any single occurrence.

5. INDEPENDENT CONTRACTOR.

A. In carrying out its obligations and activities under this Agreement, Contractor is acting as an independent Contractor and not as an agent, partner, joint venture or employee of Gunnison County. Contractor does not have any authority to bind Gunnison County in any manner whatsoever.

B. Contractor acknowledges and agrees that Contractor is not entitled to: (i) unemployment insurance benefits; or (ii) Workers Compensation coverage, from Gunnison County. Further, Contractor is obligated to pay federal and state income tax on any moneys paid which are related to the Services.

6. DELEGATION AND ASSIGNMENT.

This is a personal services contract with Contractor and, therefore, Contractor shall not delegate or assign its duties under this Agreement without the prior written consent of Gunnison County which consent Gunnison County may withhold in its discretion. Subject to the foregoing, the terms, covenants and conditions of this Agreement shall be binding on the successors and assigns of either party.

7. IMMIGRATION COMPLIANCE CERTIFICATION.

A. Contractor certifies that Contractor does not and will not knowingly contract with or employ illegal aliens to work under this Agreement.

B. Contractor certifies that Contractor has required its subcontractors to certify that they do not knowingly contract with or employ illegal aliens to work under this Agreement.

C. Contractor certifies that it has attempted to verify the eligibility of its employees and subcontractors to work through the Basic Pilot Employment Verification Program administered by the Social Security Administration and Department of Homeland Security.

D. Contractor agrees to comply with all reasonable requests made in the course of an investigation under C.R.S. 8-17.5-102 by the Colorado Department of Labor and Employment.

E. Contractor agrees to comply with the provisions of C.R.S. 8-17.5-101 et seq.

8. SOLE SOURCE CONTRACTS.

If the Contractor has entered into a sole source contract or contracts with the State of Colorado or any of its political subdivisions as defined in Article XXVIII of the Colorado Constitution which including this contract in the aggregate on an annual basis are equal to or exceed the amount of $100,000, then the following provisions apply:

> Because of a presumption of impropriety between contributions to any campaign and sole source government contracts, Contractor, on behalf of itself , any person who controls ten percent or more of the shares of or interest in the Contractor, and the Contractor's officers, directors and trustees (collectively, "Contract Holder") shall contractually agree, for the duration of the contract and for two years thereafter, to cease making, causing to be made, or inducing by any means, a contribution, directly or indirectly, on behalf of the Contractor Holder or on behalf of his or her immediate family member and for the benefit of any political party or for the benefit of any candidate for any elected office of the state or any of its political subdivisions.
>
> The parties further agree that if a Contract Holder makes or causes to be made any contribution intended to promote or influence the result of an election on a ballot issue, the Contract Holder shall not be qualified to enter into a sole source government contract relating to that particular ballot issue.
>
> The parties agree that if a Contract Holder intentionally violates sections 15 or 17(2) of Article XXVIII of the Colorado Constitution, as contractual damages that Contract Holder shall be ineligible to hold any sole source government contract, or public employment with the state or any of its political subdivisions, for three years.

These provisions shall not apply to the extent they have been enjoined or invalidated by a court of competent jurisdiction.

9. DISCRIMINATION.

The Contractor agrees not to discriminate against any person or class of persons by reason of age, race, color, sex, creed, religion, disability, national origin, sexual orientation or political affiliation in providing any services or in the use of any facilities provided for the public in any manner prohibited by Part 21 of the Regulations of the Office of the Secretary of Transportation. Contractor shall further comply with the letter and spirit of the Colorado Anti-Discrimination Act of 1957, as amended, and any other laws and regulations respecting discrimination in unfair employment practices. Additionally, Contractor shall comply with such enforcement procedures as any governmental authority might demand that Gunnison County take for the purpose of complying with any such laws and regulations.

10. ADA COMPLIANCE.

The Contractor assures Gunnison County that at all times during the performance of this Agreement no qualified individual with a disability shall, by reason of such disability, be exclude from participation in, or denied benefits of the service, programs, or activities performed by the Contractor, or be subjected to any discrimination by the Contractor upon which assurance Gunnison County relies.

11. INDEMNIFICATION.

A. Contractor agrees to indemnify, defend and hold harmless Gunnison County, its Commissioners, agents and employees of and from any and all liability, claims, liens, demands, actions and causes of action whatsoever (including reasonable attorney's and expert's fees and costs) arising out of or related to any loss, cost, damage or injury, including death, of any person or damage to property of any kind caused by the misconduct or negligent acts of Contractor or its employees, sub-contractors or agents in connection with this Agreement.

B. This provision shall survive any termination or expiration of this Agreement with respect to any liability, injury or damage occurring prior to such termination.

12. TERMINATION.

Either party shall have the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days prior written notice to the other. Upon termination, Contractor shall be entitled to Compensation for Services performed prior to the date of termination.

Gunnison County shall have the right to stop work at any time for any reason and shall also have the ability to self-perform any portion of the Services.

13. NOTICES.

Any notice, demand or communication which either party may desire or be required to give to the other party shall be in writing and shall be deemed sufficiently given or rendered if delivered personally or sent by certified first class US mail, postage prepaid, addressed as follows:

Gunnison County: Matthew Birnie, County Manager
Gunnison County
200 E. Virginia
Gunnison, CO 81230

Contractor: Christopher Klein Construction, Inc.
487 Blackfoot Trail
Gunnison, Colorado 81230

Either party has the right to designate in writing, served as provided above, a different address to which any notice, demand or communication is to be mailed.

14. MISCELLANEOUS.

A. SEVERABILITY. If any clause or provision of this Agreement shall be held to be invalid in whole or in part, then the remaining clauses and provisions, or portions thereof, shall nevertheless be and remain in full force and effect.

B. AMENDMENT. No amendment, alteration, modification of or addition to this Agreement shall be valid or binding unless expressed in writing and signed by the parties to be bound thereby.

C. NO WAIVER OF GOVERNMENTAL IMMUNITY. Nothing in this Agreement is, or shall be construed to be, a waiver, in whole or part, by Gunnison County of governmental immunity provided by the Colorado Governmental Immunity Act or otherwise.

15. GOVERNING LAW.

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado. Exclusive jurisdiction and venue for any legal proceedings related to this Agreement shall be in the State District Court governing Gunnison County, Colorado.

16. COUNTERPARTS: ELECTRONIC TRANSMISSION.

This Agreement may be executed and sent electronically and/or in any number of counterparts, any or all of which may contain the signatures of less than all the parties, and all of which shall be construed together as but a single instrument and shall be binding on the parties as though originally executed on one originally executed document. All electronic counterparts shall be promptly followed with delivery of original executed counterparts.

17. ENTIRE AGREEMENT.

This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof, and supersedes any and all prior agreements, proposals, negotiations and representations pertaining to the obligations to be performed hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF GUNNISON, COLORADO

By: _____
Phil Chamberland, Chairperson

ATTEST:

_____
Deputy County Clerk

CHRISTOPHER KLEIN CONSTRUCTION, INC.,
a Colorado corporation

By: _____
Christopher Klein, President

Gunnison County Family Services Building

Section 8: Final Guaranteed Maximum Price Proposal and Contract Time

Attachment 1: Guaranteed Maximum Price.
The Final Guaranteed Maximum Price is $1,278,382.00. We have attached our estimating spreadsheet for your use.

Attachment 2: General Conditions.
General Conditions budget is included in our spreadsheet.

Attachment 3: Labor Burden.
Labor burden is included in our labor rates.

Attachment 4: Staff Assignments.
We have included a Superintendent (Chris Klein) for 6 months at 100 hours per month, a Project Manager (Joe Puchek) for 6 months at 10 hours per month and an A/E (Ben White) for 164 hours for permit drawings, spec completion, submittal review and weekly progress meetings.

Attachment 5: Allowances.
We have hard bid all of the line items except that which the county's engineer has not completed yet. These items include the wellfield, HVAC equipment, and Electrical Panel upgrades. We are fairly confident that we have the correct number but we will not be sure until we receive the final design.

Attachment 7: Clarifications.
The estimate sheet includes the latest revisions to the drawings attached with this proposal. We have attached our subcontractor and supplier quotes for your use. As per the direction from the county on 9/7/17, we have deleted or reduced in price the following items:

- Alpha mechanical, contingency was removed.
- EC most of the access control was removed except for the auto openers on the entry doors and programming for the card locks.
- Bath and exam rooms deleted.
- Added Vestibule to south entrance.
- South windows deleted.
- Panic hardware deleted on West entry door A01.
- 5 sidelight glazing deleted.
- Covering or painting or existing green block deleted. ± $2000
- Landscape and snow removal deleted.
- Window blinds deleted.
- Flooring changed to VCT and commercial carpet only. Existing flooring to remain in file room.

APPENDIX A

Attachments page 2:

- Existing cabinets to be carefully removed, stored, and reinstalled in new break room.

- Lighting changes resulted in credit.

Attachment 8: Project Schedule.
We have attached the critical path schedule. This is a very aggressive schedule. We will need to be able to order equipment and schedule the drillers as soon as possible. We have scheduled you moving on November 1-15 and us starting to demo on the 15th. We have also guaranteed a 6 month timeline to substantial completion.

Section 9: Construction Contingency.
We have not included any Contingency in our proposal. We do recommend that the Owner budget about 5% which would be $63,919 although we would be comfortable with a smaller contingency.

CHRISTO. .ER KLEIN CONSTRUCTION, INC.

Estimate #: 2017-20

Customer Name: Gunnison County

Project Name: Family Services Building remodel
AKA O'Leary

10/4/2017

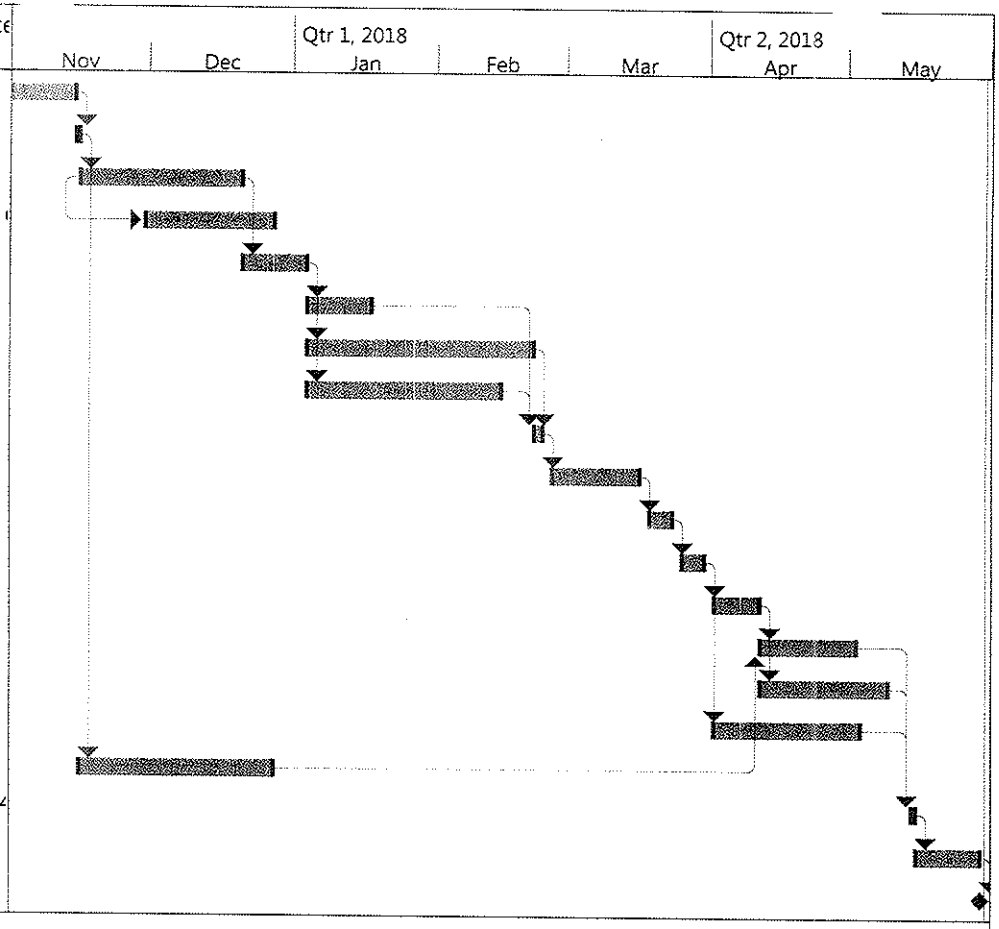
1,245,380 Sub Total Proposal
33,003 Bond
1,278,382 Total Proposal with bond

Description	Quan	UM	Labor Mhr/U	Labor Mhrs	Labor CC	Labor $ Amount	Material Unit	Material Amount	Equipment Unit	Equipment Amount	Sub Amount	Subtotal	13%OH 2%pr Total with OH &P (15%)
Save this line				0		0		0		0			
				0		0		0		0		0	0
HVAC/plumbing, Alpha	1	ls		0		0		0		0	242,050	242,050	278357
CK for plumb and HVAC	1	ls		0		0		0		0	12,000	12,000	13800
				0		0		0		0		0	0
Can Am Drilling	1	ls		0		0		0		0	204,467	204,467	235137
CK work for drillers	1	ls	50	50	c	3,250		0	2000	2,000		5,250	6038
Sidewalks	1	ls		0		0		0		0	2,500	2,500	2875
				0		0		0		0		0	0
Electrical, EC	1	ls		0		0		0		0	154,490	154,490	177664
Low Volt wiring	1	ls		0		0		0		0	31,216	31,216	35899
Acess control for doors	1	ls	12	12	c	780		0		0	1,100	1,880	2162
CK for electrical	1	ls		0		0		0		0	4,000	4,000	4600
				0		0		0		0		0	0
Mobilization/demob	1	ls	32	32	l	1,440		0		0		1,440	1656
Demolition	3	wks	160	480	l	21,600		0		0		21,600	24840
Save for re-use	1	lot	200	200	c	13,000		0		0		13,000	14950
Con-ex's	2	ea	6	12	l	540		0	750	1,500		2,040	2346
Protect surf/dust walls	1	ls	120	120	l	5,400	1200.00	1,200		0		6,600	7590
				0		0		0		0		0	0
Structural Modifications	1	ls	280	280	c	18,200	8000.00	8,000	2000	2,000		28,200	32430
Forklift	2	mos	24	48	c	3,120		0	2500	5,000		8,120	9338
				0		0		0		0		0	0
New walls 8'	292	lf	0.5	146	c	9,490	10.00	2,920		0		12,410	14272
New walls 12'	258	lf	0.75	194	c	12,578	15.00	3,870		0		16,448	18915
Furr exist block walls	0			0		0		0		0		0	0
Infill doors/windows	287	sf	0.2	57	c	3,731	1.25	359		0		4,090	4703
				0		0		0		0		0	0
Sound batts(118,120,113	900	sf		0		0		0		0	855	855	983
				0		0		0		0		0	0
Drywall new, Blanco	13,161	sf		0		0		0		0	22,560	22,560	25944
Patch drywall, Blanco	1	lot		0		0		0		0	6,960	6,960	8004
				0		0		0		0		0	0

APPENDIX B

Paint/finish (Cooler)	1	ea		0		0		0		0	33,440	33,440	38456
				0		0		0		0		0	0
Doors new	20	ea	6	120	c	7,800	1300.00	26,000		0		33,800	38870
Doors rem and reinstall	10	ea	8	80	c	5,200	30.00	300		0		5,500	6325
Hardware	20	ea	3	60	c	3,900	400.00	8,000		0		11,900	13685
Card readers	5	ea	3	15	c	975	500.00	2,500		0		3,475	3996
Sl/tran/door glass	1	ea	4	4	c	260	290.00	290		0		550	633
				0		0		0		0		0	0
Windows South	0	ls		0		0		0		0		0	0
Brickwork at windows	0	ls		0		0		0		0		0	0
				0		0		0		0		0	0
Storefront vestibule	2	ea		0		0		0		0	15,800	15,800	18170
Auto open	1	ea		0		0	2000.00	2,000		0		2,000	2300
One way window	1	ea	6	6	c	390	300.00	300		0	585	1,275	1466
				0		0		0		0		0	0
ACT ceiling	3,387	sf		0		0		0		0	16,766	16,766	19280
				0		0		0		0		0	0
Flooring/base	1	ls		0		0		0		0	38,538	38,538	44319
Demo flooring	1	ls	55	55	l	2,475		0	100	100		2,575	2961
Patch floor	1	ls	32	32	l	1,440	250.00	250		0		1,690	1944
				0		0		0		0		0	0
Re-use breakroom cabs	16	lf	1	16	c	1,040		0		0		1,040	1196
Re-use conf cabs	8	lf	1	8	c	520		0		0		520	598
Countertops	18	lf	0.5	9	c	585	50.00	900		0		1,485	1708
Reception area cabs	25	lf	0.6	15	c	975	200.00	5,000		0		5,975	6871
Reception area tops	38	lf	0.65	25	c	1,606	85.00	3,230		0		4,836	5561
				0		0		0		0		0	0
Bath accys	1	lot	8	8	c	520	650.00	650		0		1,170	1346
Misc Finish items	1	ls	50	50	c	3,250	4000.00	4,000		0	4,000	11,250	12938
Window blinds	0			0		0		0		0		0	0
F/E cabs	2	ea	4	8	c	520	225.00	450		0		970	1116
				0		0		0		0		0	0
Temp heat	1	ls		0		0		0	6000	6,000		6,000	6900
Snow removal	0	ls		0		0		0		0		0	0
Architect/permit dwgs	1	ls		0		0		0		0	11,840	11,840	13616
Project Manager	6	mos	10	60	p	4,200		0		0		4,200	4830
Superintendent	6	mos	100	600	p	42,000		0		0		42,000	48300
Common labor/ fin clean	1	ls	300	300	l	13,500		0		0		13,500	15525
Dumpster	5	ea	10	50	l	2,250		0	900	4,500		6,750	7763
Port o let	6	mos		0		0		0	320	1,920		1,920	2208
				0		0		0		0		0	0
Totals				3,152		186,534		70,219		23,020	803,166	1,082,939	1245380

ID	Task Name	Duration	Start	Finish	Predece
1	Owner move out	10 days	Wed 11/1/17	Tue 11/14/17	
2	Mobilization	1 day	Wed 11/15/17	Wed 11/15/17	1
3	Demolition	25 days	Thu 11/16/17	Wed 12/20/17	2
4	Structural framing	20 days	Thu 11/30/17	Wed 12/27/17	3SS+10
5	Steel stud framing	10 days	Thu 12/21/17	Wed 1/3/18	3
6	Rough plumbing	10 days	Thu 1/4/18	Wed 1/17/18	5
7	Rough HVAC	35 days	Thu 1/4/18	Wed 2/21/18	5
8	Rough electric	30 days	Thu 1/4/18	Wed 2/14/18	5
9	Inspections	2 days	Thu 2/22/18	Fri 2/23/18	6,7,8
10	Drywall	15 days	Mon 2/26/18	Fri 3/16/18	9
11	Paint walls	5 days	Mon 3/19/18	Fri 3/23/18	10
12	ACT grid	5 days	Mon 3/26/18	Fri 3/30/18	11
13	HVAC and elec to grid	8 days	Mon 4/2/18	Wed 4/11/18	12
14	HVAC/elec/plumb trim	15 days	Thu 4/12/18	Wed 5/2/18	13,17
15	Flooring	20 days	Thu 4/12/18	Wed 5/9/18	13
16	Finishes	24 days	Mon 4/2/18	Thu 5/3/18	12
17	Geothermal Wellfield	30 days	Thu 11/16/17	Wed 12/27/17	2
18	Substantial completion	1 day	Tue 5/15/18	Tue 5/15/18	16,15,14
19	Punch list move back in	10 days	Wed 5/16/18	Tue 5/29/18	18
20	Final completion	0 days	Wed 5/30/18	Wed 5/30/18	19



Project: Family Services Schedu
Date: Thu 10/5/17

Task		Inactive Summary		External Tasks	
Split		Manual Task		External Milestone	
Milestone		Duration-only		Deadline	
Summary		Manual Summary Rollup		Progress	
Project Summary		Manual Summary		Manual Progress	
Inactive Task		Start-only			
Inactive Milestone		Finish-only			

APPENDIX C

DOOR SCHEDULE

ALTERNATE 1 9/18/2017

TAG	NEW/EXISTING	ROOM	WIDTH	HEIGHT	THICKNESS	MATERIAL	GLAZING	FRAME	FRAME TYPE	FRAME DEPTH	HARDWARE SET	NOTES
001	NEW	FAMILY RESTROOM	3' - 0"	7' - 0"	1-3/4"	OAK		HM	A	4-7/8"	1.0	
002	NEW	LOBBY CONTROL	3' - 0"	7' - 0"	1-3/4"	OAK		HM	A	4-7/8"	2.0	
003	NEW	LOBBY CONTROL	3' - 0"	7' - 0"	1-3/4"	OAK		HM	A	4-7/8"	2.0	
004	NEW	FAMILY VISIT	3' - 0"	7' - 0"	1-3/4"	OAK		HM	A	4-7/8"	2.0	EXISTING WALL
005	NEW	OBSERVATION	3' - 0"	7' - 0"	1-3/4"	OAK		HM	A	4-7/8"	2.0	EXISTING WALL
006	NEW	OFFICE	3' - 0"	7' - 0"	1-3/4"	OAK		HM	A	4-7/8"	3.0	EXISTING WALL
007	NEW	OFFICE	3' - 0"	7' - 0"	1-3/4"	OAK		HM	A	4-7/8"	3.0	
009	NEW	OFFICE	3' - 0"	7' - 0"	1-3/4"	OAK		HM	A	4-7/8"	3.0	
010	NEW	OFFICE	3' - 0"	7' - 0"	1-3/4"	OAK		HM	A	4-7/8"	3.0	
015	NEW	OFFICE	3' - 0"	7' - 0"	1-3/4"	OAK		HM	A	4-7/8"	3.0	
016	NEW	INTERVIEW	3' - 0"	7' - 0"	1-3/4"	OAK		HM	A	4-7/8"	3.0	IN MASONRY OPENING
017	NEW	INTERVIEW	3' - 0"	7' - 0"	1-3/4"	OAK		HM	A	4-7/8"	3.0	IN MASONRY OPENING
019	NEW	FILES	3' - 0"	7' - 0"	1-3/4"	OAK		HM	A	4-7/8"	2.0	
020	NEW	OFFICE	3' - 0"	7' - 0"	1-3/4"	OAK		HM	B	4-7/8"	3.0	EXISTING WALL
A01	NEW	VESTIBULE	6' - 0"	7' - 0"	1-3/4"	ALUM	FULL LIGHT	ALUM	C	4-1/2"	4.1	ADA AUTO OPENER
A02	NEW	SOUTH ENTRY	6' - 0"	7' - 0"	1-3/4"	ALUM	FULL LIGHT	ALUM	C	4-1/2"	4.2	
E01	EXISTING	MECHANICAL	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	
E02	EXISTING	RESTROOM	2' - 8"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	
E03	EXISTING	MOP	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	
E04	EXISTING	RESTROOM	2' - 8"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	
E05	EXISTING	STAIRS	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	
E06	EXISTING	CONFERENCE	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	
E07	EXISTING	PARTITION	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	
E08	EXISTING	STORAGE	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	
E09	EXISTING	CONFERENCE	6' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	
E10	EXISTING	CLOSET	4' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	
E11	EXISTING	CLOSET	4' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	
E12	EXISTING	OFFICE	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	EXISTING SIDELIGHT
E13	EXISTING	OFFICE	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	EXISTING SIDELIGHT
E14	EXISTING	OFFICE	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	
E15	EXISTING	OFFICE	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	
E16	EXISTING	OFFICE	3' - 0"	7' - 0"	1-3/4"	EXISTING	1/2 LIGHT	EXISTING			EXISTING	*VERIFY HARDWARE FUNCTION*
E17	EXISTING	OFFICE	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	
E18	EXISTING	OFFICE	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	
E19	EXISTING	CORRIDOR	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	EXISTING CARDSWIPE
E20	EXISTING	OFFICE	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	EXISTING SIDELIGHT
E21	EXISTING	OFFICE	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	EXISTING SIDELIGHT
E22	EXISTING	RESTROOM	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	
E23	EXISTING	OFFICE	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	
E24	EXISTING	PHARMACY	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	
E25	EXISTING	OFFICE	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	EXISTING SIDELIGHT
E26	EXISTING	OFFICE	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	EXISTING SIDELIGHT
E27	EXISTING	OFFICE	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	EXISTING SIDELIGHT
E28	EXISTING	OFFICE	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	EXISTING CARDSWIPE
E29	EXISTING	CORRIDOR	6' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	
E30	EXISTING	CORRIDOR	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	
EA1	EXISTING	MAIN ENTRY	6' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	
EA2	EXISTING	CONFERENCE EXIT	6' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	
EA3	EXISTING	SOUTH ENTRY	6' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING			EXISTING	
R02	RELOCATED	OFFICE	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING	REUSE	4-7/8"	EXISTING	
R04	RELOCATED	OFFICE	3' - 0"	7' - 0"	1-3/4"	EXISTING	1x1 LIGHT	EXISTING	REUSE	4-7/8"	EXISTING	
R05	RELOCATED	OFFICE	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING	REUSE	4-7/8"	EXISTING	EXISTING SIDELIGHT
R06	RELOCATED	OFFICE	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING	REUSE	4-7/8"	EXISTING	EXISTING SIDELIGHT
R07	RELOCATED	OFFICE	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING	REUSE	4-7/8"	EXISTING	EXISTING SIDELIGHT
R08	RELOCATED	OFFICE	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING	REUSE	???	3.1	CONVERT FROM STORAGE LOCK?
R10	RELOCATED	OFFICE	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING	REUSE	4-7/8"	EXISTING	
R11	RELOCATED	FILES	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING	REUSE	4-7/8"	2.1	CONVERT FROM PASSAGE SET?
R12	RELOCATED	OFFICE	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING	REUSE	4-7/8"	3.1	CONVERT FROM PASSAGE SET?
R13	RELOCATED	LACTATION	3' - 0"	7' - 0"	1-3/4"	EXISTING		EXISTING	REUSE	4-7/8"	1.1	CONVERT FROM OFFICE LOCK?

APPENDIX D

HARDWARE SETS

HARDWARE SET 1.0 - PRIVACY SET
DOORS: 001

3	EA	HINGE	BB1279 4.5 x 4.5	HA	US26D
1	EA	PRIVACY LOCK	ND40S RHO	SC	626
1	EA	PERMANENT CORE			
1	EA	SURFACE CLOSER	1460	LCN	AL
1	EA	KICK PLATE	.050 34 x 8	TR	32D
3	EA	SILENCER	SR64	IVE	GRY
1	EA	WALL STOP	403	RW	US26D

FUNCTION: PRIVACY
1.) PUSH BUTTON INSIDE LOCKS OUTSIDE LEVER
2.) SMALL SCREWDRIVER OUTSIDE UNLOCKS LEVER
3.) INSIDE LEVER ALWAYS OPERATES

HARDWARE SET 1.1 - PRIVACY SET RETROFIT
DOORS: R13

1	EA	PRIVACY LOCK	ND40S RHO	SC	626
1	EA	PERMANENT CORE			
1	EA	SURFACE CLOSER	1460	LCN	AL
1	EA	WALL STOP	403	RW	US26D

HARDWARE SET 2.0 - CONTROL DOOR
DOORS: 002, 003, 004, 005, 019

3	EA	HINGE	BB1279 4.5 x 4.5	HA	US26D
1	EA	WIRELESS LOCK	NDE80PD RHO	SC	626
1	EA	PERMANENT CORE			
1	EA	SURFACE CLOSER	1460	LCN	AL
1	EA	KICK PLATE	.050 34 x 8	TR	32D
1	EA	DOOR SEAL	5060B	NGP	GRY
1	EA	WALL STOP	403	RW	US26D

FUNCTION: ACCESS CONTROL, STOREROOM FUNCTION
1.) DOOR NORMALLY CLOSED AND LOCKED AT ALL TIMES
2.) CARD READER RETRACTS LATCHBOLT
3.) KEY RETRACTS LATCHBOLT, STOREROOM FUNCTION
4.) INSIDE LEVER ALWAYS OPERATES

HARDWARE SET 2.1 - CONTROL DOOR RETROFIT
DOORS: R11

1	EA	WIRELESS LOCK	NDE80PD RHO	SC	626
1	EA	PERMANENT CORE			
1	EA	SURFACE CLOSER	1460	LCN	AL
1	EA	KICK PLATE	.050 34 x 8	TR	32D
1	EA	WALL STOP	403	RW	US26D

HARDWARE SET 3.0 - OFFICE SET
DOORS: 006, 007, 009, 010, 015, 016, 017, 020

3	EA	HINGE	BB1279 4.5 x 4.5	HA	US26D
1	EA	OFFICE LOCK	ND50S RHO	SC	626
1	EA	PERMANENT CORE			
1	EA	KICK PLATE	.050 34 x 8	TR	32D
1	EA	WALL STOP	403	RW	US26D
3	EA	SILENCER	SR64	IVE	GRY

FUNCTION: OFFICE LOCK
1.) PUSH BUTTON INSIDE LOCKS OUTSIDE LEVER
2.) KEY OUTSIDE UNLOCKS LEVER
3.) INSIDE LEVER ALWAYS OPERATES

HARDWARE SET 3.1 - OFFICE SET RETROFIT

DOORS: R08, R12

1	EA	OFFICE LOCK	ND50S RHO	SC	626
1	EA	PERMANENT CORE			
1	EA	WALL STOP	403	RW	US26D

HARDWARE SET 4.1 - VESTIBULE WITH ADA OPENER

DOORS: A01

2	EA	CONTINUOUS HINGE	651-SS-96	STH	630
2	EA	DUMMY TOUCH BAR	1791DT	FALCON	630
2	EA	OFFSET PULL	TBF157A	RW	630
1	EA	SURFACE CLOSER	1460	LCN	AL
1	EA	ADA OPERATOR	D-4990	STH	628
1	EA	PUSH PLATE	CL2216	STH	
1	EA	CONTROL BOX	CL2220	STH	

FUNCTION: PAIR, PUSH / PULL OPERATION

1.) BOTH DOORS ALWAYS OPERATIVE, NON LOCKING, NON LATCHING

2.) ADA ACTUATOR INSIDE OPENS 1 LEAF

3.) ADA ACTUATOR LINKED TO OUTSIDE DOOR

4.) INSTALL DOORS FOR 100-DEGREE DOOR SWING

HARDWARE SET 4.2 - VESTIBULE

DOORS: A01

2	EA	CONTINUOUS HINGE	651-SS-96	STH	630
2	EA	DUMMY TOUCH BAR	1791DT	FALCON	630
2	EA	OFFSET PULL	TBF157A	RW	630
2	EA	SURFACE CLOSER	1460	LCN	AL

FUNCTION: PAIR, PUSH / PULL OPERATION

1.) BOTH DOORS ALWAYS OPERATIVE, NON LOCKING, NON LATCHING

2.) INSTALL DOORS FOR 100-DEGREE DOOR SWING

CONDITIONS OF THE CONTRACTOR AGREEMENT FOR CONSTRUCTION

FOR THE FOLLOWING PROJECT:

Gunnison County Family Services Building Remodel,
Phase II
225 N. Pine
Gunnison, CO 81230

THE OWNER:

Board of County Commissioners
of the County of Gunnison, Colorado
200 E. Virginia
Gunnison, CO 81230

ARTICLE 1: GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement).

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor a Subcontractor or a Sub-subcontractor, or (2) between any persons or entities other than the Owner and the Contractor.

§ 1.1.3 THE WORK

§1.1.3.1 The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work, which may constitute the whole or a part of the Project, shall include construction and services provided by the Contractor, Subcontractors and Subsubcontractors, suppliers, vendors and others required by the Contractor as necessary for the Contractor to fulfill the Contractor's obligations.

§1.1.3.2 The Contractor shall undertake and complete the Work as an independent Contractor and not as an agent of the Owner to the complete satisfaction of the Owner. Contractor shall faithfully and diligently perform and complete the Work and its obligations under this Contract in strict compliance with and subject to each of the provisions of the Contract to the fullest extent that such provisions are applicable to the Work. Any Work performed by the Contractor that is not part of the Work as described in the Contract Documents will be at the sole risk and expense of the Contractor, unless such additional work is approved in writing through a change order.

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

§ 1.1.6 THE SPECIFICATIONS
The Final Construction Plans include specifications which are written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE
The Final Construction Plans include instruments of Service which may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials. Instruments of Service are created at the direction of the Owner and therefore the Owner shall have complete ownership and control of the Instruments of Service.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event that there is a conflict or discrepancy within the Contract Documents, the Contractor shall be responsible for notifying the Owner immediately. The Owner, shall then determine which Contract Document(s) shall govern. As the Contractor is to assume the longest schedule and the largest volume, highest quality and most expensive solution described within the Contract Documents for the development of the Final Guaranteed Maximum Price for purposes of scheduling and budgeting, the Contractor shall be prepared to provide a credit as appropriate, based on the Owner's decision.

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

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

§ 1.3 CAPITALIZATION

Capitalized terms in these General Conditions are those specifically defined in the Contract Documents, the titles of numbered articles, or the titles of other documents that are not defined herein shall have the meanings, if any, provided in the Agreement.

§ 1.4 INTERPRETATION

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

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Owner shall have title to and all intellectual and other property rights in and to the Drawings and Specifications, including without limitation all phased and final designs, plans and specifications, and all data used in the development of the same. Owner shall further have title to the results of any tests, surveys or inspections at the Project site, and all photographs, drawings, draft specifications, Contract Documents, studies, reports, notes and any other materials or work products, whether in electronic or hard copy format, pursuant to this Agreement.

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

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

ARTICLE 2: OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The

Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The provisions of Colorado Revised Statutes Sec. 38-26-107 et seq. will govern the evaluation, notice and enforcement of claims for payment. Notwithstanding any provisions therein to the contrary, Contractor shall indemnify and hold the Owner harmless from all liens and other encumbrances against the Owner's property or facilities relating to the Work on account of debts or claims alleged to be due from Contractor its Subcontractors or Sub-subcontractors to any persons. Contractor shall also defend, at its own expense, any claim or litigation in connection therewith, except to the extent the same is solely caused by the Owner's wrongful withholding of payment to the Contractor.

§2.1.3 Owner and its authorized consultants and representatives shall at all times have access to the Project site for the purposes of inspecting and observing the Work.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract.

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

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work. The Contractor shall notify the Owner in writing immediately and in any event within three (3) business days, after discovering any discrepancies between the information provided by the Owner and the actual conditions in the field.

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

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

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 11.2 or fails to carry out Work in accordance with the Contract Documents, or fails to correct non-conforming work within a reasonable time after receiving notice thereof, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 5.1.3. The Contractor shall be liable for all impacts related to delays resulting from a stop work order issued by the Owner based on the Contractor's failure to perform under this paragraph. The exercise of Owner's right to stop Work pursuant to this Section 2.3 shall not result in any extensions to the Project Schedule.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK AND OTHER REMEDIES

§2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents, and the Contractor fails, within a five (5) day period after receipt of written notice from the Owner, to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments, then or thereafter due the Contractor, the reasonable cost of correcting such deficiencies, including Owner's expenses made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 2.4.2 Each of the following shall constitute a default or an event of default by the Contractor:

1. The Contractor fails or refuses to comply with or perform, in whole or in part, any terms or conditions of the Agreement or the Contract Documents.

2. The Contractor fails to pay or cause to be paid (as applicable) any of its Subcontractors, supervisory staff, work force or any materials, labor, equipment or other expenses incurred in the performance of the Work,

when such payments are due in accordance with the agreements requiring such payment and all applicable laws.

3. The Contractor becomes insolvent, makes an assignment for the benefit of creditors, or commences any proceeding in bankruptcy, or any such proceedings are commenced against it and are not discharged within thirty days.

4. The Contractor abandons the Work, or reduces its management, supervisory staff or work force to a level that may not allow the Contractor to maintain the accurate progress of the services or the Work for the timely completion of the Project as determined by the Owner (including services during Preconstruction as well as during Construction, and including Work being performed prior to Final Completion as well as following completion all until all Punch List items are complete and the Project achieves Final Completion.

5. Contractor is otherwise in material breach of the terms of the Contract Documents.

§ 2.4.3 If the Contractor is ever in default or an event of default exists the Owner may elect to:

1. Direct the Contractor to comply with the terms of the Contract Agreement and/or Contract Documents.

2. Direct the Contractor to remove any defective or hazardous material or work, which Contractor shall do at its sole cost.

3. Accept any non-conforming work or materials, in which event Owner shall be entitled to a reduction in the Final Guaranteed maximum price for the reduced value thereof.

4. Immediately complete portions of or all of the Work in Accordance with Section 2.4.1.

5. Make payments directly to Subcontractors to satisfy the Contractor's obligations relating to the Work in accordance with Section 8.3.

6. Withhold any further payments to Contractor or to any Subcontractor until the cause for the default or the event of default is cured to the satisfaction of the Owner.

7. Subject to the notice period provided in the Contract Agreement, terminate the Contract Agreement, finish the Work by whatever

method Owner deems expedient.

8. Have any other remedy to which Owner may be entitled under the Contract Documents, at law or in equity.

§ 2.4.4 The Owner's choice of a remedy shall not obligate the Owner to waive any other rights or remedies provided under the Contract Documents, or by law, against Contractor or its surety. Owner, at its option, may choose more than one remedy or choose one or more particular remedies at different times, without prejudice to any other remedies, and Owner may exercise any remedies in any sequence or combination.

§ 2.4.5 Contractor shall pay, immediately upon demand, all costs, losses, damages and expenses, including, without limitation, all costs and expenses described in Section 2.4.1 above, and all administrative, management, and overhead and other expenses and economic loss, including reasonable attorney's fees and expenses (herein sometimes collectively called "Costs"), incurred by the Owner in connection with any default by Contractor or exercise of any right or remedy upon Contractor's default. If Contractor does not pay the Costs immediately, the Owner may deduct all Costs from any unpaid portion of the Contract Sum and the Final Guaranteed Maximum Price. The liability of Contractor shall extend to include, without limitation, the full amount of Costs incurred and obligations assumed in good faith under the reasonable belief that such Costs or obligations were necessary or required whether or not they were, in fact, necessary or required. An itemized statement of such obligations and payment shall be prima-facie evidence of Contractor's liability.

§ 2.4.6 Except to the extent otherwise specifically provided herein or in the Agreement, neither party shall be entitled to recover attorneys' fees for services or costs prior to filing suit.

ARTICLE 3: CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall be an officer or principal of the firm. Such representative shall have authority to bind the Contractor with respect to all matters under this Contract. Owner shall be entitled to rely on the authority of the Contractor's representative at all times without inquiry.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents. Time is of the essence.

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

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions including but not limited to climatic, geological and topographic conditions under which the Work is to be performed and correlated personal observations; and that Contractor has assessed and is satisfied with the availability of potential Subcontractors and labor, material and equipment availability to satisfy the requirements of the Contract Documents.

§ 3.2.2 The Contractor shall, in developing the Contract Sum for the Owner and before starting each portion of the Work, carefully study and compare the various Contract Documents relative to the entire Project or that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2. The Contractor shall promptly inform the Owner of any errors, omissions or inconsistencies that it discovers. The Contractor shall conduct detailed reviews with Subcontractors and Sub-subcontractors in an effort to continue to uncover any errors, omissions or inconsistencies prior to finalizing Project costs and awarding work to Subcontractors. The Contractor and their Subcontractors shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and therefore are opportunities for the Contractor to identify any observable or potential errors, omissions, or inconsistencies in the Contract Documents. The Owner relies on the Contractor to review these documents and visit the site within ten (10) days of receipt of the Contract Documents with qualified staff experienced in the specific project type. The Contractor shall, within seven (7) days of the site visit, report to the Owner any errors, inconsistencies or omissions discovered by or made known to the Contractor as a "Request For Information" (RFI) in such form as mutually agreed to between the Owner and Contractor. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and

regulations, or lawful orders of public authorities, but the Contractor, using appropriately qualified staff, shall within three (3) days report to the Owner any nonconformity discovered by or made known to the Contractor as an RFI.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Owner issues in response to the Contractor's notices or RFI's pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 13. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner 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.

§3.2.5 If any portion of the Project is an addition to an existing facility, verifying existing conditions shall be a key responsibility of the Contractor. In that event, Contractor shall verify applicable measurements or confirm dimensions at the Project site prior to ordering any material or doing any Work in affected areas. Contractor shall make such verification before delivering its proposed Final Guaranteed Maximum Price or, for changes in the Drawings and Specifications made thereafter, as soon as reasonably practicable after receiving such changes. If the Contractor fails to verify applicable measurements when required under the terms of the Contract Documents, no extra charge or compensation shall be allowed to Contractor on account of differences between actual dimensions and those shown in the Contract Documents.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

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

or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors. Contractor shall also be responsible for any damages, losses, costs or expenses resulting from such acts or omissions.

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

§ 3.4 LABOR AND MATERIALS

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

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Owner in accordance with Sections 3.12.8, the Contractor may make substitutions only with the written consent of the Owner, and in accordance with a Change Order or Construction Change Directive.

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

§ 3.5 WARRANTY

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

shall furnish satisfactory evidence as to the kind and quality of materials and equipment to be supplied.

§3.5.2 The Warranty shall be for the duration of time stipulated within the Contract Documents. In the event that a specific duration is not identified in the Contract Documents, the warranty period shall be one year from Owner occupancy or completion, whichever occurs first. If there is a conflict within the Contract Documents for the warranty period, the longest duration of time stated shall govern. As Work required on warranty is the complete, rework, repair or replacement of Work not properly performed, or the result of defective material or workmanship, the Owner will not compensate the Contractor or Subcontractors and Sub-subcontractors for the warranty Work.

§3.5.3 All warranty items are the responsibility of the Contractor. When warranty items occur, the Owner will notify the Contractor or appropriate Subcontractor. The Contractor shall commence work on any warranty items within seven (7) days. In the event that the warranty item(s) are impacting safety or rendering the Project or a portion of the Project unfit for its intended use, in the opinion of the Owner, the Contractor shall take any and all measures to resolve the warranty item(s) immediately. This shall include the acceleration of labor, material and equipment, all to implement the resolution. All costs associated with the resolution of the warranty issue(s) shall remain the responsibility of the Contractor.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. Contractor shall pay unemployment and social security taxes or other taxes imposed by local, city, state or federal government and upon request, shall certify to Owner that prior taxes due were paid before payment is made to Contractor. Contractor represents that the cost of payment of all the aforesaid taxes has been included in its preliminary estimates and Initial Guaranteed Maximum Price and will be included in the Final Guaranteed Maximum Price. The Contractor's obligation for taxes extends beyond the final close-out of the Project and continues for the applicable limitations period.

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

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

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

§ 3.7.3 Pursuant to Section 3.2, if the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.7.4 Concealed or Unknown Conditions. If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents to be reasonably expected at the location of the Project site, the Contractor shall promptly provide notice to the Owner before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. The Owner will promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, the Owner will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner 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 Owner shall promptly notify the Contractor in writing, stating the reasons. If Contractor disputes the Owner's determination or recommendation, Contractor may proceed as provided in Article 13.

§ 3.7.5 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 13.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the

Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection. Allowances shall be clearly tracked in a separate report and updated on a monthly basis.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

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

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

3. Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual costs and the allowances under Section 3.8.1 as well as changes in Contractor's costs under Section 3.8.2.

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

§ 3.9 PROJECT MANAGER AND SUPERINTENDENT

§3.9.1 The Contractor shall employ a competent Superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The Superintendent shall represent the Contractor for all field activities including but not limited to the activities performed by the Contractor, Subcontractors, suppliers and vendors.

The Contractor shall employ a competent Project Manager who shall be assigned full time at the Project site for the duration of the Project. The Project Manager shall represent the Contractor for the complete management of the Project including the oversight and direction of the Superintendent(s), project engineer(s) and all Contractor staff assigned to the Project. All communications given to the Project Manager or the Superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor shall employ for this Project a proposed key staff individual to whom the Owner may make an objection. The Contractor shall not change the key staff without the Owner's consent, which shall not unreasonably be withheld or delayed. During the course of the Project, if, in the Owner's opinion, any of these individuals become unfit to continue on the Project or the Owner feels that it is in the best interest of the Project that an individual needs to be removed, the Owner

may direct the Contractor to remove such individual from the Project and Contractor shall promptly do so. If the Contractor replaces any key staff member of their team for any reason, the Owner must be provided with a detailed resume and an opportunity to meet with and approve the proposed replacement staff member prior to assignment to the Project. No such approval shall in any way relieve the Contractor of responsibility for the performance of its employees, contractors and agents in connection with the Project.

§3.9.3 If the Owner requires all Contractor personnel working on the Project to undergo and pass background checks then the Contractor will work with the respective Owner's Project Managers and security through this process. Individuals who, for any reason, do not pass the background check shall be replaced with qualified individuals approved in writing by the Owner. In this event, all costs and/or delays associated with replacing individuals shall be the sole responsibility of the Contractor.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's information and Owner's approval a critical path method Construction Schedule for the Work. The Construction 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. The approved Construction Schedule shall be incorporated into the Final Guaranteed Maximum Price proposal and must show a reasonable critical path in adequate detail to track the detail of every critical and major element of the Project. The Construction Schedule must incorporate the logic for the preparation, submittal and approval of shop drawings and submittals in a timely manner that allows adequate review, fabrication and delivery to the site. The Construction Schedule must also incorporate the sequencing and interrelationship between each of the trades.

§3.10.1.1 The Construction Schedule shall be revised by the Contractor at least monthly or when directed to do so by the Owner. All revised Construction Schedules must demonstrate updates and or changes from the previously approved Construction Schedule. In the event that the Contractor ever presents a schedule that does not provide for completion to be achieved by the contract time, the Contractor shall also present a recovery plan that will allow the Contractor to achieve completion by the Contract Time. The Owner will determine if the recovery plan or the revised schedule shall be accepted. If the Owner elects to accept the revised schedule in writing, it shall become the approved Construction Schedule that the Owner will rely upon to make commitments and obligations. Receiving revised schedules at the weekly

Owner/Contractor (O/C) meeting or in another format shall not be construed as an acceptance by the Owner. Any revision to the approved Construction Schedule requires the Owner's written approval.

§3.10.1.2 The Contractor shall also prepare a three (3) week look ahead schedule as often as necessary so that it is available for review at the regular O/C meetings. This schedule shall focus on the in-depth detail of the upcoming weeks' activities in a manner that reflects the planned day-to-day activities in the field. The detail shall be adequate to allow tracking of daily progress through field observation walks and reports.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Owner's collaboration and approval. The Owner's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's Construction Schedule, and (2) allow the Owner reasonable time to review submittals. The Owner's turn-around time shall be noted in the schedule. For complex or critical Work, the schedule should allow for the possibility of revisions and re-submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of the Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent approved Construction Schedule.

§ 3.10.4 The Contractor shall include within the Construction Schedule a specific number of weather delay days per year for the duration of the Project. Contractor shall state its assumptions used to determine the number of weather delay days.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

§3.11.2 The Contractor shall keep detailed daily logs and submit these logs to the Owner at the O/C meetings. The detailed written daily logs shall include a description of the Work performed the previous week. Each such daily report shall be prepared and signed by the Project Manager or Superintendent, on behalf of the Contractor. Each report shall, at a minimum, include the following information

for that day concerning the Contractor and each Subcontractor (including each Sub- subcontractor): materials and equipment being installed, number of individuals working, the hours worked, the type and location of the work being performed by each trade and each item of major equipment being used. The report shall also include other information such as temperature and weather recorded during the work period and any significant events occurring on the job site with regard to the Work or the Project.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor (including any manufacturer, supplier or distributor) to illustrate some portion of the Work. Shop Drawings are not to be treated as an administrative pass through to the Owner. The Contractor is required to complete its own detailed review for conformance of the Shop Drawings and other submittals with the Contract Documents with competent and qualified staff.

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

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

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Informational submittals upon which the Owner is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Owner without action unless the Contractor makes a specific written request of the Owner to review a submittal about which the Contractor has reasonable questions or concerns.

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

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner that the Contractor has (1)

reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. Submissions which, in the Owner's opinion, are incomplete, contain numerous errors, or have not been adequately checked by the Contractor may be returned by the Owner for proper review and re-submittal. In the event that the Owner and Contractor are in dispute over the quality of any submittal, the Owner shall be the final judge.

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

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

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

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the

Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Owner. The Owner 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 have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Owner will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

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

§ 3.14 CUTTING AND PATCHING

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

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

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. The Owner may direct the Contractor to provide immediate cleanup of the site and the Contractor shall comply at no additional cost to the Owner. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

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

§ 3.16 ACCESS TO WORK

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

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner 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. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Owner.

§ 3.18 INDEMNITY

The Contractor shall defend, indemnify and save and hold harmless the Owner, its officers, agents, consultants and employees from and against: (1) any and all damages, losses, or expenses, including but not limited to loss of use, to real property, or injuries to or death of any person or persons, including officers, agents and employees of the Owner, and (2) any and all claims, demands, suits, actions, liabilities, costs, expenses (including but not limited to reasonable attorney fees, expert witness fees and all associated defense fees), causes of action, or other legal, equitable or administrative proceedings of any kind or nature whatsoever, of or by anyone whomsoever, regardless of the legal theory(ies) upon which premised, including but not limited to contract, tort, express and/or implied warranty, strict liability, and workers compensation, in any way resulting from, connected with, or arising out of, directly or indirectly, actions or omissions of the Contractor or those performing under it in connection with its operations or performance hereunder or in connection herewith or Contractor's use or occupancy of real or personal property hereunder, including actions or omissions of Subcontractors, suppliers, or vendors and acts or omissions of officers, employees, agents, representatives, invitees or licensees of the Contractor or its Subcontractors, suppliers or vendors; provided however, that the foregoing indemnity shall not apply to damages caused by the negligence or willful misconduct of the Owner's officers, agents and employees.

In the event the indemnification obligations of the Contractor, pursuant to the foregoing paragraph, exceed limits imposed by applicable law, the provisions of the foregoing paragraph shall be limited to the extent necessary to comply with such limits and, as so limited, shall be given full force and effect.

Contractor's indemnification obligations shall also include the Owner's defense costs, in the event the Owner, in its sole discretion, elects to provide its own

defense. The Owner retains the right to disapprove counsel, if any, selected by Contractor to fulfill the foregoing defense indemnity obligation, which right of disapproval shall not be unreasonably exercised.

Insurance coverage requirements specified herein shall in no way lessen or limit the liability of the Contractor under the terms of its indemnification obligations under the Contract. The Contractor shall obtain, at its own expense, any additional insurance that it deems necessary for the Contractor's protection in the performance of this Contract.

Contractor agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless Owner, its successors, officers, directors, partners, and assigns of and from any liability to any person, firm, corporation or other entity resulting from Contractor's or any Subcontractor's failure to comply with applicable occupational licensing requirements; and/or liability imposed upon any indemnified party, directly or indirectly, by Contractor's failure or the failure of any of Contractor's or a Subcontractor's employees to comply with (1) any Occupational Safety and Health Administration or related statutes (2) any penalties, including enhancements, resulting in whole or in part from Contractor's acts or omissions under the Immigration Reform and Control Act of 1988 (or related statutes), (3) any other federal, state or local employment statutes, rules and regulations, or (4) any environmental laws, rules and regulations applicable to the Work.

This indemnity Article 3.18 shall not require any party to indemnify another party against their own negligence and shall survive the expiration or termination of this Contract, completion and acceptance of the Work, and final payment.

ARTICLE 4: SUBCONTRACTORS

§ 4.1 DEFINITIONS

§ 4.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor retained directly by the Owner. 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. The terms "Subcontractor" or "Sub-subcontractor" also include all vendors and suppliers retained, as applicable.

§ 4.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 4.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish labor, materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Contractor in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14 day period shall constitute notice of no reasonable objection.

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

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

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

§ 4.3 SUBCONTRACTUAL RELATIONS

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner. No agreements entered into between the Contractor and Subcontractor shall relieve the Contractor of its responsibilities to the Owner under the Contract Documents. Each subcontract agreement and purchase order shall preserve and protect the rights of the Owner under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the

Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 4.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

1. Asignment is effective only after termination of the Contract by the Owner for cause and only for those subcontract agreements and subsubcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and

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

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights (to the extent they relate to Work satisfactorily performed but not paid by Owner) and obligations under the subcontract.

To the extent that the Owner elects to accept assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall execute and deliver all such papers and take all such steps, including the assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders. All contracts between Contractor and Subcontractors (including without limitation purchase orders, other contracts for purchase of materials and rental agreements) entered into by the Contractor shall contain provisions allowing for assignment to the Owner as described above and further assignment by Owner.

The provisions of this Section 4.4.1 do not limit the assignment and assign ability requirements contained in Article 9.

§ 4.4.2 Upon assignment to the Owner, the Owner may further assign the subcontract to a successor contractor or other entity.

ARTICLE 5 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 5.1.1 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 identical or similar conditions of the Agreement, including insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 13. Contractor agrees to allow access to the Project site and all areas of the Work as may be reasonably necessary for the performance of work by others, including, without limitation, storage of materials and equipment, use of vertical transportation and connection to utilities and services. Such parties shall abide by all safety program requirements of Contractor.

§ 5.1.2 If separate contracts are awarded for different portions of the Project or other construction or operations on the site and such contracts each refer to these Conditions of the Contract, the term "Contractor" in the Contract Documents in each case shall mean, the Contractor who executed the Owner-Contractor Agreement for that contract.

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

§ 5.1.4 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 Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 5, and Articles 9, 10 and 11.

§ 5.2 MUTUAL RESPONSIBILITY

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

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

§ 5.2.3 The Contractor shall reimburse the Owner and its separate contractors for costs they incur because of the Contractor's delays, improperly timed activities or defective construction. The Owner and its separate contractors shall be responsible to the Contractor for costs the Contractor incurs because of delays, improperly timed activities, damage to the Work or defective construction caused by Owner's separate contractors.

§ 5.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or its separate contractors as provided in Section 9.2.5.

§ 5.3 OWNER'S RIGHT TO CLEAN UP

If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Owner will make a good faith allocation of the cost among those the Owner believes are responsible, which allocation will be binding on Contractor and Owner's separate contractors. Contractor shall promptly pay to Owner its share of the costs as so determined.

ARTICLE 6: CHANGES IN THE WORK

§ 6.1 GENERAL

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 6 and elsewhere in the Contract Documents. Changes in the Work may be made without notice to the Contractor's surety, and absence of such notice shall not relieve such sureties of any obligations to the Owner. Notice of Changes in the Work to surety companies is the responsibility of the Contractor.

§ 6.1.2 A Change Order shall be based upon agreement among the Owner and Contractor.

§6.1.2.1 A field directive or field order shall not be recognized as having any impact upon the Contract Sum or the Contract Time. Contractor shall have no claim therefore unless it shall notify Owner, prior to complying with same and in no event later than ten (10) business days from the date such direction or order was given, that Contractor intends to submit a change proposal relating thereto. Following such notice to Owner, Contractor shall prepare and submit to the Owner, for Owner's approval, its change proposal within ten (10) business days following the issuance of the field directive or field order, taking into account the nature and extent of the change to the Work required thereby.

§**6.1.2.2** When submitting its change proposal, Contractor shall include and set forth, in clear and precise detail, breakdowns of labor, materials and all mark-ups for all trades involved and the estimated impact on the Construction Schedule. Contractor shall furnish spreadsheets from which the breakdowns were prepared, plus spreadsheets, if requested, of any Subcontractors and detailed breakdown from Subcontractors.

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

§ 6.2 CHANGE ORDERS

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

1. The change in the Work; and
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 or Project Schedule.

The Contractor acknowledges and agrees that the Contract Sum and Contract Time cannot be adjusted without a properly executed Change Order.

§ 6.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

§ 6.3.3 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 mutually acceptable fixed or percentage fee; or
4. As provided in Section 6.3.7.

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

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

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

§ 6.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner 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. The Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

1. Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
2. Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

3. Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
4. Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
5. Additional costs of supervision and field office personnel directly attributable to the change.

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

§ 6.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Owner determines, in the Owner's professional judgment, to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 13.

§ 6.3.10 When the Owner and Contractor agree on a final determination 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 Owner will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

ARTICLE 7: TIME

§ 7.1 DEFINITIONS

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

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

§ 7.1.3 The date of completion is the date certified by the Owner in accordance with Section 8.12.

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

§ 7.2 PROGRESS AND COMPLETION

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

§ 7.2.2 The Contractor shall not, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 10 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 7.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve completion within the Contract Time.

§ 7.3 DELAYS AND EXTENSIONS OF TIME

§ 7.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner, or of an employee of either, or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by occurrences beyond the reasonable control and without fault or negligence of Contractor, including labor disputes (other than disputes caused by the Contractor, Subcontractor or Subsubcontractors), fire, documented unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation and arbitration; or by other causes that the Owner determines may justify delay, then the Contract Time may be extended by Change Order for such reasonable time as the Owner may determine.

§ 7.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15 and administered as stated below:

§7.3.2.1 Notification- Within three (3) business days after the discovery of or the commencement of a disruption in the Work, Contractor must notify the Owner in writing of the effect and must state specifically the condition that is causing or may cause delay or disruption. The Contractor must set forth therein suggestions for avoiding such delay or disruption.

§7.3.2.2 Request- A formal request for an extension of time must be submitted within ten (10) business days of the time of occurrence or when Contractor became aware, of the delay and must provide the basis for the extension of time, identifying the causes of delay and describing the nature and expected duration of the delay as well as its effect on the completion of the Work.

§7.3.2.3 Approval- An extension of time shall be granted if and only if (a) the cause of the delay arises after the issuance of Notice to Proceed and neither was, nor could have been, reasonably anticipated by Contractor before such issuance; (b) Contractor demonstrates, by the use of a Progress Schedule, that the completion of the Project will actually and necessarily be delayed; (c) the effect of the delay cannot be avoided or mitigated by the Contractor's exercise of all reasonable precautions, efforts and measures whether before or after the occurrence of the delay; and (d) the Contractor makes the written request to the Owner on account of the delay for an extension of time in accordance with this Contract.

§7.3.2.4 Compensation- If Contractor shall, at any time, claim or intend to claim compensation for any damage sustained by reason of any such delay or disruption, Contractor shall (in addition to providing notice under subparagraph (a) above), on or before the fifteenth (15th) day of the month following that in which any such damage shall have been sustained, provide the Owner with an itemized written statement, setting forth in detail the nature, extent and amount of such damage and having attached thereto copies of all documentation then in the possession of the Contractor or obtainable to support such claim.

§7.3.2.5 Avoidance- Notwithstanding any other provision of the Contract to the contrary or any applicable law, since the purpose of each of the foregoing requirements is to provide the Owner with the opportunity to avoid or minimize the effect of any such condition, the failure by the Contractor to strictly comply with the requirements set forth in Sections 7.3.2.1, 7.3.2.2 or 7.3.2.4 above shall constitute a waiver and release by the Contractor of any and all claims for damages for delay or disruption arising from any such conditions.

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

ARTICLE 8 PAYMENTS AND COMPLETION

§ 8.1 CONTRACT SUM

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

§ 8.2 APPLICATIONS FOR PAYMENT

§ 8.2.1 Contractor shall submit a draft Application for Payment to Owner at least five (5) days before the end of each calendar month during the Construction Phase and shall submit a final Application for Payment for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as required by the Owner, including but not limited to, copies of detailed documentation including invoices

and applications for payment from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 8.2.1.1 When agreed to by Owner and Contractor, Applications for Payment may include request for payment on account of changes in the Work which have been properly authorized by Construction Change Directives but not yet included in Change Orders.

§ 8.2.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier.

§ 8.2.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for job specific materials and equipment suitably stored off the site at a licensed and bonded warehouse/location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. For materials and equipment stored off-site, the Contractor shall provide Owner a certificate of property insurance for the stored materials and/or equipment with the Owner listed as an additional insured and loss payee, an itemized list of the stored materials and/or equipment, a bill of sale for the stored materials and/or equipment in the exact dollar value for the product and, if requested, a site visit to the storage location to be coordinated by the Contractor, all satisfactory to the Owner in its discretion.

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

§8.2.4 Before the Contractor shall become entitled to any progress or final payments under the terms of this Contract, the Contractor must first submit waivers of liens, on a form approved by the Owner. The waivers of liens are required from the Contractor and all Subcontractors and Sub-subcontractors with each application for payment in the following manner;

1. Partial Conditional waivers of liens are required from the Contractor and all Subcontractors and material suppliers for whom the Contractor is requesting disbursement within the current Application for Payment.

2. Partial Unconditional waivers of liens are required from the Contractor and all Subcontractors and material suppliers for which Contractor previously received payment.

3. Final Conditional waivers of liens are required from the Contractor and all Subcontractors and material suppliers for whom the Contractor is requesting final disbursement within the current Application for Payment.

4. Final Unconditional waivers of liens are required from the Contractor and all Subcontractors and material suppliers for which Contractor previously received final payments. Final Unconditional waivers of liens are due within seven (7) days of receipt of final payment to the Contractor or Subcontractors or material suppliers. Failure to comply shall constitute a default by Contractor.

§8.2.5 Failure to provide the proper waivers of liens as described in Section 8.2.4 may result in payments or partial payment being withheld until such waivers have been properly provided to the Owner.

§8.2.6 The Contractor shall inform every Subcontractor and major supplier of the requirements of waivers of liens prior to award of a subcontract or purchase order.

§8.2.7 Contractor must provide the Owner with a monthly lien waiver log notifying Owner of any lien waivers that have not been provided.

§ 8.3 PROGRESS PAYMENTS

§ 8.3.1 The Contractor shall pay each Subcontractor and material supplier no later than seven (7) days after receipt of payment from the Owner the amount to which the Subcontractor or material supplier is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's or material supplier's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors, vendors and suppliers in a similar manner. If the Contractor intends to withhold payments from a Subcontractor or material supplier for any reason, those funds shall not be included within an Application for Payment.

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

§ 8.3.3 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors, Sub-subcontractors, vendors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven (7) days, the Owner shall have the right to contact Subcontractors and Sub-subcontractors to ascertain whether they have been properly paid. The Owner shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law. Owner's inquiry of payment to Subcontractors, Sub-subcontractors, vendors and suppliers in no way relieves Contractor of its responsibility to ensure payment.

§ 8.3.4. Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 8.3.1, 8.2.3 and 8.3.3.

§ 8.3.5 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.

§ 8.4 PARTIAL OCCUPANCY OR USE

§ 8.4.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted, in writing, the responsibilities assigned to each of them for payments, retainage, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed, in writing, concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a Punch List to the Owner. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor.

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

§ 8.4.3 Unless otherwise agreed upon in writing by Owner, 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.

§ 8.5 FINAL COMPLETION AND FINAL PAYMENT

§ 8.5.1 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance, and upon receipt of a final Application for Payment, the Owner will promptly make such inspection and, when the Owner finds the Work acceptable under the Contract Documents and the Contract fully performed, the Owner will promptly issue a final Certificate for Payment stating that to the best of Owner's knowledge, information and belief, and on the basis of the 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 Contractor and noted in the final Certificate is due and payable. The Owner's final Certificate for Payment will constitute a further representation that conditions listed in Section 8.5.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§ 8.5.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner all of the following, satisfactory to Owner:

1. an affidavit that payrolls, bills for labor, services, materials and equipment (including without limitation all those furnished by Subcontractors), and other obligations or 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 is to remain in force after final payment and that said insurance is currently in effect and will not be canceled or allowed to expire until at least thirty (30) days' prior written notice has been given to the Owner,
3. a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, including but not limited to the completed operations coverage that must remain in full effect for the statutes of limitations at the location of the Project,
4. consent of surety, if any, to final payment,
5. if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner,

6. Contractor has furnished to Owner lien waivers and releases, in form satisfactory to Owner, from all persons, firms, and entities who have performed work or supplied materials or equipment for or in connection with the Work and an affidavit from Contractor that such waivers and releases cover all the labor, materials, and equipment for which Contractor is directly or indirectly responsible or for which any lien or claim could be filed,
7. Contractor has released or obtained the release of all mechanic's liens or claims filed against the Property or the Project,
8. Proof of Final Inspection and approval of the work by governmental and other authorities having jurisdiction over the Work, and Owner's receipt of all requisite temporary certificates of occupancy, permits and approvals for which Contractor is responsible under the Contract Documents, and
9. a certificate executed by Contractor stating that all other terms of the Contract have been satisfied.

If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor shall furnish a bond, satisfactory to the Owner and with Owner's consent, to indemnify the Owner against such lien which shall cause the property and the Project to be released from such lien at the Contractor's sole expense.

§ 8.6 Statutory Final Settlement

§ 8.6.1 Before Final Payment is made, Owner will advertise the final settlement of this Agreement by two (2) publications of notice thereof pursuant to C.R.S. § 38-26-107, the last of which shall be published not less than ten (10) days before the date set for final settlement. If any unpaid claim for labor, materials, rental machinery, tools, equipment, sustenance, or other supplies used or consumed in connection with the Work is filed, Owner shall withhold from the Final Payment amounts sufficient, in Owner's reasonable determination, to insure the payment of such claim until such claim shall have been paid or withdrawn, such payment or withdrawal to be evidenced by filing with the Owner a receipt in full or an order for withdrawal signed by the claimant or his duly authorized agent or assignee.

§ 8.6.2 Notwithstanding the foregoing paragraph, funds retained for the payment of claims filed with the Owner shall not be withheld longer than ninety (90) days following the date fixed for final settlement as published unless an action is commenced within that time to enforce such unpaid claim and a notice of lis pendens is filed with the Owner.

§ 8.6.3 At the expiration of the ninety (90) day period, Owner shall pay to the Contractor such amounts as are not the subject of suit and lis pendens notices and shall retain thereafter, subject to the final outcome of such suits, only sufficient funds to insure the payment of judgments that may result from the suit.

§ 8.6.4 If any claim for such labor, materials, supplies or equipment remains unsatisfied after Final Payment, Contractor shall refund to Owner all sums which the Owner may for any reason be obligated to pay to satisfy such claim, including all costs and attorneys' fees incurred by Owner in connection therewith.

§ 8.6.5 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, whether or not then known;
2. failure of the Work to comply with the requirements of the Contract Documents;
3. terms of warranties required by the Contract Documents; or
4. other claims arising under provisions of the Contract Documents that expressly survive Final Payment or are to be performed after Final Payment.

§ 8.6.6 Acceptance of final payment by the Contractor or a Subcontractor or Sub-subcontractor shall constitute a waiver of all claims against the Owner.

§ 8..7 In addition to the requirements provided in this Section 8.6, the satisfaction of the conditions to Final Payment set forth in Section 8.5 of the Agreement and any other applicable conditions contained in the Agreement shall be a condition precedent to the Owner's obligation to make Final Payment.

ARTICLE 9 PROTECTION OF PERSONS AND PROPERTY

§ 9.1 SAFETY PRECAUTIONS AND PROGRAMS

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

§ 9.2 SAFETY OF PERSONS AND PROPERTY

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

.1 All personnel including employees on the Work or at the Project and other persons who may be affected thereby, including visitors, guests and employees if applicable;

.2 the Work and the materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or Subcontractors and Sub-subcontractors; and

.3 other property at the site or adjacent to the Project, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 9.2.2 The Contractor shall comply with and give notices required by OSHA and all other 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.

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

§ 9.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel in accordance with all applicable laws, codes, rules and regulations.

§ 9.2.5 The Contractor shall promptly remedy damage and loss to property referred to in Sections 5.2.4, 9.2 and 9.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly engaged or employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 9.2 and 9.3, except damage or loss attributable to acts or omissions of the Owner or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's indemnification obligations under the Contract Documents.

§ 9.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents and compliance with OSHA or other laws and regulations relating to safety. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner.

§ 9.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition for the Work or any properties adjacent to the Project.

§ 9.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If any 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, oral notice of injury or damage must be given to the other party within 24 hours of occurrence and written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding two (2) business days after discovery. The written notice shall provide sufficient detail to enable the other party to investigate the matter in detail.

§ 9.3 HAZARDOUS MATERIALS

Except as respects that portion of the Work defined or otherwise described by the Contract Documents and as further set forth below in 9.3.2, as the responsibility of the Contractor for the abatement of existing hazardous materials to be removed by the Contractor during the Existing Hazardous Materials Abatement Phase of the Work, and in advance of Demolition and New Construction Phases of the Work of the Project, this Contract does not contemplate the handling of any other additional Hazardous Materials during the course of said subsequent Demolition and New Construction Phases (other than Ordinary Course Materials) or the incorporation of any Hazardous Materials into the construction of the Project. The term "Hazardous Materials" shall mean any hazardous or environmentally-controlled substance subject to regulation by any local, state or federal governmental authority. The term "Ordinary Course Materials" means those Hazardous Materials used for cleaning, printing or other common purposes in the ordinary course of general office use or for cleaning, fuel, or other common purposes in the ordinary course of commercial construction in quantities typically used for such purposes and used in accordance with all laws, rules, and regulations.

§ 9.3.1 The Contractor's Responsibilities:

1. The Contractor, its Subcontractors Sub-subcontractors, and their respective agents, representatives and employees shall not introduce or cause the introduction of any Hazardous Materials (other than Ordinary Course Materials) to the Project or the Project Site.
2. The Contractor shall be responsible for the safe and careful use of Ordinary Course Materials in accordance with all laws, rules, and regulations by the Contractor, its Subcontractors, Subsubcontractors, and their respective agents, representatives and employees on the Project Site.
3. In the event that the Contractor, any of its Subcontractors, Sub-subcontractors, or their respective agent, representatives or employees, introduces or causes the introduction of Hazardous Materials to the Project or Project Site or misuses Ordinary Course Materials on the Project site, the Contractor shall pay for removal of all such substances and shall indemnify Owner and its successors as owners of the Site for all liability resulting from the introduction of such substances to the Project, including any release thereof and any failure to handle and dispose of the sums in accordance with the Contract Documents and all applicable laws. The Contractor shall not be entitled to any extensions to the Project Schedule for delays caused by such introduction of Hazardous Materials or misuse of Ordinary Course Materials.

§ 9.3.2 Hazardous Materials Testing and Abatement Phase Work. The Contractor shall be responsible for, and shall engage a qualified testing and abatement contractor for that portion of the Work defined or otherwise described by the Contract Documents for testing for, and abatement of any and all hazardous materials existing on the Project site or contained in the existing building facility that is to be demolished by the Contractor, prior to the New Construction Phase of the Work. In the event, after said testing, that Hazardous Materials (other than Ordinary Course Materials) are found to exist on the Project site or in the existing building facility to be demolished, the Contractor shall engage the qualified testing and/or abatement contractor and shall make arrangements for, and otherwise manage the removal and disposal of the Hazardous Materials as required, prior to the commencement of the subsequent Demolition Phase of the Work of the Project.

§ 9.3.3 Post-Abatement Phase Suspension of Work; Notification of Owner. If after the initial Abatement Phase of the Work of the Project as defined or otherwise described in the Contract Documents, and, in the subsequent event the Contractor thereafter during Demolition or New Construction Phases of the Work encounters, on the Project, site material reasonably believed to be Hazardous Materials (other than Ordinary Course Materials), the Contractor shall immediately stop Work in the area affected by such Hazardous Materials and report the condition to the Owner in writing. The Work in such affected area shall be resumed in the absence of Hazardous Materials, or when any Hazardous Materials have been rendered harmless, as determined by written instructions of the Owner.

§ 9.3.4 The Owner shall not be responsible under this Section 9.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents; provided that Contractor shall be responsible for the handling, use and disposition of the same in accordance with all applicable laws.

§ 9.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and fails to handle, use or dispose of in accordance with all applicable laws, or (2) where the Contractor fails to perform its obligations under Section 9.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 9.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's reasonable discretion, to prevent and minimize threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 13 and Article 6.

§ 10.1 PERFORMANCE BOND AND PAYMENT BOND

§ 10.1.1 The Owner shall have the right to require the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract.

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

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 UNCOVERING OF WORK

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

§ 11.1.2 If a portion of the Work has been covered that the Owner has not specifically requested to examine prior to its being covered, the Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense and without reimbursement 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.

§ 11.2 CORRECTION OF WORK

§ 11.2.1 BEFORE OR AFTER COMPLETION

The Contractor shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Contract Documents, whether discovered before or after 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 expenses made necessary thereby, shall be at the Contractor's expense and without reimbursement.

§ 11.2.2 AFTER COMPLETION

§ 11.2.2.1 In addition to the Contractor's obligations under Section 3.5, Section 11.2.1, and any other provisions of the Contract Documents, if, within one year

after the date of completion of the work or designated portion thereof or after the date for commencement of warranties established 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 or otherwise defective in materials and/or workmanship, the Contractor shall, at the Contractor's sole expense, correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The corrective work shall include the complete rework, repair or replacement of defective or nonconforming Work. Contractor and its Subcontractors, Sub-subcontractors shall not be entitled to any compensation from Owner for corrective work. The Owner shall give such notice promptly after discovery of the condition. If the Owner fails to notify the Contractor on or before the first anniversary of the date of completion and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor under this Section 11.2.2.1. If the Contractor fails to correct nonconforming Work within ten (10) business days after receipt of notice thereof (or, if such nonconformance is such that it cannot reasonably be corrected within such period, so long as Contractor is diligently prosecuting such correction, such longer period as is reasonably required to make such correction), the Owner may correct such nonconforming Work and recover from Contractor Owner's cost of making such corrections, including ten (10%) percent of all direct costs for overhead and supervision. Owner's rights under this Section 11.2.2 are in addition to any claims Owner may have against Contractor for negligence in the performance of the Work.

§ 11.2.2.2 The one-year period for notice of non-conforming or defective Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 11.2; but Contractor shall be required to correct any defects in any corrective work of which Contractor is given notice within such one year period or, if later, within six (6) months after such correction is completed.

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

§ 11.2.2.4 The Contractor shall bear the cost (without reimbursement) of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 11.2.2.5 Contractor shall commence corrective work within seven (7) days after receiving Owner's notice thereof (or earlier as may be necessary to maintain the Construction Schedule), except that for warranty item(s) that pose safety risks or render the Project or any portion of the Project unfit for its intended use, in the

opinion of the Owner, the Contractor shall take any and all measures to resolve the warranty item(s) immediately. This shall include the acceleration of labor, material and equipment, all as may be necessary to implement the resolution. All costs associated with the resolution of the warranty issue(s) shall remain the responsibility of the Contractor.

§ 11.2.2.6 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Contractor to correct the Work under Section 11.2.2.1, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than the specific obligations to correct the Work under Section 11.2.2.1.

§ 11.3 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 12 MISCELLANEOUS PROVISIONS

§ 12.1 GOVERNING LAW

The Contract and any other claim relating to the Project shall be governed by the law of the place where the Project is located.

§ 12.2 SUCCESSORS AND ASSIGNS

§ 12.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 12.2.2, 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.

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

§ 12.3 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; by successful and confirmed facsimile transmission; 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. All notices shall be effective upon delivery or refusal to accept delivery.

§ 12.4 RIGHTS AND REMEDIES

§ 12.4.1 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.

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

§ 12.5 TESTS AND INSPECTIONS

§ 12.5.1 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 Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (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 Contractor.

§ 12.5.2 If the Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 12.5.1, the Owner will instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 12.5.3, shall be at the Owner's expense.

§ 12.5.3 If such procedures for testing, inspection or approval under Sections 12.5.1 and 12.5.2 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 Owner shall be at the Contractor's expense.

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

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

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

§ 12.6 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.

§ 12.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, but in any case not more than 10 years after the date of completion of the Work. The Owner and Contractor waive all claims and causes of action not commenced in accordance with this Section 12.7.

ARTICLE 13 CLAIMS AND DISPUTES

No time periods provided in this Article 13 shall be applicable when a different time period is otherwise specifically agreed to by both parties in writing.

§ 13.1 CLAIMS

§ 13.1.1 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 Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 13.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party. Except as otherwise provided in the Contract Documents, Claims by

either party must be initiated within twenty-one (21) days after occurrence of the event giving rise to such Claim or within twenty-one (21) days after the claimant first recognizes or should have recognized in the exercise of reasonable diligence the condition giving rise to the Claim, whichever is later.

§ 13.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Owner will prepare Change Orders and issue Certificates for Payment.

§ 13.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor 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. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 9.4.

§ 13.1.5 CLAIMS FOR ADDITIONAL TIME

See Section 6.3.

END