



FLORIDA GULF COAST UNIVERSITY

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

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



THE OWNER:

Florida Gulf Coast University Board of Trustees, a public body corporate of the State of Florida, located at: 10501 FGCU Boulevard, South, Fort Myers, Florida 33965 (“Owner”)

THE ARCHITECT:
(Name and address):



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ARTICLE 1 GENERAL PROVISIONS

1.1. BASIC DEFINITIONS

1.1.1. THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements).

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 Architect and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor, (3) between the Owner and Architect or (4) between any persons or entities other than the Owner and Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

1.1.3. THE WORK

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

1.1.4. THE PROJECT

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

1.1.5. THE DRAWINGS

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

1.1.6. THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

1.1.7. THE PROJECT MANUAL

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

1.2. CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

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

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

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

1.3. CAPITALIZATION

1.3.1. Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects. The terms "Contractor" and "Construction Manager" may be used interchangeably, and both refer to the Construction Manager identified as such in the Agreement.

1.4. INTERPRETATION

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

1.5. EXECUTION OF CONTRACT DOCUMENTS

1.5.1. The Contract Documents shall be signed by the Owner and Contractor. If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.

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

1.5.3. Where reference is made to the Standard Specifications of the American Society for Testing and Materials (A.S.T.M.) or other standard specifications in connection with the required quality of materials, methods, etc., then the applicable specifications shall be of the latest revised edition effective as of the date of execution of Amendment No. 1 (the GMP Amendment) by the

Contractor and submission of the same to the Owner, unless otherwise expressly provided in the Specifications which are a part of the contract Documents.

1.6. OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

1.6.1. The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants. The Instruments of Service are the property of the Owner and/or the Architect, as determined by the contract between them. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Owner, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' copyrights or other reserved rights. Any and all provisions of the Contract Documents to the contrary notwithstanding, any drawings, shop drawings, specifications and other documents electronic data furnished to the Owner by the Contractor during the course of the Project shall become the property of the Owner upon delivery to the Owner.

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 may designate in writing a representative who shall have such express authority to bind the Owner as the Owner shall specifically and expressly authorize in writing. Except as otherwise provided in Subparagraph 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

2.2. INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 The Owner shall, at the written request of the Contractor, prior to commencement of the Work, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract.

2.2.2 Except for permits and fees, including those required under Subparagraph 3.7.1, which are the responsibility of the Contractor under the Contract Documents, 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.

2.2.4 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services.

2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Project Manuals as are reasonably necessary for execution of the Work, or such number as may be specified in the Specifications. Additional sets will be furnished to the Contractor upon request for the cost of printing, copying and handling.

2.3. OWNER'S RIGHT TO STOP THE WORK

2.3.1. If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or fails to carry out Work in accordance with the Contract Documents, 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 Subparagraph 6.1.3.

2.4. OWNER'S RIGHT TO CARRY OUT THE WORK

2.4.1. If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Contractor a second written notice to correct such deficiencies within a three-day period. If the Contractor within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order or Construction Change Directive shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. Such action by the Owner

and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

3.1. GENERAL

3.1.1. The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

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

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

3.2. REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1. Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it.

3.2.1.1. Any information on site or soil conditions made available to the Contractor from data collected through test borings and presented as part of the Contract Documents, or otherwise made available from reports prepared by or on behalf of the Architect or the Owner, or obtained verbally from a representative of the Architect or the Owner, does not guarantee that such site or soil conditions will be as described, and such data and information are made available with the express understanding that the Contractor waives and releases the Owner from all responsibility therefor. It is the Contractor's sole risk and responsibility to verify such information in order that the Contractor may complete the Work as specified and shown in the Contract Documents. Under no circumstances will a variation in the information obtained by the Architect or the Owner on site or soil conditions, including underground soil conditions, be accepted as a basis for any increase in the Guaranteed Maximum Price, or as a claim for damages or any additional compensation. Furthermore, the Contractor shall not at any time after the execution of Amendment No. 1 (i.e., the GMP Amendment) assert or submit any claims whatsoever based upon insufficient data, incorrectly assumed conditions, concealed, unforeseen or unknown conditions, nor shall the Contractor claim any misunderstanding in regard to the nature, conditions or character of the Work, and the Contractor shall assume all risks resulting from any changes in the conditions which may occur during the progress of the Work or where actual conditions encountered are different from those conditions initially assumed to exist.

3.2.2. Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect and the Owner, but 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. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, except as related to the means, methods, techniques, safety precautions, sequencing or procedures of Contractor's Work hereunder, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Architect and the Owner.

3.2.2.1. Any and all other provisions of the Contract Documents to the contrary notwithstanding, the Contractor, before beginning any of the Work, shall identify all permits and approvals necessary to perform the Work from any and all applicable governmental agencies and entities and inform the Owner in writing of the same, specifically designating which the Owner does not, as of that time, already have or which have not, as of that time, been applied for. The filing and administrative fees associated with obtaining any permits or approvals which the Owner does not already have shall be borne by the Contractor. The Contractor shall be responsible and liable for all costs associated with any Work (including, but not limited to, any governmental or administrative fees, fines, penalties or damages) that is performed without all required permits and/or approvals.

3.2.3. If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Subparagraphs 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Subparagraphs 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Subparagraphs 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damages resulting from error or omissions in the Contract Documents or inconsistencies between the construction documents and project specifications when the Contractor recognizes such errors or omissions, or such inconsistency and reports the same to the Owner and Architect.

3.3. SUPERVISION AND CONSTRUCTION PROCEDURES

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

3.3.2. The Contractor shall be responsible to the Owner for acts and omissions of the

Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

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

3.3.4. The Contractor shall cause all required inspections and approvals by any public authority to be performed. The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Owner or the Architect during the performance of the Work or by tests, inspections or approvals required or performed by persons other than the Contractor.

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. It shall be the responsibility of the Contractor to provide at the Contractor's expense the power, fuel, equipment, and labor necessary to maintain appropriate climate conditions, including humidity, when specified or necessary for Work in progress.

3.4.2. The Contractor may make substitutions only with the prior written consent of the Owner, after evaluation by the Architect and in accordance with a Change Order.

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

3.4.4. The Contractor shall be licensed by the State of Florida as General Contractor. Contractor shall proof of current licensure no later than the execution of Amendment No. 1. The Contractor shall only employ Subcontractors and Subsubcontractors who hold all required licenses to work in Lee County, Florida or hold the required licenses issued by the State of Florida. Upon completion of the contract, Contractor shall execute an affidavit acknowledging that all subcontractors and Subsubcontractors employed by Contractor held all required licenses during the term of the contract.

3.4.5. After Amendment No. 1 has been executed, the Owner and the Architect will consider a formal request for the substitution of products in place of those specified only under the conditions set forth in the Specifications. By making requests for substitutions, the Contractor:

1. Represents that the Contractor has personally investigated the proposed substitute product and determined that it is equal or superior in all respects to that specified unless a lesser substitute is accepted by the Owner with full knowledge;

2. Represents that the Contractor will provide the same warranty for the substitution that the Contractor would have specified;
3. Certifies that the cost data presented is complete and includes all related costs under this Contract and waives all claims for additional costs related to the substitution which subsequently become apparent. The Contractor shall be responsible to highlight in writing any changes in mechanical, electrical, structural and architectural requirements which are occasioned by the substitution and shall also be responsible for the cost of any redesign of mechanical, electrical, structural, and architectural elements or systems occasioned by the substitution; and
4. Will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

3.4.6. The Owner shall be entitled to deduct from the Contract Sum, an amount to be paid to the Architect, at rates established in Owner/Architect Agreement, to evaluate the Contractor's proposed substitutions and to make agreed upon changes in the Drawings and Specifications made necessary by the Owner's acceptance of such substitutions.

3.5. WARRANTY

3.5.1. The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The warranty described in this paragraph shall be in addition to, and not in limitation of, any other warranty or remedy required by the Contract Documents or by law.

3.6. TAXES

3.6.1. The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

3.7. PERMITS, FEES AND NOTICES

3.7.1. Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

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

3.7.3. Subject to the provision of paragraph 2.1.10 of the Agreement, it is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

3.7.4. If the Contractor performs Work knowing it to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

3.7.5. The Contractor shall notify the Architect in writing of notes, corrections, additions, etc. that have been issued by, marked on, or attached to, the Contract Documents or Contractor submittals by any reviewing authorities.

3.8. ALLOWANCES

3.8.1. The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

3.8.2. Unless otherwise provided in the Contract Documents:

1. Allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
2. Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances;
3. Whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Clause 3.8.2.1 and (2) changes in Contractor's costs under Clause 3.8.2.2. and;
4. To the fullest extent possible, the Contractor shall elicit at least three bids for all items of Work (whether related to Subcontractors or material suppliers), and in doing so shall comply with the provisions of the Agreement applicable to the selection of bids.

3.8.3. Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

3.9. SUPERINTENDENT

3.9.1. The Contractor shall employ a competent superintendent and necessary assistants acceptable to the Owner who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request

in each case. If at any time the Owner notifies the Contractor in writing of an objection to the Contractor's superintendent or any of the assistants, the Contractor shall replace such persons with others who are acceptable to the Owner.

3.10. CONTRACTOR'S CONSTRUCTION SCHEDULES

3.10.1. The Contractor shall promptly, after being awarded the Contract, submit to the Owner and the Architect a complete construction schedule in Critical Path Method (CPM) format (the "Schedule"). This and all other required schedules shall be reviewed by the Owner and Architect periodically, and in connection with each periodic request for payment submitted by the Contractor. The Schedule shall be based on a critical path analysis of the construction activities and sequential operations needed for the orderly performance and completion of any separable parts of the Work.

3.10.1.1. The Schedule shall be complete in all respects, covering, in addition to all Work, activities and interfaces with all Subcontractors at the site of the Work, offsite activities such as design and fabrication, submittals, procurement and jobsite delivery of Contractor-furnished materials and equipment.

3.10.1.2. (Intentionally left blank.)

3.10.1.3. The Schedule shall include, but not be limited to, the following:

- (a) Activities showing scheduled start and finish;
- (b) Brief description of each activity;
- (c) Relationships between activities;
- (d) Indication of activities with less than one month of float; and
- (e) Contractual and other major milestones.

3.10.1.4. As each duration, start date and float time of each activity becomes actual, it shall be noted as such on the periodic update of the activities listing. As each activity is completed, it shall be noted as such on the periodic update of the activities listing.

3.10.1.5. The Contractor shall promptly notify the Owner and Architect of any proposed change in the Schedule and shall furnish the Owner and Architect with a revised Schedule and narrative within 10 days after approval by the Owner and Architect of such change. The Schedule and activities listing shall be kept current, taking into account the actual progress of the Work and shall be updated and submitted to the Owner and Architect every 30 days.

3.10.1.6. The Schedule shall not exceed the time limit for Substantial Completion of construction that is then current under the Contract Documents.

3.10.2. The Contractor shall prepare and keep current, for the Architect's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect a minimum of fourteen (14) days to review submittals. This submittal schedule shall be submitted to the Architect within 10 days of the commencement of the Work, and shall be updated and submitted monthly. The schedule of submittals shall indicate the dates by which the Architect must respond to the Contractor (but no less than 14 days for any particular submittal) in order to maintain the Schedule.

3.10.3. The Contractor shall submit with each Application for Payment a copy of the Schedule marked to show the percentage completed for each subdivision of the Work. The monthly submission shall also state the estimated total number of days that the actual Work is either ahead of or behind the then current Substantial Completion date. Should the Contractor fail to meet the approved Schedule at any time, documentation acceptable to the Owner and Architect shall be submitted to show the proposed remedies for accelerating or adjustments to the Schedule to achieve the required Substantial Completion date. Failure to comply with the provisions of this paragraph 3.10.3 shall constitute grounds to withhold payment to the Contractor until an updated Schedule acceptable to the Owner and Architect is submitted, reviewed and approved.

3.10.4. The Contractor shall conform to the most recently approved Schedule.

3.11. DOCUMENTS AND SAMPLES AT THE SITE

3.11.1. The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon Substantial completion of the Work. In furtherance of the foregoing, during the progress of the Work, the Contractor shall require the mechanical, electrical and plumbing Subcontractors to record on a set of Drawings (dedicated for this purpose, and not a working set that may be used for other purposes) the actual locations, as installed, of all conduit, pipe and duct lines, whether concealed or exposed, which were not installed exactly as shown on the Drawings (the "MEP As-Builts"). During the course of the Work, the Contractor shall also record on a set of Drawings (dedicated for this purpose, and not a working set that may be used for other purposes, hereinafter referred to as the "Record Drawings") the actual locations, as installed, of all other aspects of the Work not installed exactly as shown on the Drawings, including, but not limited to, wall or partition locations, door and window locations and other template changes. The Contractor shall review the MEP As-Builts and the Record Drawings no less often than monthly to ensure their accuracy and sufficiency. The MEP As-Builts and the Record Drawings shall be available for review by the Owner monthly (or more often, if requested by the Owner) prior to issuance of each monthly progress payment. Upon Substantial Completion being achieved, and prior to issuance of final payment, the Contractor shall insert the MEP AS-Builts (and incorporate the changes shown therein) into the Record Drawings and deliver the same to the Architect for review and delivery to the Owner.

3.11.2. The Contractor shall maintain the record copy of the drawings, marked as approved by the State Fire Marshal at the site.

3.12. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

3.12.2. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or

equipment for some portion of the Work.

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

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

3.12.4.1. Information submitted pursuant to paragraph 3.12.4 shall show the capacity, operating conditions and all engineering data and descriptive information necessary for comparison and to enable the Architect to determine compliance with the Specifications.

3.12.5. The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

3.12.5.1. Shop Drawings shall be fully identified by Project Name, location, supplier's name, date, Drawing number and Specifications section reference. The Contractor shall submit four copies (in addition to those copies necessary for the Contractor's own requirements) of all Shop Drawings and schedules, or any required submission thereof required for the Work of the various trades to the Architect for approval. The Contractor shall make no deviation from the approved Drawings and the changes made thereto by the Architect, if any.

3.12.5.2. It shall be the responsibility of the Contractor to properly schedule the submission of Shop Drawings for approval to allow adequate time for review of Shop Drawings, manufacture and shipment of items to the jobsite in sufficient time to prevent delays in the Schedule.

3.12.5.3. It shall also be the responsibility of the Contractor to coordinate the preparation of Shop Drawings of items which will be furnished by more than one manufacturer but which are designed to interface when installed.

3.12.5.4. If and when required by the Architect, the Contractor shall prepare and submit in triplicate to the Architect a completely itemized Schedule of Shop Drawings, brochures and other descriptive literature, which schedule shall indicate for each item:

- (a) Identification of the pertinent Specification Section;
- (b) The item(s) involved;
- (c) Name of the pertinent manufacturer; and

(d) Scheduled date of delivery of pertinent items to the Project.

3.12.5.5. The Contractor shall require all Subcontractors to submit to the Architect through the Contractor complete brochures covering all materials and/or equipment proposed for use in the execution of the Work as required by their respective divisions of the Specifications. These brochures shall be indexed and properly cross-referenced to the Drawings and Specifications for easy identification.

3.12.5.6. A list of all materials and equipment, together with manufacturer's drawings and catalog information, shall be submitted to the Architect for review prior to ordering material or equipment, but not later than 45 days after the commencement of the Work. Information submitted shall show the capacity, operation conditions and all engineering data and descriptive information. The Architect's review and approval of the same shall not relieve the Contractor or responsibility for compliance with the requirements of the Contract Documents.

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

3.12.6.1. Prior to submission by the Contractor to the Architect of any Shop Drawings, each such Shop Drawing shall be reviewed by the Contractor and stamped either "Approved" or "Approved as Noted" reflecting the Contractor's approval, or approval as noted, of each such Shop Drawing. Shop Drawings received without such notation from the Contractor may be returned immediately by the Architect without review.

3.12.6.2. Re-submittals necessitated by required corrections due to the Contractor's failure to review and approve Shop Drawings, or due to errors and omissions, shall not be cause for extension of the Contract Time.

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

3.12.7.1. At no time shall Shop Drawings which have not been approved by the Architect be allowed on the Project site.

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

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

3.12.10. The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required or reasonably inferable from the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents. The Architect's review of Contractor's submittals will be limited to examination of an initial submittal and one (1) resubmittal. The Architect's review of additional submittals will be made only with the consent of the Owner after notification by the Architect. The Owner shall be entitled to deduct from the Contract Sum, an amount paid to the Architect for evaluation of such additional submittals.

3.13. USE OF SITE

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

3.14. 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.

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.

3.14.3. Existing structures and facilities, including, but not limited to, buildings, utilities, topography, streets, curbs, walks, walkways, landscape materials, and other improvements that are damaged or removed due to required excavations or other portions of the Work shall be patched, repaired or replaced by the Contractor to the satisfaction of the Architect, the owner of such structures and facilities, and authorities having jurisdiction. In the event that authorities having jurisdiction require that such repairing and patching be done with their own labor and materials, the Contractor shall abide by such requirements and shall be responsible to pay for such work.

3.15. CLEANING UP

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

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

3.16. ACCESS TO WORK

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

3.17. ROYALTIES, PATENTS AND COPYRIGHTS

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

3.18. INDEMNIFICATION

3.18.1. To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and the Owner's officers and employees of any of them from and against claims, damages, losses and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from performance of the Work, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 3.18.

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

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

4.1. ARCHITECT

4.1.1. The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative. And such successor Architect as the Owner may appoint by written notice to the Contractor from time to time.

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

4.1.3. If the employment of the Architect is terminated, the Owner shall employ a new Architect whose status under the Contract Documents shall be that of the former Architect.

4.2. ARCHITECT'S ADMINISTRATION OF THE CONTRACT

4.2.1. The Architect will provide administration of the Contract as described in the Contract Documents, and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Paragraph 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

4.2.2. The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Subparagraph 3.3.1.

4.2.2.1. The Owner shall be entitled to deduct from the Contract Sum, an amount paid to the Architect, at rates established in Owner/Architect Agreement, for the Architect's additional site visits made necessary by the fault, neglect or request of the Contractor.

4.2.3. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

4.2.4. Communications Facilitating Contract Administration. The Owner and Contractor may communicate with each other directly or through the Architect. All direct communications between the Owner and Contractor shall be reported in writing by the Owner to the Architect within forty-eight (48) hours or within a reasonable time under the circumstances, unless such communications were made or held in the presence of the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with separate Contractors shall be through the Owner.

4.2.5. Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

4.2.6. The Architect will have authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

4.2.7. The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

4.2.8. The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4.

4.2.9. The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents. Architect's inspection and issuance of a Certificate for Final Payment and Owner's payment shall not relieve Contractor of responsibility for defects in the Work.

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

4.2.11. The Architect will interpret and decide matters concerning performance under and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.

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

4.2.13. The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

4.3. CLAIMS AND DISPUTES

4.3.1. Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

4.3.2. Time Limits on Claims. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Architect and the other party.

4.3.3. Continuing Contract Performance. Pending final resolution of a Claim, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

4.3.4. Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are unknown physical conditions of an unusual nature, which 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, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if 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, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Section 4.4.

4.3.5. Claims for Additional Cost. Subject to the provisions of paragraph 8.3.3 below, if the Contractor wishes to make a claim for an increase in the Contract Sum, he shall give the Owner written notice thereof within twenty-one (21) days after the Contractor first recognizes the condition giving rise to the claim. This notice shall be given by the Contractor before proceeding to execute the Work except in an emergency endangering life or property. No such claim shall be valid unless so made. If the Owner and Contractor cannot agree on the amount of the adjustment of the Contract Sum, it shall be resolved in accordance with paragraph 4.3 or 4.5 hereof.

4.3.6. If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Section 4.3. Pending final resolution of a claim to include litigation, unless otherwise agreed in writing, the Contractor shall proceed diligently with the performance of the Work including, if directed by Owner, the work subject to the claim, and the Owner shall continue to make payments in accordance with the Contract Documents. This provision to continue does not apply to claims for non-payment of approved applications for payment.

4.3.7. Claims for Additional Time

4.3.7.1. If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

4.3.7.2. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the

period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

4.3.7.3. Delays due to abnormal weather conditions will be allowed on a monthly basis. Extensions of time due to abnormal weather conditions will be granted on the basis of seven (7) calendar days for every five (5) working days lost. No increase in the Contract Sum and no damages for delay shall be allowed for weather delays.

4.3.8. Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

4.3.9. 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.

4.3.10. Claims for Consequential Damages. Except as otherwise expressly and specifically provided for in the Contract Documents (e.g., a provision in the Agreement for liquidated damages), the Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

1. damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
2. damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 4.3.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

4.4. RESOLUTION OF CLAIMS AND DISPUTES

4.4.1. Decision of Architect. Claims, including those alleging an error or omission by the Architect but excluding those arising under Sections 10.3 through 10.5, shall be referred initially to the Architect for decision. An initial decision by the Architect shall be required as a condition precedent to mediation, arbitration or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no decision having been rendered by the Architect. The Architect will not decide disputes between the Contractor and persons or entities other than the

Owner.

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

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

4.4.4. If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished or advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect will either reject or approve the Claim in whole or in part.

4.4.5. The Architect will approve or reject Claims by written decision, which shall state the reasons therefore and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Architect shall be a condition precedent to the filing of any litigation by the Owner or Contractor against the other.

4.4.6. (Intentionally left blank.)

4.4.7. (Intentionally left blank.)

4.4.8. (Intentionally left blank.)

4.5. MEDIATION

4.5.1. Prior to the filing of any litigation by the Owner or Contractor against the other (and, except as described below, as a precondition to any such filing), the Owner and Contractor shall engage in pre-suit mediation. Such mediation may be requested by either party, at any time, and shall be conducted the same as if such mediation were ordered by a Florida Circuit Court (i.e., in accordance with, and subject to, all of the laws and rules applicable to Court ordered mediation). Such mediation shall be conducted within a reasonable period of time after the same is requested in writing by either party. If the parties are unable to agree upon the selection of a mediator, either party may petition or request that the Circuit Court in and for Lee County, Florida (or the Mediation Coordinator for the Courts of Lee County, Florida) appoint a mediator. A mediator who is so appointed may only be challenged for cause, and not preemptorily. While the request for and the conducting of such a mediation shall be a precondition to the filing of a civil action, in the event that either party is in jeopardy of losing its right to sue (e.g., the statute of limitations is about to expire), then a suit may be filed before mediation is conducted,

provided that mediation is requested before, or simultaneously with, the filing of such suit, and is conducted before the named defendant in the suit is required to respond to the Complaint. If the scheduling of the mediation requires, the plaintiff in the suit shall therefore grant the defendant an appropriate extension of time to respond to the Complaint so as to permit the mediation to be conducted before the defendant must so respond. The mediator's fee shall be borne equally by the parties.

Subject to the provisions of the preceding paragraph, any and all litigation between the Owner and Contractor arising out of or relating to this Agreement or the Work shall be venued and shall only be venued (i.e., exclusively), in a State court of competent jurisdiction in Lee County, Florida.

The provisions of paragraphs 4.3.3 and 4.3.6 above shall apply during any such litigation.

ARTICLE 5 SUBCONTRACTORS

5.1. DEFINITIONS

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

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

5.2. AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

5.2.1. Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, prior to delivery of the proposed Amendment No. 1 to the Owner, shall furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity.

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

5.2.3. If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be

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

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

5.2.5. Payments to Subcontractors and Suppliers: The Owner reserves the right to require lien waivers (i.e., bond claim waivers) or other proof of payments as the Owner may deem necessary to ensure that the Contractor is timely paying Subcontractors and suppliers for the Work.

In furtherance of the provisions of paragraphs 5.2.1 through 5.2.5, the following paragraphs 5.2.6 through 5.2.13 shall apply:

5.2.6. Bidding of Subcontracts: It is the intent of the Owner that the Contractor conduct open competitive bidding of subtrade work for the Project. Although solicitation of specific bidders by the Contractor is encouraged, the Contractor shall in no way limit those firms who may submit proposals to the Contractor. Proposals for subtrade work shall be solicited to be received at a date and time specific in consultation with the Owner. Bids shall be received by the Contractor by mail, fax or e-mail ahead of the closing time of the bids at the office of the Contractor, and the Owner may observe the bidding process. Subsequent to receipt of bids, the Owner and Contractor shall review all bids and rank preliminary selections of proposed bidders to be considered for contract awards by the Contractor. Provided that the Contractor shall be fully and solely responsible to the Owner for all of the Work (regardless of who the Contractor ultimately contract with), the Contractor shall not contract with any firm which the Owner finds objectionable.

5.2.7. Pre-award Conferences with Subtrades: The Contractor will conduct pre-award conferences with all prospective subcontractors and suppliers selected through the above process. The Owner may attend these pre-award conferences. The format of the pre-award conferences will be at the Contractor's discretion and, within one (1) business day after any pre-award conference, the Contractor must decide to proceed with a contract award to the prospective subcontractor or supplier or to terminate discussion with that proposer and go to the next preferred firm. In no case shall discussion with more than one proposer in a given trade category be conducted concurrently.

5.2.8. Ultimate Right and Responsibility of Subcontractor and Supplier Selection: The above Subcontractor and supplier selection process shall in no way require the Contractor to award contracts to firms with whom the Contractor has a reasonable objection. The foregoing notwithstanding, the Contractor shall be solely and exclusively responsible to the Owner for the performance of the Work by the Subcontractors and suppliers actually selected.

5.2.9. Furnishing of Subcontractor Forms: During the design phase of the Project (i.e., the Preconstruction Phase), the Contractor shall furnish his standard subcontract form, terms and conditions to the Owner for the Owner's review and approval, which approval shall not be unreasonably withheld, and for incorporation into the Project Specifications for review by all

bidders during the bidding process.

5.2.10. Bonding of Subcontractors: The Contractor may opt to require performance or payment bonds from any subcontractor. The cost of such bonds, however, shall not be considered a Cost of the Work and, hence, shall not be reimbursable by the Owner to the Contractor.

5.2.11. Final accounting documentation: Final accounting of all costs on the Project must be provided in the form of a job cost details report showing, at a minimum, vendor, direct payroll expenses, or subcontractor for all costs (the cost code categories shall be those customarily maintained in the Contractor's job cost system); date of invoice; and amount paid. Such accounting must be computer generated. Prior and subsequent to the Contractor furnishing the final accounting in this format, the Owner shall have full right of access to the Contractor's accounts and Project records as otherwise provided in the Contract Documents.

5.2.12. Payments to Subcontractors and Suppliers: The Owner reserves the right to require lien waivers (i.e., bond claim waivers) or other proof of payments as the Owner may deem necessary to ensure that the Contractor is timely paying Subcontractors and suppliers for the Work.

5.2.13. MINORITY BUSINESS ENTERPRISES: It is the Owner's intent to encourage minority business enterprise application in this Project, and to comply to the fullest extent with Florida Law applicable to minority business enterprises, including, but not necessarily limited to, the provisions of Sections 287.093 through and including 287.0947, Florida Statutes. In this regard, the Contractor shall confer with the Owner regarding the Owner's minority business enterprise goals, and shall take all reasonable steps to encourage and solicit minority business enterprise interest and participation in this Project. Such steps shall include, but not necessarily be limited to making the good faith efforts listed in Section 287.09451(4) (b), Florida Statutes.

5.3. SUBCONTRACTUAL RELATIONS

5.3.1. By appropriate agreement, written where legally required for validity, 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 and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to

their respective proposed Sub-subcontractors.

5.3.2. The Contractor shall not enter into any subcontract, contract agreement, purchase order or other arrangement for the furnishing of any portion of the materials, services, equipment or work with any party or entity if such party or entity is an affiliated entity with which the Contractor has a direct or indirect ownership, control or interest, unless such agreement has been approved by the Owner after full disclosure in writing by the Contractor to the Owner of such affiliation or relationship and all details relating to the proposed arrangements.

5.4. CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.4.1. Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner provided that:

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

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

6.1.1. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. 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 Section 4.3.

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

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

6.2. MUTUAL RESPONSIBILITY

6.2.1. The Contractor shall afford the Owner and separate contractors reasonable

opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

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

6.2.3. The Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

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

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

6.3. OWNER'S RIGHT TO CLEAN UP

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

ARTICLE 7 CHANGES IN THE WORK

7.1. GENERAL

7.1.1. Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

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

7.1.3. Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in

the Change Order, Construction Change Directive or order for a minor change in the Work.

7.2. CHANGE ORDERS

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

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

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

7.3. CONSTRUCTION CHANGE DIRECTIVES

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

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

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

1. mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
2. unit prices stated in the Contract Documents or subsequently agreed upon;
3. cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
4. as provided in Section 7.3.6.

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

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

7.3.6. If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable

allowance for overhead and profit. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.6 shall be limited to the following:

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

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

7.3.8. Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Architect will make an interim determination for purposes of monthly certification for payment for those costs. That 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 4.

7.3.9. When the Owner and Contractor agree with the determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

7.3.10. When either the Owner or the Contractor or both do not agree with the determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, such disagreements shall be resolved in the manner prescribed by Article 4.

7.4. MINOR CHANGES IN THE WORK

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

ARTICLE 8 TIME

8.1. DEFINITIONS

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

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

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

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

8.2. PROGRESS AND COMPLETION

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

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

8.2.3. The Contractor shall proceed expeditiously with adequate forces, will keep the Project on schedule, and shall achieve Substantial Completion within the Contract Time.

8.3. DELAYS AND EXTENSIONS OF TIME

8.3.1. If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, and which could not have been anticipated by it as of the date of this Contract, or by delay authorized by the Owner pending mediation and arbitration, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine.

8.3.2. Claims relating to time shall be made in accordance with applicable provisions of Section 4.3. In addition to applicable provisions of the Agreement and paragraph 4.3 of these General Conditions, in connection with any claim for an extension of time, the Contractor shall make such claim for extension of time in writing to the Architect not more than seven (7) days after the commencement of the delay; otherwise, it shall be waived. In each written request for

an extension of time, the following information shall be provided as a minimum. Failure to submit such information shall constitute a just cause for denial of the claim for extension of time:

- (a) Nature of the delay;
- (b) Dates of commencement and, if applicable, date of cessation of the delay;
- (c) Activities on the current progress schedule affected by the delay;
- (d) Identification of the source of the delay;
- (e) Recommended action to minimize the delay; and
- (f) The Contractor's analysis of the impact (or anticipated impact) of the delay on critical path activities, related to both individual activities and to the CPM Schedule in general.

8.3.2.1. Any additional claim made after the claim has been implemented by Change Order shall not be considered. Pending final resolution of a delay claim or request for extension of time by Change Order, the Contractor shall proceed diligently with the performance of the Work and the Owner shall continue to make payments in accordance with the Contract Documents. In the case of a continuing delay, only one claim is necessary; however, the Contractor shall keep the Owner informed of the probable effect of such delays on the progress of the Work no less frequently than monthly in connection with the submission of each monthly Application for Payment.

8.3.3. No Damages for Delay: Except as provided in this paragraph, the Contractor shall not be entitled to any claim for compensation or damages of any kind on account of hindrance or delays from any cause whatsoever, but if any such hindrance or delays are caused by any act of God, any force majeure, any act or omission causing such hindrance or delay that is beyond the reasonable control of the Contractor, or any act or omission on the part of the Owner causing a hindrance or delay, such act, hindrance or delay may entitle the Contractor to receive an extension of time as to the date of Substantial completion, which extension of time shall be the Contractor's sole and exclusive remedy against the Owner resulting from such delay, and under no circumstances shall the Contractor be entitled to any reimbursement of costs, additional costs, expenses, compensation or damages of any kind as a result of any delay. It is the intent of this Agreement that the Contractor bear the risk of such delays, and the Contractor include similar provisions in all of the subcontracts between it and the Subcontractors with whom it contracts.

8.3.4. In the event it shall be determined by a court of competent jurisdiction that the no damage for delay provisions of paragraph 8.3.3 above are inapplicable or unenforceable for any reason or cause whatsoever, then the Contractor shall be entitled to a maximum sum of \$200.00 per day for each day it is actually delayed by the active interference of the Owner, or anyone for whom the Owner is responsible, or by any other cause of delay which is without the fault or negligence of the Contractor or anyone working by, through or under the Contractor, directly or indirectly. This provision contemplates anticipated and actual losses caused by any delay and the difficulty in proving the loss.

ARTICLE 9 PAYMENTS AND COMPLETION

9.1. CONTRACT SUM

9.1.1. The Contract Sum is stated in the Agreement and, including authorized adjustments,

is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

9.1.2. Notwithstanding anything to the contrary contained in the Contract Documents, Owner may withhold payment to the Contractor hereunder if and for so long as Contractor persistently fails to perform any of its obligations hereunder or otherwise in default under any of the Contract Document; provided, however, that any such holdback shall be limited to an amount reasonably necessary to cure any such default or failure of performance by the Contractor.

9.2. SCHEDULE OF VALUES

9.2.1. Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

9.3. APPLICATIONS FOR PAYMENT

9.3.1. At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect and Owner an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents. The form of Application for Payment shall be in the form and manner directed by Owner. Such Application for Payment shall be certified as correct by Contractor and shall be accompanied by Contractor's Waiver of Liens (i.e., waivers against the payment bond) and any other documentation required by the Contract Documents. In addition, such Application for Payment shall contain a certification by Contractor that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, in that current payment shown in the Application is currently due. The submission of such application shall, unless otherwise noted thereon by Contractor, constitute Contractor's certification that at the date of such Application for Payment that the Contractor has no knowledge of any claims filed with respect to the Work, and, if it be a fact, that there is no known basis for the filing of any claims with respect to the Work. Applications for Payment may be submitted no more than monthly.

9.3.1.1. As provided in Section 7.3.8, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

9.3.1.2. Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

9.3.2. Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be

made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

9.3.3. The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the 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.

9.3.4. Reporting to the Owner: The Contractor shall provide a monthly progress report on the Project together with each monthly Application for Payment. The report shall include, as a minimum, the following components:

- Executive Summary
- RFI Status Log
- ASI Status Log
- Submittal Log
- Change Order Log
- Proposal Request Log
- Monthly Schedule Narrative
- Monthly Accounting and Accounting Narrative
- Monthly Payment Request
- Copies of Minutes of Meetings with the Owner
- Copies of Subcontractor Progress Meeting Minutes
- Copies of Daily Reports

Each monthly progress report shall be prepared on 8 ½ by 11 sheets, tabbed and suitably bound. Five copies are to be provided monthly.

9.4. CERTIFICATES FOR PAYMENT

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

9.4.2. The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in

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

9.5. DECISIONS TO WITHHOLD CERTIFICATION

9.5.1. The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of:

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

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

9.5.3. If the Contractor disputes any determination by the Architect or Owner with regard to any Application for Payment, the Contractor nevertheless shall expeditiously continue to

prosecute the Work.

9.5.4. The Owner shall not be deemed to be in breach of this Contract by reason of the withholding of any payment pursuant to any provision of the Contract Documents, if the Work for which payment is being withheld has been rejected by any governmental authority.

9.6. PROGRESS PAYMENTS

9.6.1. After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. The Owner shall make monthly progress payments until the scheduled (including time extensions made by change order) time for substantial completion. If the Project is not substantially completed at this time, due to the fault of the Contractor, the Owner shall have the option to discontinue further progress payments until the Project is substantially complete to the extent necessary to protect the Owner's right to recover delay damages. Payment by the Owner shall not constitute approval or acceptance of any item of cost in the Application for Payment. No partial payment made hereunder shall be construed to be final acceptance or approval of that portion of the Work to which such partial payment relates or relieves the Contractor of any of its obligations hereunder with respect thereto. Owner shall not be required to make any payment until the Owner has received from Contractor all documents required by paragraph 9.3.1.

9.6.2. The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. For purposes of this paragraph, such payments shall be deemed promptly paid if paid no more than seven (7) days after the payor has received payment (i.e., the Contractor to Subcontractors and suppliers; Subcontractors to sub-subcontractors, etc.).

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

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

9.6.5. Payment to material suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

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

9.6.7. Unless the Contractor provides the Owner with a payment bond in the full penal

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

9.7. FAILURE OF PAYMENT

9.7.1. If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect or awarded by arbitration, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents. Notwithstanding the preceding sentence, the Contractor shall not stop the Work during the pendency of a bona fide dispute between the Owner and the Contractor, provided any sums in dispute are available for payment and Owner agrees to pay said disputed sum in accordance with the resolution of the dispute. The Contractor shall be entitled to interest on amounts due and owing, but not timely paid, only in accordance with Florida law.

9.8. SUBSTANTIAL COMPLETION

9.8.1. Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents and when all required occupancy permits, if applicable, have been issued so that the Owner can occupy or utilize the Work for its intended use and a Certificate of Occupancy, if applicable, has been issued. However, if occupancy permits are withheld through no fault of the Contractor, the Contract Time will be extended appropriately. The Contractor shall secure and deliver to the Owner written warranties and guarantees from its subcontractors and suppliers bearing the date of Substantial Completion or some other date as may be agreed to by the Owner and stating the period of warranty as required by the Contract Documents. The Contractor is responsible for the warranty of all work whether performed by it or its subcontractors or suppliers.

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

9.8.3. Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor

shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

9.8.3.1. Except with the consent of the Owner, the Architect will perform no more than one (1) observation to determine whether the Work or a designated portion thereof has attained Substantial Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum an amount paid to the Architect for any additional observations.

9.8.4. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

9.8.5. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents. Liquidated damages which have accrued to the date of Substantial Completion shall be deducted by Change Order or Construction Change Directive from the Contract Sum and from the Substantial Completion payment.

9.8.6. The acceptance of the Substantial Completion payment by the Contractor shall constitute a waiver of all claims by the Contractor, except those previously made in writing and specifically identified in writing by the Contractor as unsettled at the time of submission of the Application for Payment following Substantial completion, subject only to the Contractor's right to seek the balance of the sum otherwise due and owing following payment of the Substantial Completion payment. Any and all claims not so specifically identified in writing shall be deemed waived.

9.8.7. The Contractor shall be responsible for collecting, identifying, indexing and collating the following materials from the subcontractors and suppliers, and deliver two copies of the same to the Architect to review and deliver to the Owner; the as-built drawings required by the Contract Documents, complete equipment diagrams, operating instructions, operating manuals, maintenance manuals, parts lists, wiring diagrams, pneumatic and/or electrical control diagrams, inspection reports, guarantees and warranties, as applicable, for each and every piece of fixed equipment furnished pursuant to the Work, all of which shall be supplied in three-ring binders (or other, similarly organized fashion), properly indexed for ready reference. Also, specific information regarding manufacturers' names and addresses, nearest distributors and service representatives, addresses, office and phone numbers, makes and model numbers, operating design characteristics, and other similar information necessary for the Owner's efficient and reasonable use of all aspect of the Work shall be so supplied. All information so

submitted shall be current as of the time of its submission. All such materials shall be delivered either simultaneously with the submission of the Contractor's Application for Payment immediately following the Date of Substantial Completion or, at the latest, in advance of (and as a prerequisite to the issuance of) the Substantial Completion payment.

9.8.8. Subsequent to the date of Substantial Completion, but prior to (and as a prerequisite to) the issuance of final payment, the Contractor, either through its own personnel or through its various Subcontractors, shall provide a competent and experienced person (or persons) thoroughly familiar with all of the Work for a reasonable period of time (which shall be no less than 40 working hours) to instruct the Owner's personnel in the operation and maintenance of all equipment and control systems. This instruction will include normal startup, run, stop, and emergency operations, location and operation of all controls, alarm and alarm systems, and necessary maintenance. This instruction will include tracing the system in the field and on the diagrams in the instruction books so that the operating personnel will be thoroughly familiar with both the systems and the data supplied.

9.9. PARTIAL OCCUPANCY OR USE

9.9.1. The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.4.1.5 and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect. In the event that the Owner desires to exercise such right of occupancy, the Contractor shall cooperate in making available for the Owner's use building services such as heating, ventilating, cooling, water, lighting and telephone, and shall complete as soon as practicable the installation of any equipment and the completion of any Work required to furnish such services which are not at that time ready for operation and use.

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

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

9.10. FINAL COMPLETION AND FINAL PAYMENT

9.10.1. Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly

make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Except with the consent of the Owner, the Architect will perform no more than one (1) observation to determine whether the Work or a designated portion thereof has attained Final Completion in accordance with the Contract Documents. The Owner shall be entitled to deduct from the Contract Sum an amount paid to the Architect for any additional observations.

9.10.2. Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner including the drawings, warranties instructions and maintenance manuals or information required by any lender or any other documents with information required to be furnished by Contractor to Owner under this Agreement. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.10.3. If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Owner may retain one and a half (1.5) times the amount estimated to complete unfinished Work or to correct defective Work until all such Work has been satisfactorily completed or corrected. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

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

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

9.10.5. Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and specifically identified by that payee in writing as unsettled at the time of final Application for Payment. Any and all claims not so specified in writing shall be deemed waived.

9.10.6. Any and all items required by the Contract Documents not previously submitted shall accompany the Contractor's Application for Final Payment. The submission of any and all such items shall be a prerequisite to the disbursement of final payment to the Contractor.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1. SAFETY PRECAUTIONS AND PROGRAMS

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

10.2. SAFETY OF PERSONS AND PROPERTY

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

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

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

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

10.2.4. When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost

care and carry on such activities under supervision of properly qualified personnel.

10.2.4.1. When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall give the Owner reasonable advanced notice. The provisions of this subparagraph shall not apply to substances commonly used on a project of this type and listed in Contractor's Material Safety Data Sheet file maintained on the project site.

10.2.4.2. If the Contract Documents require the Contractor to handle materials or substances that under certain circumstances may be designated as hazardous, the Contractor shall handle such materials in an appropriate manner and shall defend, indemnify, and hold Owner and Architect harmless, in accordance with Section 3.18 above, from or against all claims, liability, suits, losses and damages arising out of or relating to such materials.

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

10.2.6. The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

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

10.3. HAZARDOUS MATERIALS

10.3.1. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

10.3.2. The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. When the material or substance has been rendered harmless, Work in the affected area shall resume. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 7.

10.4. The Owner shall not be responsible under Section 10.3 for materials and substances brought to the site by the Contractor unless such materials or substances were required by the Contract Documents.

10.4.1. Hazardous materials such as asbestos, asbestos products, polychlorinated biphenyl (PCB), paints or other coatings containing lead or chromates, or other toxic substances shall not be allowed on the site nor be used in the Work.

10.4.2. The Contractor shall notify the Owner and Architect immediately and stop work in the area affected if any one of the products or materials specified in the Contract Documents or proposed by the Contractor or its subcontractors or material suppliers, contain or are suspected to contain hazardous materials in any form, so that a qualified consultant retained by the Owner can determine whether such materials may be used in the Work or need to be removed from the site or rendered harmless in a manner in which will not adversely affect the health of any persons and which will comply with applicable governmental laws and regulations.

10.4.3. Work in the affected area shall be resumed in the absence of any hazardous materials or when it has been rendered harmless by written agreement between Contractor and Owner.

10.4.4. The provisions of 10.4.1 through 10.4.3 shall not apply to substances commonly used on a project of this type and listed in Contractors Material Safety Data Sheet file maintained on the Project site.

10.5. (Intentionally left blank.)

10.6. EMERGENCIES

10.6.1. In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Section 4.3 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

11.1. CONTRACTOR'S LIABILITY INSURANCE

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

1. claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed including private entities performing work at the site and exempt from the coverage on account of number of employees or occupation, which entities

- shall maintain voluntary compensation coverage at the same limits specified for mandatory coverage for the duration of the Project;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees or persons or entities excluded by statute from the requirements of subparagraph 11.1.1.1 but required by the Contractor Documents to provide the insurance required by that subparagraph.;
 3. claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
 4. claims for damages insured by usual personal injury liability coverage;
 5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
 6. claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
 7. claims for bodily injury or property damage arising out of completed operations; and
 8. claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.
 9. Commercial General Liability Insurance shall be on an occurrence basis and include all major divisions of coverage and be on a comprehensive basis including:
 1. Premises Operations (including X, C and U coverages as applicable)
 2. Blanket Contractual Liability
 3. Products and Completed Operations
 4. Personal Injury Liability with Employment Exclusion deleted and Advertising Injury Liability
 5. Independent Contractors
 6. Owned, non-owned and hired motor vehicles
 7. Broad Form Property Damage including Completed Operations
 8. Fire Damage Legal Liability
 9. Premises Medical Payments
 10. Additional Persons Insured – (Owner to provide additional persons to Contractor prior to start of construction)
 11. Non-Owned Watercraft Liability
 12. Limited Worldwide Coverage
 13. Extended Bodily Injury
 14. Newly Acquired Organizations
 10. The policy date or Retroactive Date shall predate the Contract, the termination date of the policy or applicable extended reporting period shall be no earlier than the termination date of coverages required to be maintained after final payment, certified in accordance with paragraph 9.10.2.

If Owner or Owner's Insurance Carrier requires that the insurance requirements set forth in the Contract Documents be varied, Contractor agrees to enter into suitable modifications of the provisions hereof,

provided Owner bears any additional cost reasonably occasioned thereby.

11.1.2. The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment. The Contractor's liability insurance coverage shall include contractual liability insurance applicable to the Contractor's obligations under the Contract Documents. All liability coverages shall include the Owner as named Additional Insured, provided that the Owner shall be exempt from, and in no way responsible for, any sums of money which may represent a deductible in any such insurance policy. The payment of any such deductible shall be the sole responsibility of the Contractor. All insurance carriers providing the insurance described in this Article 11 shall have a rating in Best's Guide of no less than "A."

11.1.2.1. The insurance required by paragraph 11.1.1 shall be written for not less than the following limits, or greater if required by law:

- (1) Worker's Compensation:
 - a. As required by State Statute
 - b. Applicable Statutory Federal (e.g., Longshoremen's);
 - c. Employer's Liability:
 - \$500,000 per Accident
 - \$500,000 per Disease, Policy Limit
 - \$500,000 per Disease, Each Employee
- (2) Commercial General Liability (including Premises-Operations; Independent Contractor's Protective; Products and Completed Operation; Broad Form Property Damage);
 - a. Bodily Injury:
 - \$1,000,000 Each Occurrence
 - \$1,000,000 Aggregate
 - b. Personal Injury:
 - \$1,000,000 Each Occurrence
 - \$2,000,000 Aggregate
 - c. Property Damage:
 - \$1,000,000 Each Occurrence
 - \$2,000,000 Aggregate
 - d. Products/Completed Operations
 - \$2,000,000 Aggregate
 - e. Fire Damage Legal Liability
 - \$50,000 Any One Fire

- f. Medical Expense:
\$5,000 Any One Person
- g. Products and Completed Operations (to be maintained for a minimum period of five (5) years) after the final payment and the Contractor shall continue to provide evidence of such coverage to the Owner on an annual basis during the aforementioned period):
\$2,000 Aggregate
- h. Property Damage Liability Insurance shall provide X, C and U Coverage.
- i. Broad Form Property Damage Coverage shall include Completed Operations.

Aggregate Limits must be the full amount at the inception of this project and must not be impaired by any losses, incurred at other projects or by any activity not dated directly to this project.

Owner will be named an additional insured on this policy.

- (3) Business Auto Liability (including owned, non-owned and hired vehicles):
 - a. \$500,000 each accident
- (4) Umbrella
 - a. \$5,000,000

11.1.3. Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, and shall name the Owner as an Additional Insured on all liability coverages. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness in accordance with the Contractor's information and belief. In addition to the aforesaid Certificates of Insurance to be provided by the Contractor to the Owner, the Contractor shall provide such additional Certificates of Insurance as the Owner may request from time to time after execution of the Agreement and through the time when any warranty may still be in effect in relation to the Work. In addition, the Owner shall be entitled to request copies of the actual policy and policies at issue and, if so requested, the Contractor shall provide the same to the Owner within 30 days of receipt of any such request.

11.2. OWNER'S LIABILITY INSURANCE

11.2.1. The Owner may, in the Owner's sole and absolute discretion, purchase the Owner's own liability insurance. Whether the Owner chooses to purchase or not purchase any such liability insurance shall have no effect whatsoever upon the Contractor's liabilities pursuant to

the Contract Documents or the Contractor's duty to furnish the insurance coverages described in the Contract Documents. Moreover, the minimum limits of liability insurance coverages which the Contractor is required to purchase pursuant to the Contract Documents are minimum limits only, and do not in any way constitute a representation by the Owner that such limits are sufficient or adequate to protect the interests of the Contractor. Rather, they are merely minimum required limits, and the Contractor is free to purchase such greater limits, or additional types of coverages, as the Contractor may determine are appropriate.

11.3. PROJECT MANAGEMENT PROTECTIVE LIABILITY INSURANCE

11.4. PROPERTY INSURANCE

11.4.1. Unless otherwise provided, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.4 to be covered, whichever is later. This insurance shall include interests of the Owner and the Contractor.

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

11.4.1.2. The Contractor shall effect insurance which will protect the interests of the Owner and Contractor, in the Work, and the cost thereof shall be charged to the Owner as part of the Guaranteed Maximum Price.

11.4.1.3. If the property insurance requires deductibles, the Contractor shall pay costs not covered because of such deductibles.

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

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

cancellation, lapse or reduction of insurance.

11.4.2. Boiler and Machinery Insurance. The Contractor shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner and Contractor, in the Work, and the Owner and Contractor shall be named insureds.

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

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

11.4.5. If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.4.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

11.4.6. Before an exposure to loss may occur, the Contractor shall file with the Owner a copy of each policy that includes insurance coverages required by this Section 11.4. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Contractor.

11.4.7. Waivers of Subrogation. The Contractor waives all rights against (1) the Owner and any of its agents and employees, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 11.4 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the Owner. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a

duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

11.4.8. [Ask Willie] A loss insured under the aforesaid property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.4.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

11.4.9. (Intentionally left blank.)

11.4.10. The Owner as fiduciary shall have power to adjust and settle a loss with insurers.

11.5. PERFORMANCE BOND AND PAYMENT BOND

11.5.1. The Contractor shall furnish the Performance and Payment Bonds required by the Contract Documents and Florida law.

11.5.2. 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 permit a copy to be made.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

12.1. UNCOVERING OF WORK

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

12.1.2. If a portion of the Work has been covered which the Architect has not specifically requested to examine prior to its being covered, the Architect 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, correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

12.2. CORRECTION OF WORK

12.2.1. BEFORE OR AFTER SUBSTANTIAL COMPLETION

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

12.2.2. AFTER SUBSTANTIAL COMPLETION

12.2.2.1. In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. If the Contractor fails to correct nonconforming Work within a reasonable time after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

12.2.2.2. The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

12.2.2.3. The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

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

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

12.2.5. Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

12.3. ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

13.1. GOVERNING LAW

13.1.1. The Contract shall be governed by the law of the State of Florida.

13.2. SUCCESSORS AND ASSIGNS

13.2.1. The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

13.2.2. (Intentionally left blank.)

13.3. WRITTEN NOTICE

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

13.4. RIGHTS AND REMEDIES

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

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

13.5. TESTS AND INSPECTIONS

13.5.1. Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Contractor shall be responsible for the cost of all such tests, inspections and approvals, except that the owner shall bear the costs of test, inspections or approvals which do not become requirements until after the execution of Amendment No. 1 to the Agreement.

13.5.2. If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

13.5.3. If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense.

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

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

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

13.5.7. Where tests are required by the Specifications for materials, methods or equipment, the Contractor shall pay the cost of initial tests to prove qualities and determine conformance with the requirements of the Specifications, for example, mill tests on cement and steel; load testing of piling; sieve analysis and colorimetric tests on sand; strength tests for determining proportions of materials for concrete, moisture content and sound transmission tests of concrete blocks, etc.

13.5.8. If substitute materials or equipment are proposed by the Contractor, the Contractor shall pay the cost of all tests which may be necessary to satisfy the Architect that the requirements of the Specifications have been met by the substituted materials or equipment.

13.5.9. The Contractor shall pay for all testing costs, including, but not limited to power, fuel, and equipment costs which may be required for complete testing of all equipment and systems for proper operation, such as plumbing, heating, ventilation, air conditioning, electrical, elevators, dumbwaiters and conveyors, etc.

13.6. INTEREST

13.6.1. Any monies not paid when due to either party under this Contract shall bear interest at the rate of one percent (1%) simple interest per month.

13.7. COMMENCEMENT OF STATUTORY LIMITATION PERIOD

13.7.1. As between the Owner and Contractor:

1. The Statute of Limitations shall be applicable as provided by Florida Law.

13.8. Testing: Whenever the Contract Documents or good construction practices require inspection or testing of materials or conditions at the site, documentary evidence reasonably satisfactory to the Owner that the materials or conditions have passed the required inspection and testing must be furnished to the Owner prior to the incorporation of such materials in the Project. Rejected materials must be promptly removed, and rejected conditions must be promptly remedied. Visual field inspection will be performed by the Owner or persons designated by the

Owner. Selection of bureaus, laboratories and agencies for such inspection and testing shall be made by the Contractor, subject to the Owner's approval, which shall not be unreasonably withheld.

13.9. Equal Employment Opportunity: The provisions of Section 202 of Executive Order 11246 and Rules and Regulations issued pursuant to Section 201 thereof are incorporated by reference. The Contractor represents by signing this Agreement that he will comply with such Executive Order and Rules and Regulations, and amendments thereto to the extent the same are applicable.

13.10. Assignment of Anti-Trust: The Contractor agrees that after completion of all Work under this Contract and all amendments thereto and prior to final payment that the Contractor shall execute and deliver to the Owner an Assignment of Anti-Trust Claims on a form approved by the Owner. The Contractor also agrees that, prior to final payment, the Contractor will cause each of his suppliers and Subcontractors who have furnished labor, materials, goods or services, in connection with the performance of this Contract, to execute and deliver to the owner an Assignment of Anti-Trust Claims on the form approved by the Owner.

13.11. Prohibition Against Contingent Fees: The Contractor warrants that the Contractor has not employed or retained any company or person other than a bona fide employee working solely for the Contractor to solicit or secure this Agreement, and that the Contractor has not paid or agree to pay any person, company, corporation, individual or firm, other than a bona fide employee working for the Contractor, any fee commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this agreement.

13.12. Public Entity Crimes: The Contractor warrants that it has not been placed on the convicted vendor list. A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work may not submit bids on leases of real estate to a public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Fla. Stat., for Category Two for a period of 36 months from the date of being placed on the convicted vendor list.

13.13. Compliance with Section 287.058, Fla. Stat: In compliance with Florida law, the Owner has the unilateral right to cancel this Agreement for refusal by the Contractor to allow public access to all documents, papers, letters or other material made or received by the Contractor in conjunction with this Agreement, unless the records are exempt from Section 24(a) of Article 1 of the State Constitution and Section 119, Florida Statutes.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

14.1. TERMINATION BY THE CONTRACTOR

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

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

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

14.1.3. If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner, as the sole and exclusive recourse and remedy available to the Contractor, the cost of all Work performed through the date of termination, including reasonable overhead and profit on such sum (which reasonable overhead and profit shall be equal to the same percentage as is provided in the Agreement as the Contractor's fee times the Cost of all such Work performed through the date of termination), proven losses sustained upon materials, equipment, machinery and tools as a result of the termination, with reasonable profit on the Work not executed (which reasonable profit shall not exceed two and a half percent (2 ½%) of the Cost of the Work not executed).

14.1.4. The provisions of the preceding sentence shall also apply in the event of a termination by the Owner for cause which is subsequently adjudged by a court of competent jurisdiction to have been unjustified.

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

14.2. TERMINATION BY THE OWNER FOR CAUSE

14.2.1. The Owner may terminate the Contract if the Contractor:

1. persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

2. fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
3. persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
4. otherwise is guilty of a material breach of a provision of the Contract Documents.

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

1. take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
2. accept assignment of subcontracts pursuant to Section 5.4; and
3. finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

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

14.2.4. In the event (and only in the event) that such termination occurs after the Date of Substantial Completion, and if the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor: otherwise, such excess shall not be paid to the Contractor, but rather shall be retained by the Owner. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

14.3. SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

1. that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

2. that an equitable adjustment is made or denied under another provision of the Contract.

14.4. TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

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

14.4.3. In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive, as the Contractor's sole and exclusive remedy and recourse, payment for Work executed, and costs actually incurred as a direct result of such termination, along with reasonable overhead and profit on the Work not executed (which reasonable overhead and profit shall not exceed two and a half percent (2 ½%) of the Cost of the Work not executed)..

14.5. The provisions of paragraph 14.1.3 and 14.4.3 above represent agreed upon liquidated damage clauses. Inasmuch as the damages which may otherwise be encountered are difficult to predict as of the date of execution of the Agreement, the Owner and Contractor have agreed upon the formulas for damages set forth in such paragraphs as liquidated damages and, as set forth in each of such paragraphs, the Contractor's right to recover the sums described therein shall be the Contractor's sole and exclusive remedy and recourse in such events.

14.6. All of the provisions of the Contract Documents are intended to be reasonable and enforceable. In the event that any portion of the Contract Documents is finally adjudged to be invalid or unenforceable for any reason, whether on its face or as applied, the same shall be deemed excised, but such excision shall have no effect on the remaining provisions of the Contract Documents. It is the intention of the parties that the Contract Documents be enforced to the fullest extent allowed by law.