

# DRAFT AIA® Document A201™ - 2007

## General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

TRANSBAY TOWER

THE OWNER:

(Name and address)

TRANSBAY TOWER LLC, a Delaware limited liability company

c/o Boston Properties Limited Partnership

Four Embarcadero Center

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Attn: Bob Pester - Senior Vice President & Regional Manager

Christine Shen - Vice President & Regional Counsel

Peter Back - Vice President, Construction

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c/o Hines Interests Limited Partnership

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San Francisco, CA 94110

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Attn: Mr. Paul Paradis - Senior Managing Director

Mr. Andy Trowbridge - Senior Vice President

The "Owner's Representative" in connection with the Project is:

Peter Back

Four Embarcadero Center

San Francisco, CA, 94111

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THE ARCHITECT:

(Name and address)

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Attention: Rex Wooldridge

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Facsimile No.: (713) 877-1360

The "Architect's Representative" in connection with the Project is: Rex Woodridge

### ADDITIONS AND DELETIONS:

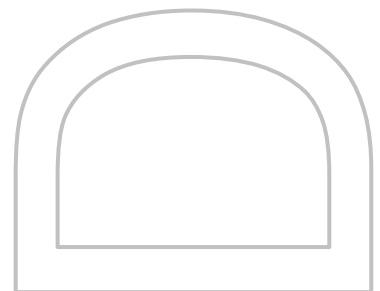
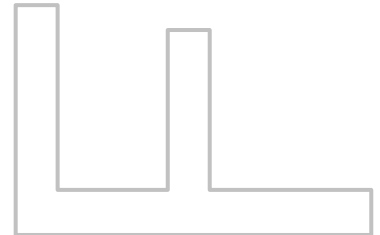
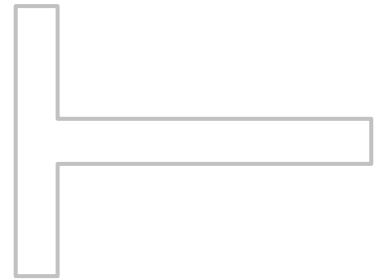
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## ARTICLE 1 GENERAL PROVISIONS

### § 1.1 BASIC DEFINITIONS

#### § 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the following, which, together with Modifications made in the manner provided therein and issued subsequent to the execution of the Agreement, form the "Contract":

- (i) the Standard Form of Agreement between Owner and Contractor, AIA Document A-102-2007, modified (the "Agreement"), as amended by Qualifications and Exceptions;
- (ii) all exhibits referenced in Section 16.1.2 of the Agreement which are attached to the Agreement (collectively, the "Exhibits");
- (iii) these modified General Conditions of the Contract for Construction, AIA Document A-201-2007, (the "General Conditions"), as amended by Qualifications and Exceptions; and
- (iv) the "Construction Documents" consisting of the drawings ("Drawings") and the specifications ("Specifications") are to be prepared by the Architect, the pertaining sets of which are indicated on Exhibit "A" attached to the Agreement and incorporated herein by this reference.

#### § 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. Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, except that Owner shall be an intended third party beneficiary of all obligations of each Subcontractor and Sub-subcontractor relating to the Work (including, without limitation, any warranty or correction obligations, any obligations with respect to indemnification and insurance, and any of the requirements described in Section 5.3 and Section 5.4 of these General Conditions, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. 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 "Work" is described in the Agreement and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. Notwithstanding any clarifications relating to the Work, the Contractor shall be fully responsible, and expressly assumes responsibility, for all means and methods of construction and Owner shall have no responsibility in connection therewith as further defined in Section 2.6.

#### § 1.1.4 THE PROJECT

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

#### § 1.1.5 THE DRAWINGS

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

#### § 1.1.6 THE SPECIFICATIONS

The "Specifications" are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services, including manufacturers' instructions, specifications or directions regarding proper installation and/or use of products, or materials.

#### § 1.1.7 INSTRUMENTS OF SERVICE

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

### § 1.1.8 PROJECT MANUAL

The Project Manual, if any, is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications. The Project Manual is divided into Divisions and Sections for convenience of the Contractor. Items or parts of Work specified shall not limit the Contractor in defining or establishing the limits of work of Subcontractors, regardless of where they are located in the Project Manual. The Architect or Owner shall not make decisions on jurisdiction or responsibilities of Subcontractors.

### § 1.1.9 APPROVED

When the words "approved," "satisfactory," "proper" or "as directed" are used, approval by the Owner shall be understood unless the Architect is specifically identified as the party whose action is required.

### § 1.1.10 PROVIDE

When the word "provide," including derivatives thereof, is used, it shall mean to properly fabricate, complete, transport, deliver, install, erect, construct, test and furnish all labor, materials, equipment, apparatus, appurtenances, and all items and expenses necessary to properly complete in place, ready for operation or use under the terms of the Specifications.

### § 1.1.11 ADDENDA

Addenda are written or graphic instruments issued prior to the execution of the Contract which modify or interpret the bidding documents, including the Drawings and Specifications, by additions, deletions, clarifications or corrections.

### § 1.1.12 BULLETINS

Bulletins are written or graphic instruments issued by the Architect or the Owner after the execution of the Contract which request a proposal from the Contractor that, if accepted by the Owner, will cause the execution of a Change Order to modify the Contract Documents.

### § 1.1.13 KNOWLEDGE

The terms "knowledge," "recognize," and "discover," their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize) and discovers (or should discover) through exercise of the Standard of Care.

### § 1.1.14 BUILDING CODE

The term Building Code shall be construed to mean the edition of the governing building code as adopted and amended by the agencies having jurisdiction under which the Project is permitted. The Contractor, at all times, shall keep a copy of the Building Code in the site office.

## § 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 Execution of the Construction Contract by the Contractor constitutes a representation that Contractor has had or will have ample opportunity to and has or will (i) conduct a thorough investigation and examination of the Project site, the Contract Documents and all other pertinent information relating to the Project, the Work and the performance thereof, (ii) review the Work with the appropriate governmental officials for execution purposes and examined documents available through such officials and (iii) carefully investigate the possibility of obstacles and conditions not identified by Owner including conditions relating to the transportation, handling and storage of materials, construction staging sites, availability of labor, the effect of any labor agreements, the local infrastructure, weather, condition of existing structures, topographic and subsurface conditions, utilities, power, traffic, roads, storage, applicable provisions of law, and the character and availability of equipment, material and facilities needed before and during prosecution of the Work. Contractor represents and agrees that it has taken such additional steps as may be necessary to satisfy itself as to the actual conditions, and that shall include in the Guaranteed Maximum Price sufficient allocations for unknown or unidentified conditions. If Contractor encounters concealed conditions which differ materially from the conditions indicated in the Contract Documents, Contractor shall promptly inform Owner and Architect of the conditions and cooperate with them in determining how best to deal with the conditions; provided however, that such concealed conditions shall not constitute grounds for an increase in the Guaranteed Maximum Price or Contract Time.

§ 1.2.2 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by Contractor by the Contract Time. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Unless expressly stipulated otherwise, Contractor shall provide and pay for all services, labor, overtime labor, standby labor, methods, materials, equipment, transportation, power, fuel, water, and all other facilities and services, including operating costs of balancing, start-up and checking out equipment, and all other items and facilities of every kind necessary to complete the intent of the Contract Documents for not more than the Guaranteed Maximum Price within the Contract Time.

§ 1.2.3 Organization of the Specifications into divisions ("Divisions"), sections ("Sections") and articles ("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. Dimensional tolerances listed in each Section are not cumulative. Contractor shall coordinate the tolerance requirements of consecutive and adjacent trades so the finished construction is within the design tolerances.

§ 1.2.4 Instructions and other information furnished in the Specifications, including, without limitation, items in connection with prefabricated or pre-finished items, are not intended to supersede work agreements between employers and employees. Should the Specifications conflict with such work agreements, the work agreements shall be followed, provided such items are provided and finished as specified. If necessary, such Work shall be performed on the Project site, instead of at the shop, by appropriate labor and in accordance with the requirements of the Drawings and Specifications.

§ 1.2.5 The Specifications (excluding the General Conditions) and Drawings shall be equal in authority and priority, provided, however, that in the event of conflict, (i) the Drawings shall govern as to the quantity and location, and (ii) the Specifications (excluding the General Conditions) shall govern as to quality and performance. Notwithstanding the foregoing, if duplications or conflicts are discovered either in themselves, or with each other, prices shall be based on the most expensive combination of quality and quantity of Work indicated with a credit for all costs saved accruing to Owner if a less expensive method of work is directed. In the event of a known conflict between those documents specified by the Architect and those specified by manufacturers, Contractor will provide written notice of such conflict to Owner and the Architect and await further instructions from Owner or Architect as to how to proceed. A duplication of Work is not intended by the Contract Documents and any duplications specified shall not become a basis for extra cost to Owner. The appropriate method of performing the Work, in the event of the above-mentioned discrepancies, shall be recommended by the Architect and approved by Owner. Contractor shall not take advantage of any apparent error or omission which may be found in the Contract Documents, but shall cooperate in good faith with the Architect to resolve any ambiguities, inconsistencies or defects in the Contract Documents in a manner to minimize any increase to the Guaranteed Maximum Price.

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

- .1 Whenever a product is specified in accordance with a Federal Specification, an ASTM Standard, an American National Standards Institute Specification, or other Association Standard, the Contractor shall present an affidavit from the manufacturer when requested by the Architect or required in the Specifications, certifying that the product complies with the particular Standard or Specification. When requested by the Architect or specified, support test data shall be submitted to substantiate compliance.
- .2 Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, regardless of whether or not the designation includes the phrase "or equal" or words of similar meaning, no substitutions may be made unless accepted in writing by the Owner prior to execution of the Contract or if accepted as a Change in the Work in accordance with Section 3.4.2. Where two or more products are shown or specified, the Contractor has the option to use either of those shown or specified.

§ 1.2.7 Where two or more products are specified for an item of the Work either one is acceptable and the choice is left to Contractor. Where only one product is specified, and where the term "equal", "or approved equal" or similar wording is used in connection with specified products, Contractor may, if Contractor so desires, offer for consideration a substitute product which Contractor judges to be equal in every respect to the required product. When a specific process is specified as well as a guarantee of the results, Contractor shall, if in Contractor's

judgment the process may not produce the required result, offer for approval an alternative process which Contractor would guarantee. All such offers shall be made in writing to Owner as a part of Contractor's bid. Review of a request to use any substitute product will be contingent upon submission of substantiating data, satisfactory to the Architect and Owner, that (1) the item is equal or superior in quality and serviceability to the specified product; (2) use of the item will not entail changes in details and construction of related work; (3) the item conforms to the intent of the Contract Documents, including respect for design and artistic effect; (4) there will be a cost advantage to Owner; and (5) there will be no impact on the Project Schedule. Contractor shall furnish to the Architect and Owner sufficient drawings, specifications, samples, performance data and other information necessary to assist the Architect, and Owner in determining whether the proposed substitution is acceptable. The burden of proof shall be upon Contractor. No consideration will be given to incomplete submittals or submittals offered after the bid. Substitutions must be approved in writing by Owner before they may be used. If a substitution is approved by Owner, Contractor shall assume all risk and costs for redesign and adjustment of work affected by the substitution and its effect on adjoining work, and any delays occasioned by its use.

§ 1.2.8 Manufactured articles, materials and items of equipment shall be stored, applied, installed, connected, erected, used, cleaned, adjusted, conditioned and protected per manufacturer's current published recommendations and specifications unless otherwise required in the Contract Documents. When product manufacturer's instructions are in conflict with the Contract Documents, Contractor shall notify the Architect and Owner for clarification before proceeding. Contractor shall keep a copy of the various product manufacturers' instructions applicable to the Work at the Project site.

§ 1.2.9 Materials, equipment and operations specified by reference to published specifications of a manufacturer, society, trade association, code or other published standard, shall comply with the requirements of the current edition of the listed document that is in effect on the issue date of the Project Specification or Addendum page making reference thereto, unless otherwise specified. In case of conflict between referenced documents, the more stringent requirements of the requirements in conflict shall govern, as recommended by the Architect, and approved by Owner.

§ 1.2.10 Except for code required labels, equipment nameplate data or other similar labels containing manufacturer's name, address, model number, capacity and other rating information securely attached to each piece of equipment, the installation of any item, element or assembly, which bears on any exposed surface any name, trademark or other insignia which is intended to identify the manufacturer, the vendor or other sources from which such object has been obtained, is prohibited. Also forbidden is the installation of any article which bears visible evidence that a name, trademark or other insignia has been removed.

§ 1.2.11 Certain drawings (including mechanical, electrical and fire protection drawings) are diagrammatic only, and are not intended to show the alignment, physical locations or configurations of such Work. Such Work shall be installed without any increase in the Contract Sum or the Guaranteed Maximum Price, as applicable, to clear all obstructions, permit proper clearances for the Work of other trades and operation and maintenance, provide clear access to all control points (including valves, strainers, filters and control devices), and present an orderly appearance where exposed. Prior to beginning such Work, the Contractor shall prepare coordination drawings showing the exact alignment, physical location and configuration of the components of the mechanical, electrical and fire protection and other allied systems and demonstrating to the Architect's and Owner's satisfaction that the installation of such systems will comply with the preceding sentence. The Contractor shall be solely liable and responsible for any such costs and/or delays resulting from the Contractor's failure to prepare such coordination drawings and properly coordinate such installations.

### § 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined in the Contract Documents, (2) the titles of numbered articles (3) the titles of other documents published by the American Institute of Architects or (4) defined in the Agreement.

### § 1.4 INTERPRETATION

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

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

§ 1.5.1 All Drawings, Specifications, Instruments of Service, and other documents prepared by the Architect or its consultants are and shall remain the property of Owner, and Owner shall retain all common law, statutory and other reserved rights with respect thereto. They shall not be used by Contractor nor any Contractor Party on any other project without the prior written consent of Owner. Contractor, Subcontractors, Sub-subcontractors, and material and equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications, and other documents prepared by Architect or its consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this license shall bear the statutory copyright notice, if any, shown on the originals. Submittals or distributions necessary to meet official regulatory requirements or for other purposes relating to completion of the Project are not to be construed as a publication in derogation of the Owner's copyright or other reserved rights.

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

## § 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

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

## § 1.7 CONFIDENTIALITY

§ 1.7.1 Contractor shall not release information concerning the Project (excluding information required in applications for permits, variances, and other governmental submittals) without Owner's prior written consent and as further stated in the Contract Documents. Contractor shall obtain similar agreements with the Contractor's Subcontractors. The Owner reserves the right to release all information as well as to time its release, form and content. This requirement shall survive the expiration or termination of this Construction Contract. The Contractor warrants and represents that the Contractor shall not knowingly or negligently communicate or disclose at any time to any person or entity any proprietary information in connection with the Work or the Project, except (i) with prior written consent of the Owner, (ii) information that was in the public domain prior to the date of this Agreement, (iii) information that becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of the Contractor, or (iv) as may be required to perform the Work or by any applicable law, including the Record set of the Drawings, Specifications and other documents which the Contractor is permitted to retain under Section 1.5 above. Specific information shall not be deemed to fall within the scope of the foregoing exceptions merely because it is embraced by more generic information which falls within the scope of one or more of those exceptions. The Contractor acknowledges and agrees that the existence of the Owner's particular interests and plans in the geographical area of the Project is a type of such specific information. In the event that the Contractor is required by any court of competent jurisdiction or legally constituted authority to disclose any Owner Information, prior to any disclosure thereof, the Contractor shall notify the Owner and shall give the Owner the opportunity to challenge any such disclosure order or to seek protection for those portions that it regards as confidential.

§ 1.7.2 The Contractor, at any time upon the request of the Owner, shall immediately return and surrender to the Owner all copies of any materials, records, notices, memoranda, recordings, drawings, specifications, and mock-ups and any other documents furnished by the Owner or the Architect to the Contractor, except as reasonably required to comply with Contractor's internal records retention policies.

§ 1.7.3 The Contractor shall cause all Subcontractors or any other person or entity performing any services, or furnishing any materials or equipment, for the Work to warrant and represent all items set forth in this Section 1.7.

§ 1.7.4 The representations and warranties contained in this Section 1.7 shall survive the complete performance of the Work or earlier termination of the Contract. Contractor's confidentiality obligations set forth herein shall continue for three (3) years following Project completion.

§ 1.7.5 Any and all inventions and discoveries, whether or not patentable, conceived or made by the Contractor as a result of the Contractor's discussions with the Owner or performance of the Work which are based substantially on the Owner's proprietary information, shall be and shall become the sole and exclusive property of the Owner. The Contractor agrees to disclose fully and promptly to the Owner all such inventions and discoveries. Upon request by the Owner, the Contractor agrees to assign such inventions and discoveries to the Owner, or cause them to be so assigned by its personnel. Further, the Contractor shall execute, or cause to be executed by its personnel, all applications, assignments or other instruments which the Owner may deem reasonably necessary in order to enable the Owner at its expense, to apply for, prosecute and obtain patents in any country for said inventions and discoveries, or in order to assign and transfer to the Owner the entire right, title and interest thereto.

## 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's Representative shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. The Architect does not have such authority. The term "Owner" refers to TRANSBAY TOWER, LLC, a Delaware limited liability company are hereby designated by the Owner as its representatives and are authorized to act on behalf of the Owner, unless a new representative is subsequently designated in writing by the Owner. Except as is expressly authorized in the Contract Documents, the Contractor has no right or authority of any kind to act as the Owner's Representative or otherwise on behalf of the Owner, and is not an agent of Owner.

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

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if the Owner fails to make undisputed payments to the Contractor except as follows: in the event that Contractor is required to subordinate its lien rights to any future lien holder pursuant to the terms of Section 15.22 of the Agreement, then at such time, Owner shall provide to Contractor reasonable evidence reaffirming that Owner has the financial wherewithal to meet all executor obligations under the Contract.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1 of these General Conditions, the Owner shall secure and pay for the building permit for the Project. A matrix setting for the parties' responsibilities for specific permits and/or fees is attached to the Agreement as Exhibit "K".

§ 2.2.3 The Contractor shall be entitled to reasonably rely on the accuracy of information furnished directly by the Owner but shall exercise proper precautions relating to the safe performance of the Work. Notwithstanding anything in the Contract Documents to the contrary, the Contractor is responsible for making all existing utility location checks.

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

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

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

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 of these General Conditions within seven (7) days written notice or repeatedly or materially 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 6.1.3 of the General Conditions. Owner's exercise of the right described in this Section 2.3 shall not give rise to any extension of the



Contract Time nor an adjustment of the Contract Sum for any sums, costs, or charges directly attributable to Owner's exercise of this right.

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

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7)-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

§ 2.5 At all times prior to the completion of the Work, but subject to compliance with Section 3.16, below, Owner, Architect, Owner's lender(s) ("Lender(s)"), and all of their employees and agents, shall have the right to have full access and use of the Work site. Owner's right hereunder shall include, without limitation, making inspections of the Work, including inspections carried out by Owner's agents (such as without limitation, Architect, engineers or other professional inspectors), stationing a Project director, a job supervisor and other personnel employed by Owner at the Work site, showing the Work to prospective concessionaires, tenants, lenders and other interested persons, and carrying out the work of fixturing the improvements comprising the Work for Owner's purposes in using the completed Work. Such use shall not constitute acceptance of the Work or any part thereof, or waive any of Owner's rights under the Contract Documents. Owner shall direct all such parties comply with Contractor's reasonable safety requirements in accessing the Work site.

§ 2.5.1 The rights stated in this Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (1) granted in the Contract Documents, (2) at law or (3) in equity.

§ 2.6 Notwithstanding anything to the contrary contained in this Contract, Owner will not be responsible for and will not have control or charge over construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, and Owner will not be responsible for Contractor's failure to carry out the Work in accordance with the Contract Documents and applicable laws, rules and regulations bearing on the performance of the Work. Owner will not be responsible for or have control or charge over the acts or omissions of Contractor, Subcontractors, or any of their agents or employees, or any other person performing any of the Work.

§ 2.7 Owner has the authority to reject the Work which does not conform to the Contract Documents. Whenever, in its reasonable opinion, Owner considers it necessary or advisable, Owner will have the authority to require special inspection or testing of the Work in accordance with Section 13.5.2 whether or not such Work is then fabricated, installed or completed.

### ARTICLE 3 CONTRACTOR

#### § 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed in the jurisdiction where the Project is located, and shall remain in good standing as a registered and licensed contractor throughout the duration of the Work and any subsequent period, until issuance of Final Payment. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative, including, without limitation, Contractor's Representative, and shall include all "Subcontractors," as that term is defined in Section 5.1.1 of these General Conditions to the extent applicable to Subcontractor's scope of Work.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents, and in a workmanlike manner. The Contractor shall be responsible for coordinating the Work among the Subcontractors, and each Subcontractor, regardless of tier, shall be responsible for coordinating its Work with any other Subcontractor either preceding it or following it.

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

§ 3.1.4 Contractor shall perform any and all of its duties, responsibilities and obligations under these Contract Documents in a good workmanlike manner and in a manner consistent with the highest quality and level of skill and care exercised by experienced national contractors of high quality first-class projects similar in size, scope and complexity to the Project in San Francisco (“Standard of Care”).

§ 3.1.5 The Contractor shall (a) record the progress of the Work; (b) submit to Owner a written meeting minutes progress report every week; (c) submit to Owner written reports and notifications as Owner may reasonably request from time to time; and (d) keep a daily log of information reasonably relevant to the Work.

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

§ 3.2.1 Claims for costs to be reimbursed relating to items required or services performed by reason of the Contractor’s failure to act in accordance with the Standard of Care or to familiarize itself with Project site as required in Section 1.2.1 above shall not increase the Guaranteed Maximum Price or the Contract Time.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3 of these General Conditions, shall take field measurements of any existing conditions related to that portion of the Work, verify field conditions, carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents before commencing activities, observe any conditions at the site affecting it, give prompt notice to the Architect in writing, of all errors, inconsistencies, or omissions, which it may discover and obtain specific instructions in writing with respect thereto before proceeding with the Work. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the design information contained in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in the design information contained in such form as the Architect may require. It is recognized that the Contractor’s review is made in the Contractor’s capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. The exactness of grades, elevations, dimensions, or locations given on any Drawings issued by the Architect, or the work installed by other contractors, is not guaranteed by the Architect or the Owner. Notwithstanding the foregoing, Owner acknowledges that Contractor may rely in good faith on the information provided by Owner’s surveyor, if any, and shall not be required to independently verify such information.

Except as provided in Section 1.2.1, Contractor shall not be responsible for material errors or omissions not provided by the Construction Documents which it could not reasonably have identified by careful study of the documents and exercise of the Standard of Care, but will cooperate with Owner to mitigate any adverse consequences of such errors or omissions. The cost of repairing or correcting errors or omissions in construction caused by Contractor’s failure to detect errors, omissions, or inconsistencies which it should reasonably have discovered shall be corrected without increase to the Guaranteed Maximum Price. Contractor shall not be entitled to an extension of the Contract Time to carry out any such repairs or corrections. Errors or omission in Contract Documents or the misdescription of details of Work manifestly necessary to carry out the intent of the Contract Documents, or which are customarily performed by contractors on similar projects, shall not relieve Contractor from performing such omitted work or misdescribed details of the Work and they shall be performed as if fully and correctly set forth and described in the Drawings and Specifications. The cost of such Work shall be included in the Cost of the Work, but in no event shall such Work entitle Contractor to an increase in the Guaranteed Maximum Price.

§ 3.2.3 Except for portions of the Work that are to be performed by the Subcontractors performing Work or providing services on a design/build basis, the Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities; provided, however, Contractor’s conduct must comport with the Standard of Care, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require. Notwithstanding the foregoing or anything else

to the contrary, the Contractor and all Subcontractors are responsible for (a) compliance with all Requirements which bear upon performance of the Work and (b) compliance of the Work with electrical, plumbing and similar trade codes (specifically excluding zoning, land use and other laws relating to architectural design).

### § 3.2.4 INFORMATION AND PROCEDURE INSTRUCTIONS (RFI)

§ 3.2.4.1 This Section contains procedures to be followed by Contractor upon discovery of errors, inconsistencies, or omissions in the Contract Documents or between Contract Documents and site conditions discovered by the Contractor.

#### § 3.2.4.2 NOTIFICATION BY CONTRACTOR:

- .1 Submit all requests for clarification or additional information in writing to the Architect and using the Request for Information (RFI) form approved by the Owner.
  - a. Provide specification section and page number or drawing number and detail; name of Requester; name of Contractor; and response required from which consultants.
  - b. Contractor shall answer all items on RFI form noted under "Request for Information".
  - c. Indicated consultants shall respond on RFI form noted under "Response to Request for Information."
- .2 Number RFI's as directed by the Owner.
- .3 Limit each RFI to one subject.
- .4 Submit an RFI if one of the following conditions occur:
  - a. Contractor discovers an unforeseen condition or circumstance that is not described in the Contract Documents.
  - b. Contractor discovers an apparent conflict or discrepancy between portions of the Contract Documents that appears to be inconsistent or is not reasonably inferred from the intent of the Contract Documents.
  - c. Contractor discovers what appears to be an omission from the Contract Documents that cannot be reasonably inferred from the intent of the Contract Documents.
- .5 Contractor shall not:
  - a. Submit an RFI in place of a request for substitution.
  - b. Submit an RFI in place of a submittal.
  - c. Submit an RFI under the pretense of a Contract Documents discrepancy or omission without thorough review of the Contract Documents.
  - d. Submit an RFI in a manner that suggests that specific portions of the Contract Documents are assumed to be excluded or by taking an isolated portion of the Contract Documents in part rather than whole.
  - e. Submit an RFI in an untimely manner without proper coordination and scheduling of work of related trades.
  - f. Submit an RFI to receive approval for and to document field directed changes by the Contractor without prior consent of the Architect.
- .6 Contractor shall submit request for information or clarification immediately upon discovery.
  - a. Contractor shall submit RFI's within a time frame so as not to delay the Contract Time while allowing the full response time described below.
- .7 Any RFI submitted which fails to comply with these procedures and requirements, will be returned without consideration.

#### § 3.2.4.3 RESPONSE TIME:

- 1 Owner, whose decision will be final and conclusive, shall resolve such questions and issue instructions to Contractor within a reasonable time frame.
  - a. Contractor shall allow fourteen (14) Days for response to RFI.
  - b. If in the opinion of the Architect and Owner more than fourteen (14) Days is required to prepare a response to an RFI, Contractor will be notified in writing within three (3) Days of receipt of the RFI by the Architect.
- .2 Should Contractor proceed with the Work affected before receipt of a response from Architect and Owner, within the response time described above, any portion of the Work which is not done in accordance with the Owner's interpretations, clarifications, instructions or decisions is subject to removal or replacement and Contractor shall be responsible for all resultant losses.

**REQUEST FOR INFORMATION NUMBER \_\_\_\_\_**

**PROJECT NAME**

**ARCHITECT/ENGINEER USE ONLY**

PROJECT CONTRACTOR NUMBER \_\_\_\_\_

RFI Received By: \_\_\_\_\_

Reference Spec. Sec.: \_\_\_\_\_ Pg. \_\_\_\_\_

Date RFI Received: \_\_\_\_\_

Reference Drawing No.: \_\_\_\_\_

DATE RESPONSE DUE: \_\_\_\_\_

Name of Requester: \_\_\_\_\_

Name of Contractor: \_\_\_\_\_

Response Required from Following Consultants: \_\_\_\_\_

*Date Stamp Rec'd*

*Date Stamp Resp.*

**REQUEST FOR INFORMATION:** (Use additional sheet if required, but mark each sheet with same RFI No.)

Nature of Issue: \_\_\_\_\_

When and how did this come to your attention? \_\_\_\_\_

Will this affect any other portion of the Work or any other Trade Contractors/Subcontractors? Yes \_\_\_ No \_\_\_

If so, which ones will it affect and how? \_\_\_\_\_

RFI Reviewed By: \_\_\_\_\_ Date of Review: \_\_\_\_\_

**RESPONSE TO REQUEST FOR INFORMATION:**

Response to RFI provided to: \_\_\_\_\_ Date: \_\_\_\_\_

Copies To: \_\_\_\_\_

§ 3.2.5 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3 of these General Conditions, the Contractor shall make claims as provided in the Contract Documents. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3 of these General Conditions, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities (except to the extent otherwise provided in Section 3.2.3) unless the Contractor recognized or should have recognized such error, inconsistency, omission or difference and failed to report it to the Architect and the Owner.

§ 3.2.6 Any ambiguities or discrepancies discovered by Contractor shall be promptly submitted to Owner, and Architect for a recommendation upon discovery. Contractor shall perform the Work reflecting the correction of such errors, inconsistencies, and omissions subject to Owner's execution of appropriate Modification.

§ 3.2.6.1 Work ordered, fabricated or constructed by Contractor, when the Contract Documents do not clearly specify in detail the Work to be done or where the Work conflicts with the Contract Documents without such Modification, Change Orders, shall be corrected by Contractor as a Cost of the Work.

§ 3.2.6.2 Recommendations of Architect with regard to such ambiguities or discrepancies shall not make Architect an arbitrator to establish responsibilities of Subcontractors to Contractor with regard to such portions of the Work.

§ 3.2.7 Contractor shall notify Architect and Owner in writing, of materials, systems, procedures or methods of construction either shown on the Drawings or specified in the Specifications which Contractor believes are incorrect or may be inappropriate for the purposes intended, or for which Contractor objects to furnishing the warranties required by the Contract Documents. Architect and Owner will make a determination of such matters in writing. Contractor shall be responsible for any additional costs resulting from its failure to notify Architect and Owner that such materials, systems, procedures and methods, are incorrect or inappropriate.

§ 3.2.8 Dimensions indicated on the Drawings are required dimensions, regardless of measurement per given scale. Contractor shall verify at site necessary levels, measurements, etc., for complete fabrication, assembly and installation, fitting of equipment, fixtures and the Work. Where dimensions are not indicated and exact location is not apparent, Contractor shall promptly notify Architect and Owner's Representative, and Architect shall compute the required measurements. Inadvertent discrepancies, or contradictions, or omissions of details, figures or notes of one drawing which are correctly given on another drawing shall not be cause for additional charges or claims by Contractor, provided Contractor, exercising due care, knew or should have known of the error and failed to promptly report it to the Architect before proceeding with the Work at issue.

§ 3.2.9 Before commencing the Work, Contractor shall make a thorough survey of the working area and approaches thereto, listing existing conditions and defects. This survey shall be approved and signed by the Contractor and shall be delivered to the Owner and Architect. If the Contractor fails to make this survey before the Work begins, the Contractor shall make good any defects and/or damages, including defective sidewalk and curbs, as a Cost of the Work. Contractor shall also locate all drainage and sewer lines, water, gas, and other utility service lines or piping in the way of the new Work. Contractor shall also cooperate with its Subcontractors and see that all relocation of lines which are in use and in conflict with new Work is properly accomplished.

§ 3.2.10 The above limitations on Contractor's liability for design do not apply to Design-Build services.

### § 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 (including, without limitation, (i) all safety precautions and programs and (ii) all shoring, bracing and temporary supports for earth and existing improvements) and for coordinating all portions of the Work under the Contract. Contractor understands and acknowledges that although certain construction means, methods, techniques, sequences and procedures necessary for the completion of the Project may be referenced in the Contract

Documents, it shall remain responsible for and have control over the construction means, methods, and techniques necessary to comply with such sequences and procedures. Contractor agrees to review the construction means, methods and techniques specified in the Contract Documents, and to notify Owner, and Architect if Contractor objects to any of the means, methods and techniques, or determines that any of the specified means, methods and techniques would deviate from customary and accepted construction practices or violate any warranty. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor believes that such means, methods, techniques, sequences or procedures may not be safe or suitable, the Contractor (a) shall give timely written notice to the Owner and Architect of the specific means, methods, techniques, sequences or procedures referred to in the Contract Documents that the Contractor believes are not safe or suitable and (b) shall not proceed with that portion of the Work until the Owner, the Architect and the Contractor have agreed upon specific means, methods, techniques, sequences or procedures that the Contractor agrees are safe and suitable for the Work and (c) participate in discussions with the Owner and the Architect regarding the specific means, methods, techniques, sequences or procedures referred to in the Contract Documents that the Contractor believes are not safe or suitable until the Owner, the Architect and the Contractor have agreed upon specific means, methods, techniques, sequences or procedures that the Contractor agrees are safe and suitable for the Work. The Contractor shall remain solely responsible for and have control over the means, methods, techniques, sequences or procedures that are employed by the Contractor for the Work, notwithstanding that such construction means, methods, techniques, sequences or procedures are (i) referred to, indicated or implied by the Contract Documents or (ii) agreed to by the Owner and/or the Architect.

§ 3.3.2 The Owner assumes no responsibility or liability for the physical condition or safety of the Project site or any improvements located on the Project site. Except as set forth in Section 10.3 of these General Conditions, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. 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 Contractor shall be responsible to Owner for acts and omissions of Contractor's employees, suppliers, consultants, Subcontractors and their respective agents and employees, and all other persons or entities performing portions of the Work. 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. The Contractor shall be responsible for Work performed by the Contractor or any Contractor Party that is defective, contrary to the Contract Documents or not in proper condition to receive subsequent Work. This Section shall be specifically incorporated by reference in all Subcontracts of any tier, and shall be binding on all Subcontractors, as if set forth in such Subcontracts. Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by the activities of Owner or the activities or duties of the Architect in the Architect's administration of the Construction Contract, or by tests, inspections or approvals required or performed by persons other than Contractor.

§ 3.3.4 SPECIFIED CONTRACTOR SERVICES. In addition to any other work or services required or reasonably inferable under the Contract Documents as part of the Work, Contractor shall, without limitation on, and in addition to other work and services, perform the following minimum list of services:

§ 3.3.4.1 Intentionally Omitted.

§ 3.3.4.2 CONSTRUCTION DOCUMENT PHASE:

- a. Continue to coordinate consultants and prepare minutes of meetings.

§ 3.3.4.3 CONSTRUCTION PHASE:

- a. Coordinate and supervise the work of all subcontractors and maintain full-time onsite staff to accomplish these goals;
- b. Update the Project Schedule and cost documents weekly and report progress to Owner;

- c. Lead weekly job meetings and participate in resolving any issues;
- d. Institute accurate onsite record keeping (e.g., daily logs, schedule, manpower, financial reports, purchase orders, contracts, material lists, submittals, shop drawing, change orders, supplemental instructions, ASI's, etc.). The Owner will require a monthly Project executive report. The Owner will advise on formal content.
- e. Coordinate with all authorities, agencies, utility companies, building management, etc. necessary to complete the Project in compliance with all applicable codes and laws bearing on the performance of the Work;
- f. Establish programs to assure safety and cleanliness of site;
- g. Establish systems for providing assurance of high quality materials and installation of all items indicated in the Construction Documents consistent with Contractor's standard quality commissioning guidelines;
- h. Coordinate shop drawing and submittal processes to assure that all items are appropriately reviewed, logged and approved as required in accordance with these General Conditions, and keep accurate and up-to-date records of the status of all such items;
- i. Coordinate and prepare requests for payment and process disbursements;
- j. Coordinate change order process, institute a system to document the status of all requests, report consequences of such changes to Owner and consultants and make recommendations as to acceptability or desirability of same;
- k. Coordinate preparation of punchlists and assure that subcontractors satisfactorily complete their work;
- l. Assemble all manuals, warranties, guarantees, etc.;
- m. Receive, check and log all necessary lien waivers, releases, etc.;
- n. Contractor shall establish and maintain benchmarks, and all other grade, lines and levels necessary for the Work. Contractor shall report errors and inconsistencies to the Architect, and Owner, in writing, before commencing such portion of the Work. Contractor shall confirm the placement of the building on the Project site to the Architect, and Owner after all lines are staked out. Contractor shall be responsible for the accuracy of the layout and shall make all corrections necessary to achieve an accurate layout of all the Work;
- o. Contractor shall arrange to accommodate "Not in Contract" work as provided in Article 6 hereof. When information is inadequate, Contractor shall request further instructions before proceeding;
- p. If any of the Work is required to be inspected or approved by any public authority, the Contractor shall cause such inspection or approval to be performed at the appropriate time in the performance of the Work and will cooperate with Owner, and Architect in scheduling inspections; and
- q. Contractor shall institute drug and substance abuse testing programs as strict as permitted by applicable laws.

### § 3.3.5 CONSTRUCTION ORGANIZATION

§ 3.3.5.1 The Contractor shall establish on-site lines of authority and communication and shall, without limitation on, and in addition to other work and services:

- a. Schedule and conduct preconstruction meeting(s) with Subcontractors prior to the start of Work to coordinate:
- Projected schedule and sequencing of critical work and hoisting;
  - Rubbish removal from the Project;
  - Delivery schedules and priorities;
  - Designation of responsible Subcontractor personnel;
  - Procedures and processing of field decisions, requests for proposals, affirmative action documentation, submittals, change orders, and applications for payment, with proper waivers and draw costs;
  - Requirements for document distribution;
  - Procedures for maintaining Drawings and Specifications;
  - Use of premises – office, work, parking and storage areas with permission from the Owner;
  - Temporary facilities and utilities;
  - Security procedures;
  - Housekeeping procedures; and
  - Allocate space and establish guidelines for Subcontractor field offices, work and storage areas, etc.
- b. Establish access traffic flows;
- c. Schedule and conduct construction progress meetings with Subcontractors on a weekly basis and shall:
- Review Work progress weekly for compliance with the Project Schedule;
  - Resolve field conflicts or problems which requires Owner authorization;
  - Review off-site fabrication and delivery schedules;
  - Monitor construction progress and execute corrective measures and procedures to prevent schedule delays;
  - Monitor adequacy of Subcontractor manpower and equipment and execute corrective action as necessary;
  - Maintain quality control standards as stated in the Construction Documents; and
  - Review status of requests for proposals within seven (7) working days.



§ 3.3.5.2 The Contractor shall establish and maintain lines of communication and review and approval procedures with Owner and shall:

- a. Schedule and conduct construction progress meetings on a weekly basis, or as needed to review progress for Subcontractor proposal evaluations and the Work, and prepare and distribute meeting minutes;
- b. Establish lines of communication with Owner to resolve problems within proposals or construction in a timely manner;
- c. Mutually establish guidelines for communications between Owner and Contractor; and
- d. Establish Project website for enhancement of Project communication and coordination.

### § 3.3.6 POST SUBSTANTIAL COMPLETION WORK

§ 3.3.6.1 The Contractor shall coordinate the Owner-contracted work, including, without limitation, scheduling and providing therefor all hoisting and cleaning services. Contractor shall not cause or permit any disruption to the streets and utilities serving any occupied portion of the Project, the remainder of the Project, or other properties without Owner's prior consent, which may be conditioned upon restrictions in the time, place and manner of such disruption.

### § 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. Unless otherwise specifically provided for in the Contract Documents, all equipment, materials, and articles incorporated in the Work are to be new, free from defects of current manufacturer, and all workmanship shall be consistent with the Standard of Care. Contractor shall check all materials and labor entering into the Work and shall keep full, detailed accounts thereof.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4 of these General Conditions, 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 or Construction Change Directive. The written request must include the specifications for the material or product and any proposed change in the Guaranteed Maximum Price or Contract Time. By requesting a substitution, the Contractor represents that it has personally investigated the proposed material or product and determined that it is equal or better to that specified, that the same or better warranty will be provided for the substitution, that complete cost data, including all direct and indirect costs has been presented, and that it will coordinate with any affected Subcontractors and will not impact other parts of the Work. Materials shall conform to the manufacturers' standards in effect at the date of execution of the Contract Documents and shall be installed in strict accordance with the manufacturers' instructions, specifications, and directions

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

§ 3.4.4 Where the Contract Documents refer to particular construction means, methods, techniques, sequences or procedures or indicate or imply that such are to be used on the Work, such mention is intended only to indicate that the operations of Contractor shall be consistent with the Standard of Care such as to produce the quality of work implied by the operations described, but that the actual determination of whether the described operations may be safely or suitably employed on the Work shall be the responsibility of Contractor. All loss, damage, or liability, or cost of correcting defective work arising from the employment of any construction means, methods, techniques, sequences or procedures shall be borne by the Contractor as a Cost of the Work, notwithstanding that such construction means, methods, techniques, sequences or procedures are referred to, indicated or implied by the Contract Documents.

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

§ 3.4.7 Where it is required in the Specifications that materials, products, processes, equipment or the like be installed or applied in accord with manufacturer's instructions, directions, or specifications or words to this effect, it shall be construed to mean that said application or installation shall be in accordance with the Standard of Care, and in strict accord with current printed instructions furnished by the manufacturer of the material concerned for use under conditions similar to those at the job site. Unless otherwise stated, Contractor shall furnish one (1) copy of instructions to Owner and one (1) copy to Architect. Nothing in this Section 3.4.7 is meant to give Contractor design liability, except for the Design-Build Work.

§ 3.4.8 Contractor shall endeavor to propose substitutes which result in a lower Cost of the Work. If, after execution of the Contract and prior to submittal of applicable Shop Drawings, Contractor desires to submit an alternative product or method in lieu of what has been specified or shown in the Contract Documents, Contractor may do so in writing and setting forth the following:

- .1 The Contractor must submit to the Architect and the Owner (i) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution; (ii) the adjustment, if any, in the Cost of the Work, in the event the substitution is acceptable; (iii) the adjustment, if any, in the time of completion of the Contract and the construction schedule in the event the substitution is acceptable; and (iv) an affidavit stating that (a) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirements shown on the Drawings, and (b) the Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted to the Architect in sufficient time to allow the Architect no less than ten (10) business days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated hereinbefore.
- .2 Substitutions and alternates may be rejected without explanation.

§ 3.4.9 Intentionally Deleted.

§ 3.4.10 Contractor shall ensure that all on-site construction at the Project site (i) shall be performed solely by Subcontractors employing craft workers represented by unions affiliated with the local and/or national Building and Construction Trades Council, AFL-CIO, and/or The Building and Construction Trades Department, AFL-CIO (collectively referred to as "AFL-CIO") and the Change to Win Coalition or any other generally recognized union in the area; (ii) all such employment shall conform to traditional craft jurisdictions in the area (the "Labor Covenant"). Contractor shall include the foregoing Labor Covenant in each Subcontract entered into by Contractor and shall require that all Subcontracts of any tier include the Labor Covenant. Contractor shall be obligated to provide such evidence as Owner, Lender(s) or equity partners may reasonably require, from time to time during the course of any construction at the Project site that the Labor Covenant is being fully and faithfully observed and Contractor shall include the obligation to produce such evidence in each contract entered into by Contractor in connection with the Work and shall require that each Subcontractor include such obligation in each of its Subcontracts.

§ 3.4.11 Subject to the foregoing Labor Covenant, Contractor shall use commercially reasonable efforts to employ labor at the Project site or in connection with the Work capable of working harmoniously with all construction trades and crafts and with any entities and individuals who may be working at the Project site or otherwise associated with the Project. The Contractor shall also use commercially reasonable efforts to minimize the likelihood of any strike, work stoppage or other labor disturbance. Any damage, cost or delay to the Owner as a direct or indirect result of labor disputes or disturbances which are directed at the Contractor, its Subcontractors, or

acting on behalf of any of them (as opposed to a labor dispute or disturbance on the entire market "General Labor Dispute"), shall be the sole responsibility of the Contractor. In addition, (i) with respect to any work stoppage or labor disturbance directed against the Project but not Contractor, its Subcontractors and anyone under contract, or acting on behalf of any of them, Contractor shall use its commercially reasonable efforts to minimize the effects of such stoppage or disturbance (including, without limitation, employing a second gate or other reasonable measures) and (ii) Contractor agrees to use its commercially reasonable efforts to prevent and resolve any General Labor Dispute from adversely affecting the Work, including, but not limited to, attempting to enter into a project labor agreement including a retroactive pay provision in anticipation of any such General Labor Dispute.

§ 3.4.12 If the Work is to be performed by multiple trade unions or union tradesmen of different jurisdictions, the Contractor shall make all necessary arrangements to reconcile, without delay, damage or cost to the Owner and without recourse to the Owner, any conflict between the Contract Documents and any agreements or regulations of any kind at any time in force among members or councils which regulate or distinguish what activities shall not be included in the work of any particular trade.

§ 3.4.13 In case the progress of the Work is adversely affected by any delay in furnishing or installing any items or materials or equipment required under the Contract Documents because of such conflict involving any such labor agreement or regulation, the Owner may require that other material or equipment of equal kind and quality be provided pursuant to a Change Order.

§ 3.4.14 Contractor shall deliver clearly labeled, undamaged materials to the Project site in the manufacturer's unopened containers or packaging as applicable to the material. Contractor shall deliver materials to allow for minimum storage time at the Project site and shall coordinate delivery with the scheduled time of installation. Contractor shall store materials in a clean, dry location, protected from weather and abuse.

### § 3.5 WARRANTY

§ 3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract Documents will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements shall be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner or the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Notwithstanding anything in Section 15.1.2 of these General Conditions to the contrary, any Claim by the Owner against the Contractor, any Subcontractor, supplier, agent or employee of any of them pursuant to this Section 3.5.1 may be made at any time within the time period specified in the applicable statute of limitations. The warranty provided in this Section 3.5.1 shall (a) apply to both patent and latent defects, (b) not be limited to the durations set forth in Sections 3.5.2.1 or 12.2.2 and (c) be in addition to and not in limitation of any other warranty required by the Contract Documents or otherwise provided by law.

§ 3.5.2 As a condition precedent to final acceptance of the Work by the Owner and prior to receiving final payment for the Work, the Contractor shall warrant in writing to the Owner that it will repair or replace any or all Work, and each Subcontractor shall warrant in writing to the Owner that it will repair or replace any or all of that portion of the Work performed by such Subcontractor, together with any other Work which may be displaced, damaged or marred in so doing, that may prove defective in materials or workmanship or fail to conform to the Contract Documents or Requirements, all without any additional expense to the Owner. All warranties shall be in the form required by Section 3.5.4 below, or as otherwise approved by the Owner. The Contractor shall warrant all Work in place as new Work. The Contractor shall use its commercially reasonable efforts to assist the Owner in enforcing the warranties of Subcontractors, manufacturers and suppliers. The warranties shall not be construed to modify or limit, in any way, any rights or actions which the Owner may otherwise have against the Contractor by law or statute, or in equity. All warranties, including all equipment warranties, will inure to the benefit of the Owner and the Owner's successors and assigns. The Contractor agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

- .1 Supplementing the provisions of Section 12.2 of these General Conditions, the Contractor shall warrant its Work and provide for a forty-eight (48) hour call back service for the equipment and

materials provided by the Contractor for a period of two (2) years after completion and acceptance of the Work and issuance of the Certificate of Occupancy (as extended pursuant to Section 12.2.2.3 of these General Conditions). Equipment or building systems/components may be warranted for a period in excess of two (2) years by the manufacturer, as provided by the Contract Documents.

- 2 Without limiting the other provisions of this Section 3.5, the Contractor shall assign to the Owner all warranties provided by those who furnish equipment, materials and/or services in connection with the Work and all such warranties shall warrant all Work in place as new work.

### § 3.5.3 WARRANTY AND OPERATING AND MAINTENANCE DATA

Upon completion of any correction work under or pursuant to this Section warranty, the two (2) year correction period in connection with the work requiring correction shall be renewed and recommence, however in no event shall said correction period exceed four (4) years in total. The Contractor, as condition of final payment and as part of the Final Application for Payment, will compile and submit to the Owner the following:

#### § 3.5.3.1 A minimum of four (4) sets of hardbound notebooks each containing the following information:

- 1 All Subcontractor and supplier warranties fully executed in the form provided in Section 3.5.4 below.
- 2 The Contractor's warranty, and
- 3 A list of all Subcontractors and suppliers who performed Work on the Project or who furnished materials for use in the Project, such list to include the name, address, telephone number and responsible person at all such entities.

§ 3.5.3.2 Four (4) sets of operating and maintenance data for mechanical, electrical, plumbing, conveying and other such equipment provided by the Contractor as part of Work. This data shall include all manufacturers' operating and maintenance instructions, original copies of warranties, bonds or service contracts etc. The data shall identify:

- 1 The Subcontractor or installer;
- 2 The maintenance contractor, as appropriate; and
- 3 The local source of supply for parts and replacement.

§ 3.5.3.3 Four (4) sets of architectural product care and maintenance data as applicable for Work performed by Contractor. This data shall include manufacturer's recommendation for types of cleaning agents and methods, cautions against detrimental maintenance, and original copies or warranties, etc. The Contractor shall submit operating, care and maintenance data for all items of Work upon Substantial Completion.

§ 3.5.4 Unless otherwise required by the Contract Documents, the following form of warranty shall be used on this Project: (Contractor/Subcontractor/or supplier letterhead) We, the undersigned, hereby warrant that the (portion of the work guaranteed) \_\_\_\_\_ work which we have performed on the (Name of the Project) \_\_\_\_\_ at \_\_\_\_\_ (Project Address)

\_\_\_\_\_ has been performed and the materials and equipment we have supplied to and/or installed in the Project have been supplied or installed in accordance with the Contract Documents, all applicable laws bearing on the performance of the Work, the manufacturers' recommendations and the warranty included in the Contract Documents (collectively, the "Subcontractor Requirements"). For a period of two (2) years after Completion, We agree to repair or replace any or all of our work and/or materials and equipment, together with any other work and/or materials and equipment that may be damaged, displaced or marred in so doing or that may have been damaged, displaced or marred in connection with the performance of that work or by reason of any defects in materials or equipment installed as part of that work, that may prove to be defective in its workmanship or materials, or that may fail to conform with the Subcontractor Requirements, without any expense whatsoever to the Owner, excluding damage or defect caused by abuse, Modification not executed by the Contractor, improper or insufficient maintenance, improper operation or normal wear and tear under normal usage unless resulting from the negligence, act or omission of the Contractor,

any Subcontractor, or supplier or the agent or employee of any of them. Upon completion of any correction work under or pursuant to this Section warranty, the two (2) year correction period in connection with the work requiring correction shall be renewed and recommence.

If we fail to comply with the foregoing agreement within forty-eight (48) hours after being requested to do so in writing by the Owner, we do hereby authorize the Owner to have the defective or nonconforming work and/or materials and equipment repaired or replaced at our expense in which event all costs and expenses incurred in connection therewith shall be payable by us on demand. Our liability hereunder shall be joint and several.

Nothing contained in the preceding paragraph shall be construed to establish a period of limitation with respect to other obligations the we have under the first paragraph of this warranty or under the Contract Documents. Establishment of the one-year period for correction of Work as described in the preceding paragraph relates only to our specific obligation to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents or the warranty under the first paragraph above may be sought to be enforced, nor to the time within which proceedings may be commenced to establish our liability with respect to our obligations other than specifically to correct the Work. Nothing contained in this instrument shall in any way limit the right of the Owner to assert claims for damages resulting from patent or latent defects in the Work for the period of limitations prescribed by California law, and the rights under this instrument shall be in addition to any other rights and remedies Owner may have hereunder or at law or in equity.

Date:

Contractor/Subcontractor/ or supplier:

By:

(Original signature)

Title:

State License No.:

License Classification:

Address:

Telephone No.

Telefax No.

§ 3.5.5 If Contractor uses any portion of the Work or the Owner's other property prior to the date of Substantial Completion of the entire Work, such items shall be restored to their condition existing immediately prior to such use, or as otherwise specified in the Contract Documents. The Contractor's warranty and agreement to correct defective Work shall specifically include the Contractor's obligations under this Section.

§ 3.5.6 Supplementing the provisions of Section 12.2 of these General Conditions, the Contractor's obligation to correct defective, deficient or nonconforming Work shall extend for a period of two (2) years after the date of Substantial Completion of the Work (or, for items completed after Substantial Completion of the Work, two (2) years after completion of such items) unless otherwise agreed upon in writing by Owner and Contractor. Upon the repair, replacement or correction of any portion of the Work pursuant to this Section 3.5.6 or Section 12.2 of these General Conditions, the two (2) year correction period shall be deemed to have been renewed and such warranty shall continue for a period of two (2) years thereafter as to such portion of the Work, however in no event shall said correction period exceed four (4) years in total. The Contractor shall secure and deliver to the Owner written warranties and guarantees from all Subcontractors bearing the date of Substantial Completion, together with assignments thereof, if necessary, and delivery of such items shall be a condition precedent to final payment. Notwithstanding anything to the contrary contained in the Contract Documents, if requested by Owner, Contractor shall use its commercially reasonable efforts to secure warranties from manufacturers, which warranties extend beyond two (2) years from the date of Substantial Completion. Nothing contained in the this paragraph shall be construed to establish a period of limitation with respect to other obligations the Contractor has under Section 3.5.1 or other provisions of the Contract Documents. Establishment of the one-year period for correction of Work as described in this paragraph relates only to Contractor's specific obligation to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents or the warranty under Section 3.5.1 may be sought to be enforced, nor to the time within which proceedings may be commenced to

establish our liability with respect to our obligations other than specifically to correct the Work. Notwithstanding any provision to the contrary contained in this Contract, Contractor hereby acknowledges and agrees that the one-year correction period set forth herein does not in any way limit or waive the Owner's right to pursue legal action for latent construction defects in accordance with applicable laws, nor for patent construction defects in accordance with applicable laws.

### § 3.5.7 RECORD DRAWINGS AND SPECIFICATIONS

The Contractor shall compile and submit to the Owner upon Substantial Completion of the Premises:

- .1 Three (3) sets of permit drawings and specifications to Owner. These drawings and specifications shall bear all stamps, signatures, notations, changes, approval, etc. by the appropriate governmental agencies and a copy of the building permit(s) shall be included.
- .2 Three (3) sets of final working drawings and specifications, incorporating all revised drawings, sketches, details, etc., and marked to show any as-built conditions which deviate from the Drawings and Specifications, including all shop drawings to Owner.

The Contractor shall review with the Architect on a monthly basis, the status of the as-builts documents and verify that complete information for future CAD as-builts to be prepared by the Architect is being maintained. The as-built documents shall consist of record information including: (i) deviations from the Drawings made during construction; (ii) details in the Work not previously shown; (iii) changes to existing conditions or existing conditions found to differ from those shown on the Drawings; (iv) the actual installed position of equipment, piping, conduits, light switches, electric fixtures, circuiting, ducts, dampers, access panels, control valves, drains, openings, stub-outs; (v) the actual installed position of utilities and below ground components accurately located with respect to their elevation and alignment along their full length, showing bends and or offsets (such as dimensioned expansion loops or changes to go around, under or over other utilities), valves, and thrust blocks, and tied back to (dimensioned from) existing permanent structures (the elevations, alignment, and tie backs shall be established in the field at the time of installation before backfilling and the field records (or copies thereof) shall be maintained by the Contractor on site as part of the as-built documents for review and inspection by Owner and Architect; this information must be suitable to accurately locate all the utilities and below grade components on the Owner's site survey plan); and (vi) such other information as the Owner may reasonably request. Upon completion of the Work, the Contractor shall deliver to the Owner and the Architect the marked as-built documents [and electronic copies of the as-built documents] in a format acceptable to the Owner. Approval by the Architect and the Owner of as-built documents prepared by the Contractor and its Subcontractors shall be a condition precedent to the Owner's obligation to make final payment to the Contractor.

### § 3.5.8 ASSIGNMENT OF WARRANTIES

The specific product warranties shall be assigned to the Owner.

### § 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. All such taxes are included in the Guaranteed Maximum Price. Contractor shall indemnify, defend and hold harmless Owner from any liability for any such taxes and taxes relating to the employees of Contractor, any Subcontractor, including taxes and contributions required under the Federal Social Security Act and the unemployment compensation law or any similar law of any state.

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

§ 3.7.1 The building permit required for the operations under the Contract shall be obtained and paid for by the Owner, with Contractor's reasonable assistance. All other permits required, unless specified otherwise in the Contract Documents (see Permit Matrix attached hereto as Exhibit "K"), shall be obtained and paid for by the Contractor or its Subcontractors. The Contractor shall obtain all permits and licenses required for construction of the Project that are typically obtained by Subcontractors performing work in the locality (see attached Permit Matrix). The Contractor shall give all necessary notices, and shall pay all fees required by law, and shall observe and abide by all applicable local, state, and Federal laws, rules, ordinances, regulations, Building Codes, and acts relating to the performance of the Work, without assuming any design liability, except for the Design-Build Work.

Contractor shall send all notices, make all necessary arrangements, and provide all labor and materials required to protect all public utilities within the Project site or affected by the Work.

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders and all other requirements of public authorities applicable to performance of the Work. The Contractor shall procure and obtain all bonds required of the Owner (of which Contractor is notified) or the Contractor by the municipality in which the Project is located or any other public or private body with jurisdiction over the Project. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary backup material, and furnish the surety with any required personal undertakings. The Contractor shall also obtain and pay all charges for all approvals for street closings, parking meter removal, and other similar matters as may be necessary or appropriate from time to time for the performance of the Work, as a Cost of the Work. If Contractor fails to perform its obligations hereunder, Contractor shall be liable for and shall indemnify and hold harmless the Indemnified Parties (as defined herein) against any resulting fines, penalties, liabilities, judgments or damages, including reasonable attorneys' fees, imposed on or incurred by the parties indemnified hereunder which shall be in addition to the Contractor's indemnity obligations as set forth in Section 3.18 of these General Conditions.

§ 3.7.3 If the Contractor performs Work contrary to any Requirements, then the Contractor shall assume full responsibility for such Work and shall bear the costs attributable to correction, and Owner may pursue all available rights and remedies under the Contract or at law or in equity.

§ 3.7.4 Intentionally Deleted.

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

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

### § 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Guaranteed Maximum Price 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 and other expenses contemplated for stated allowance amounts shall also be included in the in the allowances; and
- .3 whenever costs are more than or less than allowances, the Guaranteed Maximum Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect the difference between actual costs and the allowances under Section 3.8.2.1 and 3.8.2.2 of these General Conditions.

§ 3.8.3 Materials and equipment under an allowance requiring selection by the Owner shall be selected by the Owner with reasonable promptness and the Contractor shall give the Owner sufficient prior notice of the time by which the Owner must make such selection(s) to avoid delay in the Work.

### § 3.9 SUPERINTENDENT

§ 3.9.1 In accordance with the requirements of the Contract Documents, the Contractor shall employ a competent superintendent as part of the Project team and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner the name and qualifications of a proposed superintendent. The Architect or the Owner may reply within fourteen (14) days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect or the Owner requires additional time to review.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### § 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor shall prepare and submit for the Owner's and Architect's approval a Contractor's construction schedule for the entire Work (the "Project Schedule"). The Project Schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work. Such revisions are subject to Owner's prior written approval.

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

§ 3.10.3 The Contractor shall perform the Work in accordance with the Project Schedule. The Project Schedule shall be updated monthly, or more frequently if and as required by the Contract Documents. Contractor shall prepare for Owner a monthly progress report which shows the actual progress of the Work correlated to the Cost of the Work. Owner may require that, along with such monthly progress report, Contractor shall submit a written report which specifies and demonstrates, at a minimum, that the Work is currently on schedule and, if not, the reasons therefore. Such progress report will also include any other information or documentation that the Owner may reasonably request. If the progress report shows that the Work is not proceeding in accordance with the Project Schedule, then Contractor shall prepare a Recovery Plan as provided in Section 3.10.5, below. The monthly progress report shall be in such detail and form as reasonably approved by Owner. In addition, each week, Contractor shall prepare, update and submit to Owner, short term, three (3) week "look-ahead" schedules generated from the Project Schedule. In no event shall the Contractor's updates or "look ahead" schedules alter the dates for Substantial Completion or Final Completion, except as expressly provided in the Contract Documents. Such Project Schedule updates and look-ahead schedules shall include, without limitation, the status of all orders and submittals, and be in computer media form on disks compatible with Microsoft Project software or as otherwise agreed to by Owner. Further, Contractor shall keep and maintain a daily log at the Project, evidencing the daily activities of the Work, including without limitation, all labor used, and inspections and testing conducted. Nothing in this Section 3.10.3 shall prevent Contractor from making a claim for an extension of the Contract Time in accordance with the Contract Documents.



§ 3.10.4 The Project Schedule shall be in a detailed precedence-style critical path management (“CPM”) or primavera-type format satisfactory to the Owner and the Architect that shall also (i) provide a graphic representation of all activities and events that will occur during performance of the Work; (ii) identify each phase of construction and occupancy; and (iii) set forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents (each herein referred to as a “Milestone Date”). Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the Project Schedule shall be deemed part of the Contract Documents and attached to the Agreement as Exhibit “D” if not already done so upon execution of the Agreement. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and the Architect and resubmitted for acceptance. The Contractor shall monitor the progress of the Work for conformance with the requirements of the construction schedule and shall promptly advise the Owner of any delays or potential delays. The accepted construction schedule shall be updated to reflect actual conditions (sometimes referred to in these General Conditions as “progress reports”) as set forth in Section 3.10.1 above, or if requested by either the Owner or the Architect. In the event any progress report indicates any delays, the Contractor shall propose an affirmative plan to correct the delay, including overtime and/or additional labor, if necessary. In no event shall any progress report constitute an adjustment in the Contract Time, any Milestone Date, the Contract Sum, or the Guaranteed Maximum Price, as applicable, unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order. Activities shown in the Project Schedule shall be in sufficient detail to demonstrate a practical plan to complete the design, engineering, fabrication and construction within the Contract Time. Without limitation to any other requirements of the Contract Documents, the Project Schedule, at a minimum, shall include the following:

- .1 the start and finish date of each activity;
- .2 the anticipated purchase and delivery of major materials and equipment;
- .3 Owner’s occupancy requirements (to the extent such information is provided to Contractor);
- .4 receipt and incorporation of Owner-furnished materials, equipment or other items;
- .5 Owner review periods and Owner review dates;
- .6 Submittal review periods and submittal review dates;
- .7 setting/connecting of utilities and devices by utilities and telephone by providers;
- .8 Governmental authority review periods; and
- .9 the activities identified as being on the critical path to achievement of Substantial Completion or Final Completion.

§ 3.10.5 In the event that Owner reasonably determines that the progress of Work affecting the critical path of the Project Schedule is behind the progress anticipated in the Project Schedule and Contractor is not entitled to receive an extension of the Contract Time in accordance with the Contract Documents, Contractor, within five (5) business days following Owner's demand, shall submit to Owner, for its approval a "Recovery Plan" which will indicate the manner in which Contractor is in fact on schedule or intends to get the Work back on schedule in accordance with the Project Schedule, which actions may include, without limitation, increasing the number of equipment, facilities, and workmen performing the Work, utilizing additional shifts or overtime work and requiring additional work shifts, or taking other similar measures (hereinafter referred to collectively as “Extraordinary Measures”). The Owner may exercise the rights furnished the Owner under or pursuant to this Section 3.10.5 as frequently as the Owner deems necessary to ensure that the Contractor’s performance of the Work will comply with any Milestone Date or completion date set forth in the Contract Documents. In addition, Owner may require Contractor to take Extraordinary Measures as Owner deems necessary to expedite progress of the Work in conformance with the progress anticipated by the Project Schedule. Neither the costs of preparing and implementing the Recovery Plan nor such direction by Owner to cause the Contractor to accelerate the Work to bring the actual progress of the Work back on schedule shall entitle the Contractor to an increase in the Guaranteed Maximum Price but may be the proper subject of Contingency funds to the extent expressly allowed pursuant to Section 5.3 of the Agreement.

§ 3.10.6 The Owner shall have the right to direct a postponement or rescheduling of any date or time for the performance of any part of the Work. The Contractor shall, upon the Owner's request, reschedule any portion of the Work affecting operation of the premises during hours when the premises are not in operation. Any postponement, rescheduling, or performance of the Work under this Section 3.10.6 may be grounds for an extension of the Contract Time, if permitted under Section 8.3.1 of these General Conditions, and an equitable adjustment in the Contract Sum if (i) the performance of the Work was properly scheduled by the Contractor in compliance with the requirements of the Contract Documents.

§ 3.10.7 Failure of Owner to discover errors or omissions in schedules that it has reviewed, or to inform Contractor that Contractor, Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Project Schedule, shall not relieve Contractor from its sole responsibility to perform and complete the Work within the Contract Time and shall not be a cause for an adjustment of the Contract Time or the Guaranteed Maximum Price.

§ 3.10.8 Contractor shall hold weekly progress meetings at the Project site. At such meetings, Contractor shall report in detail on the progress of the Work and how it compares to the Project Schedule.

### § 3.11 DOCUMENTS AND SAMPLES AT THE SITE

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

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

The Contractor shall cause to be prepared and shall review and submit all shop drawings, product data and samples required by the Contract Documents. All such drawings and samples, including, without limitation, all engineering shop drawings for mechanical and electrical work, shall be at the expenses of the particular Subcontractor who is to perform such work. Reproductions shall be borne by Contractor. All submittals are to be reviewed and stamped as such by the Contractor prior to submission.

Contractor shall cause the Subcontractors to perform the Work in this Section below and Contractor shall monitor such work. Submittals shall be made in accordance with the following:

§ 3.12.1 "Shop Drawings" are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, including, without limitation, a manufacturer, supplier or distributor, to illustrate some portion of the Work. Shop Drawings shall include all information pertinent to the item specified including, but not limited to, the type of materials used, gauges, sizes, pretreatments, colors, finishes, textures, and pattern of all components, and all fasteners, anchorage, fillers, sealants, accessories, primers, coating, including brand names and manufacturer's identification number and installation procedures.

- .1 Contractor shall cause such Shop Drawings to be prepared by skilled draftsmen and presented in a clear and thorough manner. Details shall be identified by reference to sheet and details, schedules or room numbers shown on the Contract Documents.

§ 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. Product Data shall be technical information published or prepared by the equipment or materials manufacturer and shall include complete engineering and dimensional data.

- .1 Contractor shall cause such Product Data to:
  - a. Clearly identify pertinent products or model;
  - b. Show performance characteristics and capacities;
  - c. Show dimensions and clearances required; and

- d. Show wiring or piping diagrams and controls.
- .2 Contractor shall cause to be prepared and submit all manufacturer's standard schematic drawings and diagrams to Owner and shall:
    - a. Modify drawings and diagrams to delete information that is not applicable to the Work; and
    - b. Supplement standard information to provide information specifically applicable to the Work.

§ 3.12.3 "Samples" are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged. Work not matching the quality of material or workmanship of the approved sample will be cause for rejection of the nonconforming Work.

- .1 Office samples shall be of sufficient size and quantity (as determined by the Architect) to clearly illustrate:
  - a. Functional characteristics of the product, with integrally related parts and attachment devices and
  - b. Full range of color, texture and pattern.
- .2 Field samples and mock-ups may be required and will be indicated in the documents.

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

§ 3.12.5 Contractor shall prepare Shop Drawings, Product Data, and Samples, for the Project to illustrate specific portions of the Work. Manufacturers' and suppliers' "fill-in-the-blanks" forms will not be acceptable unless modified to indicate exact requirements and conditions. Submittals shall contain only information relevant to the particular equipment or materials to be provided. Submittals that describe equipment and materials other than that to be provided shall not be submitted for review unless all inapplicable material is marked out. Contractor shall not submit photocopies of material and equipment illustration unless photocopies are true and accurate representations of the original illustrations. Shop Drawings which require or rely upon an engineered solution must be prepared by a licensed professional employed by Subcontractor or Subcontractor's consultant. Contractor shall be fully responsible for any errors or omissions by such Subcontractor or its consultants.

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

- .1 Contractor shall review Shop Drawings, Product Data and Samples prior to submission and shall stamp, date and initial each submittal reviewed.
- .2 The Contractor shall be responsible for:
  - a. Compliance with the Contract Documents;
  - b. Confirming and correlating quantities and dimensions;
  - c. Selecting fabrication processes and techniques of construction;

- d. Coordination of the Work represented by each submittal with other trades and other contractors;
  - e. Performing the Work in a safe and satisfactory manner;
  - f. Compliance with the Project Schedule;
  - g. All other provisions of the Contract Documents and of agreements with Subcontractors; and
  - h. Coordination of Owner-contracted work (provided Owner acknowledges that the Owner's separate contractors have a responsibility to cooperate with the Contractor in coordinating their respective scopes of work with Contractor).
- .3 It is understood that the notations of Owner's design consultants on the submittals are not to be construed as an authorization for additional work or additional cost.
- .4 If any notations represent a change to the Contract Sum, Contractor shall notify the Owner and submit a proposal in accordance with procedures specified before proceeding with this portion of the Work.
- .5 Contractor shall notify the Owner in writing, at time of submission, of any deviations in the submittals from requirements of the Contract Documents. Contractor shall not proceed with this portion of the Work prior to acceptance of deviation by Owner and Architect.
- .6 Contractor shall notify the Owner in writing of any notations made by Owner's design consultants that the Contractor finds unacceptable and shall resolve such issues prior to proceeding with the Work.
- .7 Each Submittal shall be identified with not less than the following information:

Project Name:

[ Place Project Name/City/State here ]

Date:

Contractor's Submission Identification:

Specification Section Number and Transmittal Number (i.e., 14211-2)

- .8 Each submittal shall be accompanied by a transmittal form filled out in the following manner:

Project Name:

[ Place Project Name/City/State here ]

Contractor/Job Number:

( Place Contractor's name and job number here.)

Contractor's Transmittal Number:

(Provide consecutively numbered transmittals for each submittal within each Specification Section, i.e., 14211-1, 14211-2, 14211-3.)

Specification Section and Paragraph Reference:

(The Specification Section number and Article where item is specified.)

Drawing Number/Detail Reference:

(The sheet number and detail number where item is drawn in the Contract Documents.)

Submitted By:

(Name of Contractor's employee responsible for Contractor's review.)

Architects/Engineers:

[ Place Architect's name here ]

(Include Engineer's name if applicable.)

Transmittal Date:  
(Date leaving Contractor's office.)

Subcontractor/Supplier or Manufacturer:  
(Name of firm preparing original submittal.)

Copies and Type:  
(Number of copies submitted and type of material submitted [ sepia, print, product data, or sample ].)

Drawing Number, Description and Date:  
(Number on the drawing. Title on the submission where possible and date on the submission. Where a group of related drawings is submitted as one entity, only one entry need be made with the general description of what is included. Number drawings consecutively with the same date, e.g., L1 through L4/Miscellaneous Metal, February 1, 2005.)

Contractor shall submit copies of Product Data and Contractor's certifications and warranties in a form and quantity satisfactory to Owner.

Contractor shall review and check Submittals prepared by Subcontractors and mark any required corrections thereto with green pencil. The Architect will review Submittals bearing corrections marked by Contractor and add comments with red pencil.

Contractor shall not perform any portion of the Work requiring submittal and review of any Submittal until the respective Submittal has been approved by the Architect. All such Work shall be in accordance with approved Submittals.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, dimensions, quantities, relations to existing work, coordination with work to be installed later, coordination with information on previously accepted Shop Drawings, Product Data, Samples or similar submittals, field measurements and field construction criteria related thereto and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents. The accuracy of all such information is the responsibility of the Contractor.

The Architect or the appropriate design consultant will review and mark Submittals with comments or corrections that may be required. The design consultant, where applicable, will retain one copy of the Submittals for record, the Architect will retain one copy for record and forward one (1) copy to Owner for record, and the electronic versions will be annotated as required and be returned to Contractor along with one set of direct line prints.

§ 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. The portions of the Work that are the subject of the approved submittal shall be completed in accordance with such approved submittal.

§ 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. Contractor shall make all revisions as noted by the Architect and shall resubmit in the original format as the prior Submittal, the required number of corrected copies of Submittals until no exceptions are taken. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work, such as the Design-Build portions 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 (a) 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, and (b) cause all parties performing such design, engineering or other professional services to comply with reasonable requirements of the Owner regarding qualifications and insurance. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals. 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. Without limiting the generality of the foregoing, the Owner and the Architect shall be entitled to rely upon such certifications and approvals performed or provided by such design professionals, and neither the Owner nor the Architect shall be expected to make any independent examination with respect thereto.

§ 3.12.11 Contractor shall submit complete and accurate Submittals at the first submission. If the Submittal is returned not approved, only one (1) additional submission will be reviewed at Owner's cost. Any additional submissions will be reviewed at the cost of Contractor.

§ 3.12.12 Unless otherwise specifically agreed, Samples will be retained by Architect until Final Completion of the Project.

§ 3.12.13 Contractor shall allow not less than fourteen (14) Days for Submittal review by the Architect and such period of review shall not be a basis for any claim of delay in the progress of the Work.

§ 3.12.14 When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Architect and Owner shall be entitled to rely upon the accuracy and completeness of such calculations and certifications.

§ 3.12.15 After receiving and checking Submittals for compliance with the information contained in the Contract Documents, Contractor shall affix a Statement of Certification as specified below. Such certification shall be made by the owner, a partner, a corporate officer, or other person duly authorized to sign binding agreements for Contractor. The Submittal shall be accompanied by a notarized letter of authorization from Contractor naming the person duly authorized to sign for Contractor. Submittals which are not properly certified by Contractor will not be reviewed by the Architect and will be returned to Contractor. Prior to submission of Submittals Contractor shall stamp onto each brochure or Sample and each sheet of drawings the following Statement of Certification:

The undersigned hereby certifies that this Submittal for [ place Project Name/City/State here ], has been checked prior to transmittal to the Architect and it complies in all respects, except as noted, with the requirements of the Contract Documents and physical space limitations on the Project Site.

(Contractor's Name):  
Signed:  
(Typed Name):  
Position:  
Date:

§ 3.12.16 Intentionally Deleted.

§ 3.12.17 After completion of installation, but prior to Substantial Completion of Project, Contractor shall submit Final Statement of Certification for all materials and equipment as specified. Statements shall be certified by Contractor as to performance and compliance with Contract Documents. Final Statements of Certification shall be made only by the owner, a partner or a corporate officer, or other person duly authorized to sign binding agreements for Contractor. The certification shall be as follows:

The undersigned hereby certifies that the installation of the (materials/equipment) complies in all respects, except as noted, with the requirements of the Contract Documents for [ place Project Name/City/ State here ].

The undersigned further certifies to the best of its knowledge and belief that all products and materials installed, and processes used, do not contain asbestos or polychlorinated biphenyls (PCB).

(Contractor's Name): \_\_\_\_\_  
Signed: \_\_\_\_\_  
(Typed Name): \_\_\_\_\_  
Position: \_\_\_\_\_  
Date: \_\_\_\_\_

§ 3.12.18 TRANSMITTAL FORMS AND NUMBERS

All Shop Drawings, Product Data and Samples submitted shall be accompanied by the transmittal form (copies required) attached within the Project Manual.

- .1 This form shall be reproduced by the Contractor and shall be properly filled in.
- .2 Each transmittal form shall be numbered consecutively in the space provided.

The Contractor has rendered and will render opinions, advice and recommendations to the Owner and the Architect in order to help reduce the overall cost. These services are provided by the Contractor at no additional fee. By doing so, the Contractor has not assumed any of the duties or obligations of the Owner or Architect (except for the Design-Build Work). The final decision as to the use of any opinions, advice or recommendations supplied by the Contractor is, and remains, the responsibility of the Owner and Architect.

§ 3.12.19 COLOR SELECTION:

§ 3.12.19.1 As soon as possible, Contractor shall obtain from Subcontractors and submit to Architect, a complete list of materials for which colors are to be Selected, including manufacturer's name and all pertinent data which will facilitate completion of color schedule, until all submittals and required samples have been submitted to and reviewed by Architect. Such list shall include items which may come in only one or a limited number of colors. Items which are specified without any reference to color, but which come in a color, shall be brought to the Architect's attention for color selection. In no case, shall Contractor or Subcontractors select a color for materials, products or equipment for which colors are available without first consulting the Architect.

§ 3.12.19.2 When the phrase "color selected by Architect." is used in the Drawings and Specifications, it shall mean that color, texture or pattern will be Selected by the Architect from the manufacturer's full range of standard and special colors. The phrase "custom color selected by Architect.", "match existing color." or "match Architect's approved sample." shall mean that color, texture or pattern has been Selected or that it will be Selected by the Architect and that Contractor shall provide color, texture or pattern conforming to that selection.

§ 3.12.19.3 When, due to the nature of the material, the material is available in a range of colors, i.e., natural stone, brick, and tile, Contractor shall submit the full range of available colors for that material for the Architect's review. Materials not conforming to the approved color range will be rejected and Contractor shall remove nonconforming materials from the Project site and replace them with materials in the approved color range at Contractor's expense.

### § 3.13 USE OF SITE

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

Contractor shall obtain written approval from Owner prior to beginning Work in any area of the Project site and shall schedule Work in such a manner as to avoid unnecessary disruption to the operations of (i) Owner, (ii) adjacent landowners, or (iii) building tenants of (i) or (ii). To the extent possible, any work which may disrupt Owner or adjacent property owners, or building tenants shall be performed during those periods which would be the least disruptive to such parties (but in any event, during those times permitted by laws, Codes and ordinances). Such disruptive work includes but is not limited to drilling or cutting of structural members, demolition, removal of equipment or machinery, removal of waste or trash, machine noise, vibrating, hammering, pounding, crushing, or grinding activities, stocking, loading of material or equipment, and any work requiring access to adjacent occupied areas such as ceiling plenums or vertical chases.

§ 3.13.1 Only materials and equipment which are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage and all other adversity is solely the responsibility of the Contractor. Contractor shall at all times perform the Work in a manner that affords reasonable access, both vehicular and pedestrian, to the Project site and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the Project site shall be free from Contractor's debris, building materials and equipment likely to cause hazardous conditions.

§ 3.13.1.2 The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which may be withheld in the sole discretion of the Owner.

§ 3.13.1.3 Without limitation of any other provision of the Contract Documents, the Contractor shall minimize any interference with the occupancy or beneficial use of (i) any areas and buildings adjacent to the site of the Work and (ii) the Building in the event of partial occupancy, as more specifically described in Section 9.9 of these General Conditions. Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Owner.

- .1 Without limitation of any other provision of the Contract Documents, the Contractor shall comply with the Requirements and all rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the Building, as amended from time to time. The Contractor shall immediately notify the Owner in writing if during the performance of the Work, the Contractor finds compliance of any portion of such rules and regulations to be impracticable, setting forth the problems of such compliance and suggesting alternatives through which the same results intended by such portions of the rules and regulations can be achieved. The Owner may, in the Owner's sole discretion, adopt such suggestions, develop new alternatives, or require compliance with the existing requirements of the rules and regulations.



- .2 The Contractor shall also comply with all insurance requirements and collective bargaining agreements applicable to use and occupancy of the Project site and the Building for which the Contractor is notified by Owner.
- .3 In addition, Contractor expressly recognizes and acknowledges that the Building is part of a first-class commercial project and that any activities involving entry to the Building, or the project or center in which the Building is located, by Contractor (and/or its Subcontractors, consultants and/or material suppliers and their respective employees, agents and/or representatives (each, a "Contractor Party", and collectively, the "Contractor Parties")) must be scheduled in advance with the Owner and to the fullest extent possible, outside of normal operating hours for the Building or when Contractor's and/or the Contractor Parties' work shall be the least disruptive to the Building's operations and that of the Building's tenants, occupants, visitors, customers and invitees.

§ 3.13.1.4 Where it is necessary for Contractor to use portions of existing buildings (other than the buildings into which the Work is incorporated) and/or grounds for operations, such use shall be strictly in accordance with requirements indicated in the Drawings and Specifications and in accordance with a plan submitted by Contractor and approved in writing by Owner prior to Contractor's use of such areas.

§ 3.13.1.5 Contractor shall provide and maintain weather protection and temporary heating and air conditioning to properly protect all Work from damage and to permit construction to proceed in accordance with the Project Schedule. Contractor shall provide site plans indicating temporary facilities, hoisting and weather protection plans for approval by Owner prior to commencing Work. Contractor shall not use any installed or partially installed heating or air conditioning system for temporary heating or air conditioning purposes, unless specifically authorized in writing by Owner. When necessary to enclose buildings for construction, Contractor shall provide all permanent and temporary enclosures required and shall provide temporary heating or air conditioning to maintain suitable temperatures for the work of all trades all in compliance with regulations of governing authorities. Temporary heating or air conditioning shall be maintained for such periods as required or as directed by Owner. When directed by Owner, all temporary enclosures shall be removed by Contractor. If portable ventilating fans are used to dispel moisture, Contractor shall provide the same with adequate safety guards and the area shall be broom clean to ensure protection of personnel. Tarpaulins shall be flameproofed by Contractor.

§ 3.13.1.6 Contractor shall provide proper and safe access to and egress from any occupied areas at all times. The delivery, unloading, staging and storage of material and equipment shall be only in areas approved by Owner. Such areas will accommodate only limited amounts of material and equipment. Contractor shall be responsible for coordinating the arrival of material and equipment in order to prevent any accumulation outside designated areas. The movement of material, equipment and personnel shall be restricted to those areas and routes within the Project site as designated in the Contract Documents. Any damage caused by such movement shall be repaired by Contractor to the satisfaction of, and at no cost to Owner. Contractor shall schedule, coordinate with and receive prior approval from Owner for the use of any service or freight elevator in any area which is occupied or for which Owner has accepted access and shall coordinate with any other contractors working within the Project site. Use during business hours will be on a first come first served basis. Contractor shall respect the rights and privileges of Owner and other contractors, vendors or suppliers working at the Project site. Passenger elevators may be used to move materials, equipment, tools or trash only with prior written approval by Owner.

### § 3.13.2 GENERAL SERVICES AND TEMPORARY FACILITIES

The Contractor shall be responsible for arranging for and providing all general services and temporary facilities as specified herein and as required for the proper and expeditious prosecution of the Work, including but not limited to the following temporary and general services: construction fencing and screening; security; telephone service; broadband internet access; storage facilities; temporary sanitary facilities; temporary water, temporary lighting and power; openings; ramps and runways; protective coverings, barricades; fire protection; rubbish removal; temporary first aid; traffic control; cleaning; commercial general liability insurance, workers compensation insurance and all other insurance required to be maintained by the Contractor and Subcontractors under the Contract Documents (Builders Risk insurance will be by Owner, as and to the extent provided elsewhere in the Contract Documents); main office travel expense; postage and mailing; blueprint and reproduction costs; office supplies and forms; repair and maintenance; temporary enclosures; safety, small tools; miscellaneous trucking, etc.; and a project representative (although such project representative is not required to be officed on site). The Contractor shall pay all costs for such general services and temporary facilities, unless otherwise specified, and shall maintain such

general services and temporary facilities until termination of the Contract or such later date as is required elsewhere in the Contract. The Contractor hereby acknowledges and agrees that the Contractor shall not disassemble and/or remove the construction fencing, the on-site construction trailer and the Project security for which Contractor is responsible until the earlier of (a) the date on which the Contractor has completed the last portion of the Work and has submitted its certificate of Final Completion to the Owner and Lender for the Work, or (b) the date the Contractor receives written direction or permission from the Owner and the Owner's Lender to disassemble and remove such items.

#### § 3.13.2.1 OFFICES AND STORAGE FACILITIES

The Contractor shall provide field office facilities for the use of its personnel, including utility and telephone service, furnishings, equipment, etc. The Contractor shall make work structurally, mechanically and electrically sound throughout; install work in a neat and orderly manner, maintain, clean, service and repair facilities to provide continuous usage, and to the quality for the original installation; relocate facilities as required by progress of construction, by storage or work requirements of Owner and Subcontractors employed at the site. The Contractor shall completely remove temporary offices, storage facilities, materials, equipment and services at the termination of the Contract or such later date as is required elsewhere in the Contract; repair damage caused by installation or use of temporary facilities; clean after removal; and restore existing or permanent facilities used for temporary purposes to specified, or to original condition.

Each Subcontractor shall be responsible for its own office and storage facilities and the location thereof shall be coordinated with the Contractor's superintendent and Owner.

#### § 3.13.2.2 TELEPHONE SERVICE

The Contractor shall arrange for telephone service with local telephone service company, provide direct line telephone service at the Project for the use of personnel and employees and pay all costs for installation, maintenance and removal, and service charges (or make arrangements with Subcontractors).

#### § 3.13.2.3 TEMPORARY SANITARY FACILITY

The Contractor shall provide and maintain temporary toilets as necessary for use of workmen, locate temporary toilets where directed, relocate inside building or connect to sewer as soon as work will allow and keep toilets in sanitary condition. The Contractor may utilize permanent toilet rooms only to the extent approved by the Owner. Workmen shall not use permanent toilet rooms, shall keep toilet rooms clean and sanitary and shall not clean construction tools in the toilet rooms. The Contractor shall repair or replace all damage to the permanent toilet rooms caused by workmen to the Owner's satisfaction and rod out all floor drains in these areas.

#### § 3.13.2.4 TEMPORARY WATER

The Contractor shall provide all temporary water as required for completion of all Work.

#### § 3.13.2.5 TEMPORARY HEAT AND VENTILATION AND AIR CONDITIONING (HVAC)

Contractor shall provide all temporary HVAC for temperature requirements for the construction and protection of the Work. Contractor shall submit or include in the scope of the work for the HVAC Subcontractor the cost of extending the factory warranties for the new equipment utilized until the later of Owner's final acceptance of the Work or until Owner commences occupancy of the Project. The HVAC Subcontractor shall include in its scope of work the ongoing maintenance of the HVAC equipment being utilized and return all such equipment to a like new condition as acceptable to the respective HVAC equipment manufacturers.

In providing temporary HVAC as set forth above, the permanent heating and ventilation systems may not be used for these purposes unless prior written approval of the Owner is obtained. If the Contractor so uses the permanent heating and ventilation systems, such systems shall be (i) used, serviced and maintained in accordance with any applicable Specifications or plan approved by the Owner and otherwise pursuant to requirements imposed by the Owner, (ii) cleaned, and all filters and any other parts and equipment that normally require periodic maintenance and replacement shall be replaced, so that the systems are left in "like new" condition at Substantial Completion of the Work, and (iii) used at the sole cost, risk and responsibility of the Contractor. No such use by the Contractor shall cause any warranty or correction periods to commence prior to Substantial Completion of the Work.

#### § 3.13.2.6 TEMPORARY LIGHTING AND POWER

The Contractor shall provide all temporary lighting and power required for completion of all Work.

### § 3.13.2.7 FIRE PROTECTION

The Contractor shall provide a fire protection and prevention program for employees and personnel at the Project site and shall provide and maintain fire extinguishing equipment ready for instant use at all areas where the Work is being performed as required to supplement temporary or permanent fire extinguishing equipment.

The Contractor shall enforce safety discipline, which enforcement shall include, without limitation, the following items:

- Storing volatile materials in an isolated location;
- Avoiding accumulations of flammable debris and waste in or about the Project;
- Prohibiting smoking near hazardous conditions;
- Closely supervising welding and torch-cutting operations in the vicinity of combustible materials and volatile conditions;
- Maintaining existing sprinkler systems in effect in the construction areas and maintaining fire-extinguishing equipment in working condition (with a current inspection certificate attached to each extinguisher) in compliance with Owner's insurance provider's requirements; and
- Any other protective measures required by the government authorities pertaining to such fire protection and prevention program.

### § 3.13.2.8 TEMPORARY FIRST AID

The Contractor shall provide first aid equipment and supplies, and personnel in accordance with CAL-OSHA regulations available to render first aid at the Project site and provide a sign, posted at the telephone(s), listing the telephone numbers for emergency medical services, physicians, ambulance services and hospitals.

### § 3.13.2.9 LIMITING EXPOSURES OF WORK

§ 3.13.2.9.1 Contractor shall supervise performance of the Work in such a manner and by such means which shall ensure that none of the Work, whether completed or in progress, shall be subjected to harmful, dangerous, damaging, or otherwise deleterious exposure during the construction period. Such exposures include, where applicable, but not by way of limitation, the following:

- Excessive static or dynamic loading,
- Excessive internal or external pressures,
- Excessively high or low temperatures,
- Thermal shock,
- Excessively high or low humidity,
- Air contamination or pollution,
- Water or ice,
- Solvents,
- Chemicals,
- Light,
- Radiation,
- Puncture,
- Abrasion,
- Heavy traffic,
- Soiling,
- Bacteria,
- Insect and rodent infestation,
- Combustion,
- Electrical current,
- High speed operation,
- Improper lubrication,

Unusual wear or other misuse,  
Incompatible interface,  
Destructive testing,  
Misalignment,  
Excessive weathering,  
Unprotected storage,  
Improper shipping or handling,  
Theft, and  
Vandalism.

### § 3.14 CUTTING AND PATCHING

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

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work. Fitting of all materials shall be done to preserve the strength and durability of the material and to present a clean, well-worked appearance.

### § 3.15 CLEANING UP

§ 3.15.1 The Contractor and each Subcontractor shall keep the Project, 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 waste materials, rubbish, cartons, wood, debris, trash, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project, etc. and shall leave all floor services in a broom-clean condition and clean all other surfaces. Additionally, the Contractor and each Subcontractor shall remove rubbish, cartons, wood, debris, trash, etc., resulting from performance of their work on a daily basis and deposit same into suitable rubbish containers on the floor. The rubbish containers shall be water sprayed by Contractor as required to prevent dust nuisance. The Contractor shall not be responsible for supervising rubbish removal or providing rubbish containers for work performed by Owner's separate contractors. In the event any Subcontractor fails to perform the clean up obligations set forth in this Section 3.15, Contractor will perform such cleanup work and backcharge the Subcontractor.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so upon two (2) business day's notice and Owner shall be entitled to reimbursement from the Contractor immediately following Owner's demand.

§ 3.15.3 Unless otherwise required in the Contract Documents, during the course of the construction of the Project and as the Contractor completes the Project, the Contractor shall clean all streets within the Project area.

§ 3.15.4 Contractor shall replace broken glass, and at or before completion of the Work, as directed by Owner, shall replace such damaged or broken glass. After broken glass has been replaced, Contractor shall remove all labels, wash, and polish both sides of all glass. Further, in addition to general broom cleaning, Contractor shall perform the final cleaning for all trades immediately upon completion of the Work, which shall include, but not be limited to, the following: remove temporary protections, remove marks, stains, spots, marks and dirt; remove paint, spots and smears from all surfaces; and leave the Work clean of dirt, smattering of paint, plaster, concrete, mortar, fingerprints and foreign matter. Further, the Contractor shall clean fixtures, cabinet work and equipment, removing stains, paint, dirt and dust, and leave same in undamaged, new condition; clean aluminum in accordance with recommendations of the manufacturer; and clean resilient floors thoroughly with a well rinsed mop containing only enough moisture to clean off an surface dirt or dust and buff dry by machine to bring the surfaces to sheen. The Contractor shall cause interior areas to be cleaned prior to start of finishing painting and shall schedule operations so that dust and other contaminants will not fall on wet or newly coated surfaces.

§ 3.15.5 If there is any conflict between these requirements for clean-up and the Specifications, the more stringent requirements shall be complied with by the Contractor. Costs incurred by Owner under this Section 3.15 and not reimbursed by Contractor shall be deducted from amounts otherwise due to Contractor.

§ 3.15.6 Upon Substantial Completion of the Work, the Contractor shall perform a final cleaning of the interior and exterior of the building using professional cleaners or experienced workmen, using only cleaning materials and methods recommended by the manufacturer of the surface material to be cleaned and using or causing to be used care not to scratch or damage any surfaces being cleaned. Additionally, the with respect to Contractor's final cleaning obligations to the interior and exterior of the building, Contractor's final cleaning shall include without limitation, the following:

- .1 Remove putty stains from glass; wash and polish same, inside of building;
- .2 Remove marks, stains, fingerprints, labels, other soil and dirt from sight-exposed surfaces;
- .3 Clean and polish hardware for all trades, which shall include removal of stains, dust, dirt, paint and the like;
- .4 Remove spots, soil, paint from ceramic tile work and wash same;
- .5 Clean light fixtures, plumbing fixtures, equipment and remove stains, paint, dirt and dust therefrom;
- .6 Remove temporary floor protections for finished floors and clean and polish such floors;
- .7 Clean interior metal surfaces, including doors and windows, required to have polished finished, remove all oil stains, dust, dirt, paint and the like and polish and leave without fingermarks or other blemishes; and
- .8 Where resilient flooring is supplied, clean, wax and polish all resilient floor surfaces.

### § 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located. Exercise of such rights shall not release the Contractor from any of its obligations under the Contract Documents. Owner and Architect agrees that the exercise of such rights shall not unreasonably interfere with the Contractor's prosecution of the Work, and shall be in compliance with Contractor's safety program.

### § 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe or should have reason to believe in the exercise of the Standard of Care 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, Contractor shall indemnify and hold harmless the Owner and its direct and indirect subsidiaries, members, principals, partners, shareholders, trustees, beneficiaries, officers, directors, employees, licensees, successors, assignees, and representatives and the Transbay Joint Powers Authority, a joint powers authority created under California Government Code Sections 6500 et seq., the City of San Francisco, and the State of California, (collectively hereinafter "Indemnified Parties") from and against all third party claims, demands, allegations (whether valid or invalid), actions, proceedings, liabilities, damages and losses (direct or consequential), fines, and expenses, (other than the Work itself) including without limitation defense costs and fees of attorneys, consultants, and experts, arising out of, relating to, or resulting from (directly or indirectly), or claimed to have arisen or resulted from, in whole or in part: (i) the performance of the Work; (ii) the failure of Contractor or its Subcontractors to perform their obligations in accordance with this Agreement, the Contract Documents, or

applicable law; (iii) the inaccuracy or breach of any representation or warranty of Contractor or Subcontractors in this Agreement or in the Contract Documents; or (iv) any negligence or intentional misconduct of Contractor, its Subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable (collectively in this Section 3.18.1, "Indemnified Matters"). Contractor shall pay such indemnified damages, losses, fines, expenses, costs, and fees as they are incurred by the Indemnified Parties. This indemnification shall not be construed to deny or reduce any other rights or obligations of indemnity that would otherwise exist as to an Indemnified Party under this Agreement, the Contract Documents, or the common law. To the fullest extent permitted by law, all of the obligations of Contractor under or pursuant to this Section 3.18.1 shall apply regardless of whether any Indemnified Matter is caused in whole or in part by an Indemnified Party, provided that, notwithstanding anything to the contrary contained above, except to the extent that an Owner Controlled Insurance Program, Contractor Controlled Insurance Program or other wrap-up type insurance is provided in connection with the Work and then only to the extent of such insurance, the Contractor's obligation to defend, indemnify and hold harmless an Indemnified Party from any Indemnified Matter shall not apply to the extent such Indemnified Matter arose from the sole or active negligence, or willful misconduct of an Indemnified Party. The intent of this paragraph is to comply with the requirements of California Civil Code Section 2782(a) and (c), and it shall be interpreted in a manner consistent with California Civil Code Section 2782(a) and (c).

§ 3.18.2. In the event that Contractor breaches any of its indemnity obligations hereunder or under any other contractual or common law indemnity: (i) Contractor shall pay to Owner all liabilities, loss, cost, or expense (including attorney's fees) incurred as a result of said breach, and the reasonable value of time expended by the party being indemnified and its employees as a result of said breach; and (ii) the Indemnified Parties may deduct and offset from any amounts due to Contractor under this Agreement any amounts owed by Contractor to an Indemnified Party pursuant to this Agreement.

§ 3.18.3. Contractor's obligations hereunder to indemnify and hold harmless Indemnified Parties are not limited by any amount of insurance that Contractor is required to carry under this Agreement or the Contract Documents.

§ 3.18.4. The indemnification obligations under this Section 3.18 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Contractor or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts. Contractor waives any immunity from or limitation on its indemnity or contribution liability to Owner based upon such acts.

§ 3.18.5 The indemnity obligations created hereunder are in addition to Contractor's obligations to procure insurance.

§ 3.18.6 Contractor shall require its Subcontractors to provide similar indemnities to Contractor, Owner, and the other Indemnified Parties in a form acceptable to Owner.

§ 3.18.7. The terms of this Section 3.18 shall survive the Work is completed or earlier termination or expiration of this Agreement.

§ 3.18.8. The foregoing indemnity and hold harmless agreement shall include indemnity for all costs, expenses and liabilities (including, without limitation, attorneys' fees and disbursements) incurred by the Indemnified Parties in connection with any such claim or any action or proceeding brought thereon, and the defense thereof. In addition, in the event that any action or proceeding shall be brought against one or more Indemnified Parties by reason of any such claim, Contractor, upon request from the Indemnified Party, shall resist and defend such action or proceeding on behalf of the Indemnified Party by counsel appointed by Contractor's insurer (if such claim is covered by insurance without reservation) or otherwise by counsel reasonably satisfactory to the Indemnified Party. The Indemnified Parties shall not be bound by any compromise or settlement of any such claim, action or proceeding without the prior written consent of such Indemnified Parties which will not be unreasonably withheld, conditioned, or delayed.

### § 3.19 DESIGN BUILD-WORK

§ 3.19.1 Contractor acknowledges that it shall be responsible for the design and method of construction of those portions of the Work (the "Design-Build Work") for which only performance criteria are given or which are otherwise so identified in the Agreement or other Contract Documents, including sizing sequence, placement and details of construction, and it hereby guarantees that (1) the Design-Build Work shall be constructed in compliance with all building codes or ordinances in effect as of the date of construction and shall be in compliance with the requirements of the Contract Documents; and (2) the design and method of construction of the Design-Build Work shall not incorporate or employ the use of any product, process or technique which may be protected by common law or statutory patent, copyright or trade secrets unless Contractor or its Subcontractor shall be the lawful owner or licensee of same. All Design-Build Work that may be required by the Contract Documents (the "Design-Build Work") shall be performed by Contractor or one or more Subcontractors retained by Contractor in accordance with the following requirements.

§ 3.19.2 Notwithstanding the generality of any other warranties or indemnities contained in the Contract Documents, Contractor shall indemnify, defend and hold Indemnified Parties harmless from any and all claims, liabilities, damages and expenses including damage to the Work and reasonable attorneys' fees and investigation costs, to the extent resulting from the negligent performance by Contractor of the foregoing obligations or resulting from the inadequacies of the design, techniques or methods of construction of the Design-Build Work.

§ 3.19.3 The design and the drawings and specifications for the technique and method of construction of the Design-Build Work shall be prepared and shall result in work which is in compliance with the requirements of the Contract Documents. Contractor shall cause such drawings and specifications to be prepared, stamped and signed by qualified, registered, licensed engineers authorized to practice their professions under the laws of the State in which the Project is located. Contractor shall cause all design-build subcontractors to grant to Owner, at Owner's election, either complete ownership of, or an irrevocable and exclusive license to use, all drawings, specifications and other documents and work product for the completion, operation, maintenance and use of the Project.

§ 3.19.4 Prior to commencement of the Design-Build Work, Contractor shall cause to be delivered to Owner certificates of insurance evidencing current insurance policies covering the errors or omissions of the persons designing the Design-Build Work with policy limits.

§ 3.19.5 Contractor shall prepare or cause the respective Subcontractor to prepare and submit to the Contractor and Owner for review and approval by the Architect, complete drawings for the installation of the Design-Build Work (the "Design-Build Drawings"). The Design-Build Drawings shall be prepared and submitted in accordance with a submittal schedule approved by the Architect and the Owner. The Contractor or appropriate Subcontractor shall revise the Design-Build Drawings for the Contractor-Designed Work as may be required by the Architect to conform the Design-Build Drawings to the Contract Documents.

§ 3.19.6 Contractor shall cause the design of the Design-Build Work, the Contractor Designed Drawings, and the installation of the Design-Build Work to comply with (i) the requirements of the Contract Documents; and (ii) all laws, regulations, ordinances, and requirements of, and conditions of any approvals, certifications or permits given by, any and all governmental authorities and agencies having jurisdiction over the design, construction, existence or use of the Project, whichever are more stringent, all without necessity of variance unless specifically consented to or requested by the Owner or Contractor.

§ 3.19.7 Contractor's duties shall include, in addition to the duties imposed on Contractor under the Contract Documents, the following:

§ 3.19.7.1 Preparation for approval by Owner of all necessary design documents for the Design-Build Work illustrating the scale and relationship of Project components.

§ 3.19.7.2 Preparation of all Construction Documents setting forth the requirements of construction of the Design-Build Work in detail sufficient to enable Subcontractors and suppliers to bid their respective portions of the Design-Build Work and to enable workmen of ordinary skill to construct the Design-Build Work.

§ 3.19.7.3 Documentation of all changes in the Construction Documents made during the course of the Work, and provision of a complete set of As-Built Drawings at the conclusion of the Work. Contractor agrees that all changes in the Construction Documents will be depicted in "clouds" shown on Contractor's drawings, and copies of any Construction Documents showing such changes shall be promptly provided to Owner, for Owner's approval.

§ 3.19.7.4 Obtaining all governmental approvals required for the Design-Build Work, plan approval, and designing the Design-Build Work so as to comply with all applicable federal, state and local laws, rules, codes and regulations.

§ 3.19.8 Contractor shall be responsible to the Owner for loss, damage and expense suffered by Owner on account of any error or omission of the Contractor or Subcontractor in the design and engineering of the Design-Build Work. In the performance of its obligations under the Contract Documents with respect to the Design-Build Work, Contractor shall perform, or cause the appropriate Subcontractor to perform the Design-Build Work in a manner to avoid any errors, omissions, or negligence which would result in:

(a) The documents prepared by the Contractor or appropriate Subcontractor containing conflicts, errors or omissions; violations of any laws or regulations; or variations from any decision or instruction from the Owner or the Architect communicated in writing to the Subcontractor or the Contractor.

(b) Any failure of the design of the Design-Build Work to comply with Owner's or the Architect's requirements for the Project identified in the Contract Documents and other requirements of the Contract Documents pertaining to the Design-Build Work and free of design deficiencies that materially and adversely affect such use.

§ 3.19.9 Working drawings and specifications prepared by any Subcontractor or Contractor as the work product under the Construction Contract shall become the property of the Owner free of any retention rights of the Contractor or any Subcontractor.

§ 3.19.10 Contractor shall cause the design and installation of all Design-Build Work to interface properly with the design and construction of the entire Project and the Drawings and Specifications prepared by the Architect and the other consultants engaged by the Owner. Contractor shall be responsible for, or shall cause the appropriate Subcontractor to be responsible for the proper coordination of the Design-Build Work with the design and engineering work of the Architect and the other consultants.

§ 3.19.11 Neither the review nor approval nor other action by the Architect or the other consultants of the Owner with respect to the working drawings or other documents prepared by the Contractor or by any Subcontractor(s) hereunder shall relieve Contractor or the respective Subcontractor of its responsibility for the proper design, furnishing and installation of the Design-Build Work under the Contract Documents and for the proper coordination of the Design-Build Work with other work for the Project.

§ 3.19.12 To the fullest extent permitted by law, and without limiting the Contractor's indemnification obligations under other provisions of the Contract Documents, Contractor shall indemnify, provide reimbursement for a reasonably allocated share of defense costs, and hold harmless the Indemnified Parties from any and against any and all liabilities, claims, causes of action, costs, expenses, damages, judgments, and professional fees and costs (subject to the aforementioned reasonable allocation limitation), including but not limited to attorneys', accounting and consulting fees and costs ("Hazmat Indemnification Costs") in connection with the negligent performance, any breach of the Contract, or failure to comply with all applicable laws, ordinances and regulations of all governmental authorities relating to the Project work, excluding, however, any Hazmat Indemnification Costs to the (a) extent resulting from the sole or active negligence or willful misconduct of Owner; and (b) resulting from defects in design furnished by Owner and/or third parties. This indemnification obligation shall be in addition to any requirements set forth in the Contract Documents, and shall survive any termination or expiration of the Construction Contract.

§ 3.19.13 The design and engineering services required for any Design-Build Work shall be performed by person(s) or entity(ies) lawfully licensed to practice architecture or professional engineering in the state in which the Project is located and all Design-Build Drawings shall be properly sealed as required.



### § 3.20 LENDER'S CERTIFICATE

§ 3.20 Within ten (10) days of Owner's request, Contractor shall execute and deliver to Owner and its lender(s) having an interest in the Project, a certificate addressed to Owner and such lender(s) concerning the compliance of the Work with the Contract Documents, the status of completion of the Work, the status of payments and defaults, and such other matters as such lender(s) may request.

### § 3.21 REPRESENTATIONS AND WARRANTIES

§ 3.21 Contractor represents and warrants the following to Owner, which representations and warranties shall survive any termination of the Owner-Contractor Agreement and the final completion of the Work:

§ 3.21.1 that it is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under Contract Documents;

§ 3.21.2 that it is able to furnish the plant, tools, materials, supplies, equipment, and labor required to complete the Work and perform its obligations under the Contract Documents and has sufficient experience and competence to do so; and

§ 3.21.3 that it is authorized to do business in the State where the Project is located and properly licensed by all necessary governmental authorities having jurisdiction over it and over the Work and the site of the Project.

### § 3.22 VALUE ENGINEERING

§ 3.22.1 In the interest of cost consciousness, Contractor and Subcontractors will throughout the duration of their performance on the Project, identify high cost, low value items or systems and make recommendations to the Owner of alternatives thereto that would reduce costs and improve cost/benefit ratios, taking into consideration such relevant factors as the following: initial cost; availability; durability; reliability; maintenance; energy consumption; life-cycle costs; construction feasibility; design; access and use of the Site; selection of materials, building systems and equipment; possible adverse effects of labor or material shortages; time requirements for procurement, installation and construction completion; and future uses of Project facilities.

§ 3.22.2 Value engineering suggestions shall be submitted to Owner promptly and in writing. Such submissions shall include a detailed description of the proposed value engineering suggestion and an estimate of the savings in the Cost of the Work and time if the recommendation were accepted and implemented by Owner. Contractor shall make every effort to develop its value engineering recommendations prior to the start of construction. In the case of value engineering suggestions submitted after the start of construction, Contractor shall submit its value engineering suggestions promptly, in all cases at least thirty (30) days before performance of the portion of Work affected, and allowing a reasonable and sufficient time, not fewer than ten (10) days, for the Owner and Architect to fully evaluate the Contractor's suggestion, consider alternatives and prepare design documents implementing any changes in design associated with acceptance of such suggestion.

§ 3.22.3 Acceptance of value engineering suggestions is at the sole and exclusive discretion of Owner. Under no circumstances shall Contractor be entitled to an adjustment increasing the Guaranteed Maximum Price or Contract Time on account of the Owner's rejection of a value engineering suggestion submitted by Contractor. Under no circumstances shall Contractor be entitled to an adjustment of the Contract Time on account of a delay by Owner to timely respond to a value engineering suggestion submitted by Contractor, unless Owner subsequently accepts such value engineering suggestion following the reasonable time period in which Contractor requested a reply, and such implementation by Owner actually causes a delay on the critical path of The Project Schedule. If Owner fails to respond to Contractor within the designated reasonable amount of time, then Contractor shall proceed with the Work without regard to the value engineering suggestion.

§ 3.22.4 Except with respect to portions of the Work that are specified to be designed and built by the Contractor, the design professionals retained by Owner shall remain ultimately responsible for the sufficiency of the changes in design that are required to implement the Contractor's value engineering suggestions.

§ 3.22.5 This Section 3.22 is subject to Section 3.12.11, above.

## ARTICLE 4 ARCHITECT

### § 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term Architect refers to the Architect identified in the Agreement. Any reference in the Contract Documents to the Architect's taking action or rendering a decision within a "reasonable time" is understood to mean no more than two (2) weeks.

§ 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 Contractor, which consent shall not be unreasonably withheld.

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

### § 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents. The Architect will not have authority to act on behalf of the Owner except to the extent provided in the Contract Documents.

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

§ 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

Unless otherwise directed by Owner, Owner and Contractor shall endeavor to provide Architect with the substance of their communications about matters arising out of or relating to the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§ 4.2.5 Except as elsewhere provided in the Agreement, based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the percentage of completion of the Work achieved by the Contractor and will issue Certificates for Payment reflecting such percentage of completion. The Owner shall establish the amounts properly due the Contractor and shall approve the percentage of completion established by the Architect.

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

§ 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 in accordance with the submittal schedule approved by the Architect or, in the absence of an approved

submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the 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 of these General Conditions. 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, with the approval of Owner, will prepare Change Orders and Construction Change Directives. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions.

§ 4.2.9 The Architect will assist the Owner, as required by Owner, conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8 of these General Conditions; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10 of these General Conditions; and, with the approval of Owner, issue a final Certificate for Payment pursuant to Section 9.10 of these General Conditions.

§ 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 the Owner. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations, 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 rendered in good faith. Architect's interpretations pursuant to Article 4 shall not be binding on Owner and Contractor.

§ 4.2.13 Coordination. The Architect is responsible for final coordination of the Contract Documents. This shall include coordination and integration of the design work provided by Contractor's design/build consultants and design-build subcontractors into the Contract Documents.

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

## ARTICLE 5 SUBCONTRACTORS

### § 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a contract through 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" includes Subcontractors at every tier, including material suppliers, vendors, employees and Sub-subcontractors at every tier, but 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 The selection of Subcontractors shall be made as provided in Exhibit "C". Owner's participation in the Subcontractor selection and negotiation process (i) shall not result in any liability of Owner with respect to such Subcontractor or subcontract and (ii) shall be subject to the provisions of Section 5.2.3. The Contractor shall also identify with specificity any changes to the approved form of subcontract (described in Section 5.3.1 below ) proposed for the bidder which the Contractor recommends. All material and equipment purchases or rentals exceeding Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) and all subcontracts to be entered into by Contractor in connection with the Project shall be subject to Owner's prior approval. Contractor shall (i) specifically identify in writing those subcontractors whose subcontract price is reasonably expected to exceed One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00) ("Major Subcontractors") and (ii) provide Owner with Contractor's written evaluation of the business history and financial condition of the Major Subcontractors. To satisfy clause (ii), above, Contractor shall provide a description of its pre-qualification evaluations, a Dunn & Bradstreet report on the Major Subcontractors, and evidence that the Major Subcontractors are in good standing with the Contractor's State License Board.

The Contractor shall furnish the Owner and the Architect with (1) the trade and subcontract amount of each Subcontractor and (2) the names of all persons or entities proposed as manufacturers of the products identified in the Specifications (including those who are to furnish materials or equipment fabricated to a special design) and, where applicable, the names of the installing Subcontractor. At the same time, the Contractor shall provide in writing a list of those portions of the Work which the Contractor proposes to perform with its own forces through a Related Party, and the amount for performing such Work.

§ 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 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If the Subcontract is awarded on a cost-plus a fee basis, the Contractor shall provide in the Subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Contractor in Article 11 of the Agreement. All Subcontracts shall contain a provision incorporating by reference the Contract Documents into such subcontract and to the extent applicable, require adherence by the Subcontractor, to the requirements of the Contract Documents.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected and approved by Owner without the Owner's written consent (not to be unreasonably withheld, conditioned or delayed), except in case of violations of Contractor's safety rules. Contractor shall immediately provide written notice to Owner of any such violations, and the substitutions Contractor made due to such violations.

§ 5.2.5 Lump sum contracts shall not be allowed for Work performed by the Contractor or the Contractor Parties unless approved in advance by the Owner. All portions of the Work that the Contractor's organization does not perform with its own personnel shall be performed under Subcontracts or by other appropriate agreements with Contractor. Prior to awarding a portion of the Work to any proposed Subcontractor, Contractor shall deliver to Owner a copy or summary, at Owner's election, of any proposed Subcontractor's bid. All Subcontracts shall conform to the requirements of the Contract Documents. Contractor shall deliver to Owner copies of all Subcontracts both prior to and following their execution.

## § 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 Contractor will enter into subcontracts substantially in the form of the subcontract attached to the Agreement as Exhibit "I-1".

§ 5.3.2. All subcontracts between Contractor and Subcontractors shall include a provision that limits the amount which the Subcontractor may charge for overhead and profit in connection with a change in the Work to the amounts permitted under the Contract calculated on the of the Subcontractor's cost of performing the change, subject to the provisions of Section 7.3.12 of these General Conditions.

§ 5.3.3 Contractor shall schedule, supervise and coordinate the operation of all Subcontractors. No subcontracting of any of the Work shall relieve the Contractor from its responsibility for the performance of the Work in accordance with the Contract Documents. The Contractor is responsible for the timely, accurate and appropriate Subcontractor coordination of the Work of lower-tier subcontractors. The Contractor shall be responsible to ensure that each Subcontractor corrects all defective work or material at the Subcontractor's expense. If any Subcontractor defaults in its obligation to promptly correct any such defective work, the Contractor shall be responsible for correcting the defective work.

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

When the Owner accepts in writing the assignment of a subcontract agreement, the Owner, on a going forward basis, assumes the Contractor's rights and obligations under the subcontract. In no event shall Owner have any obligation to cure the Contractor's breach of the subcontract.

§ 5.4.2 If the Work in connection with a subcontract has been suspended for more than thirty (30) days after termination of the Contract by the Owner pursuant to Section 14.2 of these General Conditions and the Owner or Owner's Lender accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for any reasonable increase in direct costs incurred by such Subcontractor as a result of the suspension. Contractor shall assign to Owner, from time to time as Owner may reasonably request, all assignable guaranties, warranties and indemnities by any Subcontractor or any person providing material, equipment or services in connection with the Work.

§ 5.4.3 Upon such assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity.

§ 5.4.4 Each subcontract shall specifically provide that the Owner or Owner's Lender shall only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

### 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 Project site.

§ 6.1.2 Intentionally Deleted.

§ 6.1.3 The Owner shall oversee the activities of the Owner's own forces and of each separate contractor and Contractor shall coordinate such activities with the Work of the Contractor, and shall cooperate with Owner and such separate contractors regarding such coordination. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. Contractor shall cooperate with any and all other separate contractors. 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. In no event shall Contractor be responsible for the work performed by Owner's separate contractors.

§ 6.1.4 Owner shall require its separate contractors to carry separate commercial general liability insurance.

## § 6.2 MUTUAL RESPONSIBILITY

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

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

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

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

§ 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 of these General Conditions.

§ 6.2.6 Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Article 15 of these General Conditions provided the separate contractor has reciprocal obligations.

## § 6.3 OWNER'S RIGHT TO CLEAN UP

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

## ARTICLE 7 CHANGES IN THE WORK

### § 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by 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. No change in the Work, whether by way of alteration or addition to the Work, shall be the basis of an addition to the Guaranteed Maximum Price or a change in the Contract Time unless and until such alteration or addition has been authorized by a written Change Order or Construction Change Directive signed by the Owner in strict accordance with the Contract. This requirement is of the essence of the Contract Documents. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether there is in fact any such unjust enrichment, shall be the basis for any claim to an increase in the Guaranteed Maximum Price or change in the Contract Time.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Owner's Lender (if required) and the Contractor; a Construction Change Directive requires written authorization by the Owner alone and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Owner 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. Documentation submitted by the Contractor for any change to the Work shall be in such detail as the Owner and the Architect may require and shall include all costs and quantities for the

Architect's or the Owner's evaluation of the cost and/or credits, if any, associated with such change. At the request of the Owner, the Contractor shall promptly deliver to the Owner its good faith, itemized estimate of any increase in the Cost of the Work that would result from any proposed change to the Work, and of any delay in the Substantial Completion of the Work that would be caused thereby. Except as permitted in Section 7.3 and Section 9.7.2, a change in the Contract Sum or Guaranteed Maximum Price, as applicable, or the Contract Time shall be accomplished only by Change Order. Accordingly, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by any alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

§ 7.1.4 Owner shall order changes in the Work by giving Contractor a written change order request ("Change Order Request"), setting forth the nature of the requested change. Contractor, as soon as reasonably possible, but not later than ten (10) days following receipt of a Change Order Request, shall furnish to Owner a statement setting forth in detail (and utilizing unit prices if applicable), with suitable breakdown by trades and work classifications, the changes, if any, in the Guaranteed Maximum Price attributable to the changes set forth in such Change Order Request, the proposed adjustment, if any, to the Contract Time resulting from such Change Order Request and any proposed adjustments of time and costs related to unchanged Work resulting from such Change Order Request. Provided, however, if it is not commercially reasonable for Contractor to respond to the Change Order Request within such ten (10) day period, then Contractor shall notify the Owner with reasonable promptness of such fact. If Owner approves such changes in writing, a change order ("Change Order") shall be executed and the Guaranteed Maximum Price and Contract Time shall be adjusted as set forth in such Change Order. Provided a Construction Change Directive is issued, failure to agree on the price of any Change Order shall not excuse Contractor from proceeding with the prosecution of the Work as changed, with Contractor reserving its rights to claim additional compensation for the disputed portion of such work performed pursuant to the Construction Change Directive.

## § 7.2 CHANGE ORDERS

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

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or Guaranteed Maximum Price, as applicable; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 ADDITIVE CHANGE ORDERS. The parties agree that Contractor shall use commercially reasonable efforts to minimize any additive Change Orders on the Project. Accordingly, once the Guaranteed Maximum Price is established based on complete Construction Documents, then except as otherwise expressly permitted under the Contract Documents, but subject to the provisions following provisions of this paragraph, the parties agree that Owner shall only be obligated to consider Change Order Requests ("COR") in the following circumstances: (1) Scope Changes; (2) new regulatory or legal requirements that arise which the Contractor could not have reasonably anticipated when establishing the Guaranteed Maximum Price, excluding regulatory or legal requirements that the Contractor knew or should have known would be coming into effect during the duration of the Work or that could have been known in the industry to be coming into effect during the duration of the Work; or (3) unusual, unforeseeable and extreme weather delays (taking into account historically encountered weather events such as wind, rain, etc.) as prudent given the scope of the Project as a high-rise building to the extent that it prevents the Work from being performed, impacts the Critical Path of the Work, and is otherwise permitted pursuant to Section 15.1.5.2 of the General Conditions ("Weather Delays"). The Contractor shall not be entitled to any increase in the Guaranteed Maximum Price or extension of the Contract Time on account of any failure of Contractor to meet the Standard of Care.

A "Scope Change" is hereby deemed to mean Work that is not reasonably inferable from any previously furnished Contract Document by a large and sophisticated national contractor with a high level of skill, experience, and expertise as necessary for the proper, timely, and orderly completion of the Work taking into account its magnitude and complexity and is (i) materially inconsistent with the previously furnished Contract Documents and (ii) a material change in the quantity, quality, programmatic requirements, or other substantial and unanticipated deviation in the then current Contract Documents.

§7.2.3 Agreement on any Change Order shall constitute a full and final settlement, accord and satisfaction, of all matters relating to the change in the Work that is the subject of the Change Order and will compensate Contractor fully for the costs of that item of Work, including, but not limited to, all direct and indirect costs and consequential damages associated with such change and any and all adjustments to the Guaranteed Maximum Price and the Contract Time. In the event a Change Order increases the Guaranteed Maximum Price, Contractor shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Contract Documents.

### § 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Guaranteed Maximum Price, as applicable, 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 or Guaranteed Maximum Price, as applicable, 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 Guaranteed Maximum Price, the adjustment shall be based on one of the following methods chosen by Owner:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7 of these General Conditions.

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

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

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



§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Guaranteed Maximum Price the Architect shall determine, and the Owner shall approve, the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. This method of adjustment is subject to a full reservation of rights by the Contractor. In such case, and also under Section 7.3.3.3 of these General Conditions, 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 7.3.7 shall (a) for the Contractor, be limited to costs constituting Cost of Work items under the Agreement and (b) for each direct or lower tier subcontractor, be limited to the following:

- .1 Direct costs of labor;
- .2 Direct costs of materials;
- .3 Equipment rental costs to the extent attributable to the change and as limited by the Contract;
- .4 Subcontractor General Conditions Costs ('Subcontractor General Conditions Costs' means, for the purposes of this Section 7.3.7, general conditions costs which include, but are not limited to, Subcontractor costs such as bond costs, increased or adjusted bond costs, and any and all non-productive labor, clean-up supervision, safety, field supervision, incidental costs, fixed costs, variable costs, insurance, testing, start-up, warranty, small tools, big tools, miscellaneous materials, trash, trash removal, lay-out, re-layout, engineering, waste, coordination, estimating, other estimating expenses, remobilization, and demobilization, indirect costs, direct costs other than direct labor and materials costs, etc.); and
- .5 Allowable markups as set forth in Section 7.3.12 of these General Conditions.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Guaranteed Maximum Price shall be actual net cost as approved by the Owner.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment.

§ 7.3.10 When the Owner and Contractor agree with the adjustments in the Contract Sum or Guaranteed Maximum Price, as applicable, and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

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

§ 7.3.12 Notwithstanding anything to the contrary contained in the Contract, Subcontractor and vendor markups on any Change Order shall be in accordance with the following: for Work that is self-performed by a subcontractor or vendor of any tier, that subcontractor or vendor shall be entitled to a mark-up of fifteen percent (15%) of the Cost of the Work performed; for Work that is performed by a lower-tier subcontractor or vendor, each supervising subcontractor or vendor shall be entitled to a mark-up of ten percent (10%) of the Cost of Work performed, provided, however, that the total, aggregate mark-up paid to all subcontractors and vendors for a Change Order, regardless of the number of tiers, shall not exceed twenty-five percent (25%).

#### § 7.4 MINOR CHANGES IN THE WORK

The Owner or the Architect has authority to order minor changes in the Work not involving adjustment in the Guaranteed Maximum Price or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect or Owner and shall be binding on the Owner and Contractor.

## ARTICLE 8 TIME

### § 8.1 DEFINITIONS

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

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

§ 8.1.3 The date of Substantial Completion is in 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 Documents. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

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

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

### § 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by any act or omission of the Owner or Architect, or of an employee of either (excluding those acts or omissions taken in the exercise of rights under the Contract Documents), or of a separate contractor employed by the Owner; or by changes ordered in the Work; or by labor disputes not directed at the Contractor or a direct or lower tier subcontractor or anyone for whom the Contractor is responsible, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's reasonable control; or by delay authorized by the Owner pending resolution of a dispute, or by other similar causes beyond the reasonable control of a Contractor Party that the Owner determines justify delay, excluding financial inability, then the Project Schedule, Milestone Dates and/or Contract Time may be extended by Change Order for such reasonable time as agreed to by Contractor and the Owner but not to exceed a day-for-day extension, and the Owner (or, if not so agreed to, as resolved by dispute resolution pursuant to Article 15 of these General Conditions of the Contract). The Contractor acknowledges and agrees that: (a) no adjustments to the Project Schedule and/or Contract Time shall be made unless the events have the effect of delaying completion of components of Work on the critical path indicated in the Project Schedule; (b) adjustments to the Project Schedule and/or Contract Time will be permitted in connection with any of the events described above only to the extent that the delays resulting therefrom (1) are not caused, or could not have been avoided or mitigated (including, without limitation, by rescheduling or re-sequencing activities after the occurrence of the event causing delay), by the Contractor, (2) could not be limited or avoided by the Contractor's timely notice to the Owner of the delay, and (3) have an impact of at least one (1) day and (c) adjustment to the Guaranteed Maximum Price shall be made in connection with delays, only if such delays have no concurrent or contributing cause for which the Contractor would not be entitled to an extension of the Contract Time. However, the Contractor shall be entitled to an extension of the Contract Time (but not the Guaranteed Maximum Price) for any delay to the extent that there is a proven concurrent delay for which Contractor would otherwise be entitled to an extension of the Contract Time under the Contract. Any extension in the Project Schedule and/or Contract Time shall be net of any contingency or “float” time included in the Project Schedule.

If the Contractor believes that any of the events which might entitle the Contractor to an extension of the Contract Time under the Contract Documents, the Contractor shall promptly submit to the Owner, in writing, its proposal indicating the means and methods of overcoming such delay and demonstrating how the then Completion Date may be achieved. If the Owner and the Contractor are unable to agree on the means and methods of overcoming such delay and of achieving the required dates of Substantial of the Work and Final Completion for the Work, in the aggregate, including, without limitation, the amount of any required increase in the Guaranteed Maximum Price (subject to the provisions below) and the Contract Time such dispute with respect to any adjustments to the

Guaranteed Maximum Price and the Contract Time shall be subject to dispute resolution in accordance with Article 15.

Owner may elect, in its sole discretion, to require the Contractor to proceed with Owner-Elected Acceleration and any increases or decreases in the Guaranteed Maximum Price as a result thereof shall be treated in accordance with Section 4.5 of the Agreement.

If any of events described in this Section 8.3 of the General Conditions of the Contract or elsewhere in the Contract Documents entitle the Contractor to an extension of the Project Schedule and/or Contract Time, the sole remedy of the Contractor shall be such extension of the Project Schedule and/or Contract Time and the Contractor shall not be entitled to any adjustment of the Guaranteed Maximum Price except as otherwise provided in the following sentence. If and to the extent that the Contract Time is extended on account of Compensable Delay Occurrences (as hereinafter defined) only, the Guaranteed Maximum Price shall be increased by the Contractor's reasonable and verified additional costs of performing the Work to the extent directly and solely attributable to extensions of the Contract Time on account of Compensable Delay Occurrences, without any mark-up or increase in the Contractor's Fee. As used herein, the term "Compensable Delay Occurrences" means, and is limited to, permitted extensions of the Contract Time to the extent attributable to: (i) any act or omission by Owner or Architect (excluding those acts or omissions taken in the exercise of rights under the Contract Documents or actions consistent with the Contract requirements); (ii) Scope Changes; and (iii) concealed physical conditions for which adjustment of the Contract Time and Guaranteed Maximum Price is not excluded in the Contract.

Notwithstanding anything to the contrary in this Section 8.3.1 or any other provision of the Contract Documents, Owner's implementation of Owner-Elected Acceleration or extension of the Completion Date and an increase in the Contract Sum or Guaranteed Maximum Price, as applicable, equal to the actual increase in direct costs resulting therefrom (to the extent expressly permitted above for Compensable Delay Occurrences only), shall be Contractor's sole remedy for delay or resulting loss (including, without limitation (a) delay in the commencement, prosecution or completion of the Work, (b) hindrance or obstruction in the performance of the Work, (c) loss of productivity or (d) other similar delays and losses), whether or not foreseeable. Without limiting the generality of the foregoing, in no event shall the Contractor be entitled to any other compensation or recovery of damages with respect to any delay or resulting loss, including consequential damages, lost opportunity costs, impact damages or similar remuneration.

§ 8.3.2 All claims for extension of time shall be made in writing to the Architect and copied to the Owner no more than five (5) days after the occurrence of the delay or first knowledge of the event giving rise to the delay, whichever is earlier; otherwise they shall be waived. The Contractor shall provide an estimate of the probable effect of such delay on the progress of the Work.

§ 8.3.3 Notwithstanding any other provisions in the Contract Documents, no delays incurred by the Contractor, which are the fault an Owner Party or the Architect will constitute Compensable Delay Occurrences or allow the Contractor an extension of the Project Schedule or the Contract Time unless written notice of such delay has been provided to the Owner within five (5) days after the Contractor becomes aware of any such delay. If such notice is not so provided then the Contractor shall be deemed to have waived any such compensation or extension of the Project Schedule or Contract Time.

§ 8.3.4 Intentionally Deleted.

§ 8.3.5 Notwithstanding any of the foregoing, the Contractor shall use all commercially reasonable efforts and take all reasonable steps to avoid entirely or mitigate any delay hereunder and the Contractor's failure to do so shall constitute a waiver of its right to claim that any delay that could have been avoided or mitigated has resulted in an extension of the Contract Time.

## ARTICLE 9 PAYMENTS AND COMPLETION

### § 9.1 CONTRACT SUM

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

## § 9.2 SCHEDULE OF VALUES

§ 9.2.1 As the Guaranteed Maximum Price is established progressively and updated, upon the execution of each applicable Guaranteed Maximum Price Change Order, the Contractor shall submit to the Owner and the Architect a schedule of values allocating the various portions of the Work for which commitments have been made along with budgeted amounts for unknown commitments and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require (to the extent not already attached as an exhibit to the Agreement. This Schedule of Values, unless objected to by the Owner or the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment. The Contractor shall revise its original Schedule of Values or cost breakdown from time to time at the request of the Owner as circumstances may require. Such Schedule of Values and any supplements or amendments thereto shall be subject to the prior written approval of the Owner and the Lenders, which approval shall not be unreasonably withheld. Unless otherwise agreed by the Owner, in writing, the Project Schedule of Values shall be on AIA Document G703 or such other form as may be required or approved, in writing, by the Owner and the Lenders and shall contain such other information as the Owner may require including a detailed breakdown of that portion of the Cost of the Work to be performed by the Contractor or any Related Party using its own forces.

§ 9.2.2 The Contractor and each Subcontractor shall prepare a trade payment breakdown for the Work for which each is responsible, such breakdown being submitted on a uniform standardized form approved by the Architect and Owner. The form shall be divided in detail sufficient to exhibit areas, floors, and/or sections of the Work, and/or by convenient units and shall be updated as required by either the Owner or the Architect as necessary to reflect (i) description of Work (listing labor and material separately), (ii) total value, (iii) percent of the Work completed to date, (iv) value of Work completed to date, (v) percent of previous amount billed, (vi) previous amount billed, (vii) current percent completed, and (viii) value of Work completed to date. Any trade breakdown that fails to include sufficient detail, is unbalanced, or exhibits "front-loading" of the value of the Work shall be rejected. If trade breakdown had been initially approved and subsequently used but later was found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

## § 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 The Contractor shall submit to the Owner and Architect itemized Applications for Payment prepared in accordance with the Schedule of Values. Applications for Payment must be received by the Owner not later than the 5<sup>th</sup> day of the month in order to be included in the monthly payment request to Owner. Applications for Payment that are received after the 5<sup>th</sup> of the month will be included in the following month's payment request. All Applications for Payment must be verified and signed off by the Architect prior to forwarding to Owner. Each Application for Payment shall (i) be on the AIA G702/703 forms or such other form acceptable to Owner and Owner's construction lender, if any, and prepared using the software or hard copy format as required by Owner, (ii) be sworn to and notarized, if required by Owner or Owner's construction lender, and (iii) show in complete detail (itemized by Subcontractor and Contractor's own forces, if any) all monies paid out or costs incurred by the Contractor on account of the Cost of the Work during the period commencing on the first (1<sup>st</sup>) day of the month preceding the Current Month and ending on the last day of said preceding month ("Payment Request Period") for which the Contractor is to be reimbursed under the terms of the Contract Documents and the amount of the Contractor's Fee due as provided in the Contract Documents, together with such supporting documentation as may be required by the Owner, the Architect or any construction lender providing financing in connection with the Work. Such supporting documentation shall include, without limitation, (a) copies of requisitions from Subcontractors, (b) the items referred to in Section 9.3.4 of the General Conditions, (c) conditional waivers and releases of liens, stop notices and bond rights for the current Application for Payment, and (d) unconditional waivers and releases of liens, stop notices, and bond rights for all prior payments, all of which waivers and releases (referenced in items (c) and (d) above) shall be from Contractor, all Subcontractors, and anyone having liens rights, stop notice rights or rights against a bond for the Project, and shall be in accordance with the applicable laws and Owner's requirements, except, however, unconditional waivers for previous payments shall only be required with respect to all prior payments made by Owner under this Agreement sixty (60) days (but as to the final Application for Payment, thirty (30) days) before the effective date of such Application for Payment for first-tier Subcontractors and with respect to second-tier Subcontractors, as required by any Lender. Any invoices submitted without proper waivers and releases will not be included in the payment request submitted to Owner. Further, the Application for Payment shall also be accompanied with any other information, documentation, and materials as the Owner, Architect, construction lender or the title insurer may require. In addition to the foregoing, each Application for Payment shall be accompanied by a duly executed and acknowledged Contractor's Sworn Statement showing all Subcontractors with whom the

Contractor has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor in the Application for Payment, and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all Subcontractors and, where appropriate, from lower tier subcontractors.

§ 9.3.2 If approved in advance by Owner, 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 subject to Owner's approval and 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 Project site for such materials and equipment stored off the site. The Contractor shall also comply with the following specific requirements:

- .1 The aggregate cost of materials stored off site shall be subject to written approval of the Owner, and there shall be no payment for any materials stored off site without the prior written approval of Owner.
- .2 Title to such materials shall be vested in the Owner, as evidenced by documentation satisfactory in form and substance to the Owner and the Owner's Construction Lender, including, without limitation, (a) delivery of a bill of sale and/or other transfer documents vesting title in the Owner and (b) recorded financing statements, UCC filings and UCC searches.
- .3 With each Application for Payment, the Contractor shall submit to the Owner a written list identifying each location where materials are stored off the Project site and the value of materials at each location. The Contractor shall procure "all risk" property insurance for all materials stored off-site in an amount equal to the full replacement cost thereof, without optional deductibles, except to the extent the Owner otherwise approves in writing after confirming that coverage for such materials is available under the Owner's builder's risk insurance.
- .4 The consent of any surety shall be obtained to the extent required prior to payment for any materials stored off the Project site.
- .5 Representatives of the Owner and the Lender shall have the right to make inspections of the storage areas at any time.
- .6 Such materials shall be (1) protected from diversion, destruction, theft and damage to the satisfaction of the Owner and the Lender, (2) specifically marked for use on the Project, and (3) segregated from other materials at the storage facility.

Supplementing the foregoing provisions of this Section 9.3.2, all materials and equipment stored off the site shall be stored in either a bonded warehouse facility or the place the materials are manufactured, in each case approved by the Owner and Owner's construction lender, in which all stored equipment and materials (i) shall be segregated and clearly identified as being owned by the Owner for incorporation into the Project and being subject to Lenders' liens and security interests, (ii) shall be covered by insurance against loss, damage, theft or vandalism, (iii) if at the place the materials are manufactured, are in the possession of the manufacturer after the manufacturer provides to the Owner an authenticated record acknowledging that it will hold possession of the stored materials for the benefit of Owner and its Lender, if applicable, as required by Section 9.313(c)(2) of the Uniform Commercial Code in effect in the State of California; and (iv) Contractor shall, at all times until completion of the Project, provide the Owner with access to such materials.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the earlier of incorporation into the Work or the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor and Subcontractors, including, without limitation, any material suppliers, or

other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

- .1 The Contractor further expressly undertakes to defend the Indemnified Parties, at the Contractor's sole expense, against any actions, lawsuits or proceedings brought against the Indemnified Parties as a result of lien, stop notice, bonded stop notice or similar claims filed against the Work, the site of an of the Work, the Project site and any improvements thereon, payments due the Contractor, any of the Indemnified Parties, or any portion of the property of any of the Indemnified Parties (referred to collectively as "liens" in this Section 9.3.3); except to the directly caused by the Owner's failure to pay undisputed amounts as and when due under the Contract Documents. The Contractor hereby agrees to indemnify, defend and hold the Indemnified Parties harmless against any such liens or claims of lien and agrees to pay any judgment or lien resulting from any such actions, lawsuits, or proceedings.
- .2 The Owner shall release any payments withheld due to a lien or claim of lien if the Contractor obtains security acceptable to the Owner or a lien bond that is (i) issued by a surety acceptable to the Owner, (ii) in form and substance satisfactory to the Owner, and (iii) in an amount not less than one hundred and twenty-five percent (125%) of such lien claim or such other amount as required by applicable law. By posting a lien bond or other acceptable security, however, the Contractor shall not be relieved of any responsibilities or obligations under this Section 9.3.3, including, without limitation, the duty to defend and indemnify the Indemnified Parties. The cost of any premiums and other reasonable costs incurred in connection with such bonds and security shall be allowable as Cost of the Work, only if the claim or dispute involves the nonpayment by Owner and the Contractor, using commercially reasonable efforts, is unable to recover from the lienor or the lienor's bonding company such premiums or other costs. In no case shall the cost of any premiums be the cause of any increase to the Guaranteed Maximum Price.
- .3 Notwithstanding the foregoing, Owner reserves the right to settle any disputed mechanic's or material supplier's lien claim by payments to the lien claimant or by such other means as the Owner, in the Owner's sole discretion, determines is the most economical or advantageous method of settling the dispute. The Contractor shall promptly reimburse the Owner, upon demand, for any payments so made.

§ 9.3.4 Each Application for Payment shall be based on the most recent Schedule of Values submitted by the Contractor and approved by the Owner in accordance with the Contract Documents. The Schedule of Values shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee and costs of the work attributable to General Condition Costs shall be shown as separate items. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. The Schedule of Values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the Schedule of Values. The Owner reserves the right to issue payment by joint check to the Contractor and to any Subcontractor, laborer or material supplier to whom payment is to be made out of such net amount due.

§ 9.3.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the Schedule of Values, less retainage of ten percent (10%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of the General Conditions, less retainage of ten percent (10%);

- .2 If approved by the Owner, add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, less retainage of ten percent (10%), or if approved in advance by the Owner in writing, suitably stored off the site at a location agreed upon in writing, less retainage of ten percent (10%);
- .3 Add the Contractor's Fee, less retainage of ten percent (10%);
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Contractor in the documentation required to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of the General Conditions and other amounts properly held by the Owner at the time of each progress payment on account of defective Work or other Claims that Owner may assert against Contractor.

§ 9.3.7 The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors. Except with the Owner's prior approval, the percentage of retainage held on Subcontracts shall be not less than ten percent (10%). The Contractor shall execute subcontracts in accordance with those agreements.

§ 9.3.8 In taking action on the Contractor's Applications for Payment, the Architect, Owner (including, Owner's Representative), and its lender for the Project shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect, Owner (including, Owner's Representative), or its lender for the Project has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with the Contract or other supporting data; that the Architect or Owner (including Owner's Representative) has made exhaustive or continuous on-site inspections; or that the Architect or Owner (including Owner's Representative) has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ 9.3.9 The Owner's obligation to make any progress payment shall be subject to the Owner or its agents having determined to their reasonable satisfaction that all Subcontractors, and suppliers have been paid in full for all Work and materials covered by the Owner's previous payments or otherwise satisfied in a manner mutually acceptable to the Owner and the Contractor and to the delivery to the Owner by the Contractor of mechanic's lien waivers and releases as provided in Section 9.3.1 of these General Conditions for all Subcontractors. In addition to any disputed portion of a progress payment, the Owner may withhold beyond the date for payment under this Contract that undisputed portion of a progress payment which is otherwise due and payable hereunder for which the Owner has not received satisfactory lien waivers and releases.

§ 9.3.10 On all Applications for Payment subsequent to the initial application, the following statement shall also appear:

The Contractor hereby certifies that all obligations for which the previous Application for Payment were issued and paid have been paid or otherwise satisfied in a manner mutually acceptable to the Owner and the Contractor. Each Application for Payment with this statement shall be signed at the bottom by an officer of the Contractor or the Contractor's authorized designee.

## § 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 Approved payments shall be made only following issuance by Owner's Representative or the Architect of a certificate for payment ("Certificate for Payment") for such amount as the Owner, Owner's Representative and/or Architect approve; provided, however, payment to the Contractor must also be approved by Owner's construction lender, if any, and in the event such lender does not approve all or a portion of the Work completed during the Payment Request Period the Application for Payment or the Certificate for Payment Owner shall only be obligated to pay to Contractor that amount which Owner's lender approves. The Owner shall notify the Contractor, in writing, of any reasons for withholding a Certificate for Payment for any portion of the amount set forth in the Application for Payment.

§ 9.4.2 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 or Guaranteed Maximum Price, as applicable.

#### § 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, or, if in the Architect's opinion the representations to the Owner required by Section 9.4 of these General Conditions 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 the Contract Documents. If the Contractor and Architect (with Owner's approval) 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 Owner's or 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 of these General Conditions, 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 or Guaranteed Maximum Price, as applicable, less the amount of any retainage being held by the Owner as of that date (which is intended to cover Work in place), with the Contractor funding all costs until the unpaid balance of the Contract Sum or Guaranteed Maximum Price, as applicable, less the amount of any retainage being held by the Owner as of that date (which is intended to cover Work in place) is sufficient to fund all costs to complete the Work;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid portion of the Contract Sum or Guaranteed Maximum Price, as applicable, not required to pay Subcontractors and suppliers would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.
- .8 With respect to the final request for payment, failure to deliver two (2) sets to each Lender, if any, and one (1) set each to the Owner and its consultant of "as-built" drawings, written guarantees or warranties, or operating instructions and maintenance manuals when requested but in any event prior to the earlier of (a) ninety (90) days after the issuance of the temporary certificate of occupancy or (b) receiving the final payment; or
- .9 Failure to obtain the approvals, permits, certificates of occupancies, and related items required by any authority having jurisdiction over the Project; provided such failures are within Contractor's reasonable control.



If the Owner determines that any of the reasons for withholding a Certificate for Payment or nullifying any previously issued Certificate for Payment described in this Section 9.5.1 exist, the Owner may (without action by the Architect) withhold payment to the extent as may be necessary in the Owner's opinion to protect itself from loss for which the Contractor is responsible; provided, however, that the Owner provides notice to the Contractor of the reason(s) for such withholding.

§ 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 Architect withholds certification for payment under Section 9.5.1.3 of these General Conditions, or the Owner withholds payment under Section 9.5.1.3 of these General Conditions, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment. Any amounts paid by joint check shall be credited against the Contract Sum or Guaranteed Maximum Price, as applicable. No direct or joint payment shall create any relationship between the recipient thereof and the Owner, nor any duty on the part of the Owner. The Contractor shall cooperate with the Owner to facilitate any such direct or joint payments and shall provide such evidence as the Owner may request for purposes of determining any amount to be so paid. The rights under this paragraph supplement and are in addition to the Owner's rights under Section 9.6.2.

## § 9.6 PROGRESS PAYMENTS

§ 9.6.1 The Owner will review the Application for Payment for each Payment Request Period that is received from Contractor by the 5th day of each month and, subject to the following provisions, payment shall be issued within thirty (30) calendar days of Owner's receipt of each Application for Payment based upon amounts approved in the applicable Certificate for Payment.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner. Notwithstanding anything in this Section 9.6.2 to the contrary, the Owner may elect, in the Owner's sole discretion, to make any payment requested by the Contractor on behalf of a Subcontractor jointly payable to the Contractor and such subcontractor. The Contractor and such subcontractor shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. Should Contractor neglect or refuse to cause to be paid promptly any bill or charge legitimately incurred by it, Owner shall have the right (upon prior notice to Contractor), but not the obligation, to pay the bill directly, and Contractor shall immediately credit such amount to the Cost of the Work. If such amount causes the Guaranteed Maximum Price to be exceeded, then Contractor shall reimburse Owner for same. If Contractor does not reimburse Owner, Owner may offset the amount of the bill against amounts owed by Owner to Contractor hereunder. Upon prior notice to Contractor, Owner shall have the further right to pay sums due to any Subcontractor or vendor by joint check payable to Contractor and each such Subcontractor or vendor. In no event shall any joint payment be construed to create any (i) contract between the Owner and a Subcontractor, (ii) obligations from the Owner to such Subcontractor, or (iii) rights in such Subcontractor against the Owner.

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

§ 9.6.4 Intentionally Omitted.

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

## § 9.7 FAILURE OF PAYMENT

§ 9.7.1 If, through no fault of the Contractor, the Architect should fail to issue any Certificate for Payment within seven (7) days after receipt of the Contractor's Application for Payment or the Owner should fail to timely pay the Contractor any amount approved by Owner, then the Contractor may, upon seven (7) additional days' written notice to the Owner and the Architect, stop the Work until said Certificate for Payment has been issued or payment of the amount owing has been received.

§ 9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum or Guaranteed Maximum Price, as applicable, and may, in the Owner's sole discretion, elect either to (i) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (ii) issue a written notice to the Contractor reducing the Contract Sum or Guaranteed Maximum Price, as applicable, by an amount equal to that which the Owner is entitled. This method of adjustment is subject to a full reservation of rights by the Contractor.

## § 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 "Substantial Completion" shall be deemed to have occurred when (i) the Work has been completed in accordance with the Contract Documents except for punchlist work (as detailed herein), and (ii) the regulatory authorities having jurisdiction over the Project shall have issued and the Contractor shall have delivered the original of the Temporary Certificate of Occupancy to the Owner and a copy to the Lenders of all other necessary permits, licenses and governmental approvals required in order for the Project to be occupied, and (iii) the punchlist Work is reasonably estimated to be completed within forty-five (45) consecutive calendar days (or as otherwise agreed to by the Owner) following the date of Substantial Completion of the Work. As used in this paragraph, the term "punchlist work" shall mean and be limited to minor items off incomplete or nonconforming Work which do not materially detract from the appearance and utility of the Project as intended (the completion or correction of which shall not interfere in any material respect with the beneficial use and occupancy of the Project as intended). "Substantially Complete" means the status of Substantial Completion.

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

§ 9.8.3 Upon receipt of the Contractor's list, the Owner and Architect will make an inspection to determine whether the Work or designated portion thereof is Substantially Complete. If the Architect's and Owner'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 Work may be deemed Substantially Complete, then 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 receipt of notification regarding the insufficient items. In such case, the Contractor shall then submit a request for another inspection by the Architect and Owner to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is Substantially Complete, the Architect will prepare a "Certificate of Substantial Completion" that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate of Substantial Completion. 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 of Substantial Completion. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

#### § 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under these General Conditions and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion Substantially Complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2 of these General Conditions. 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.

§ 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 FINAL PAYMENT. Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor after Contractor has achieved Substantial Completion of the Work, and within forty-five (45) days after the date when:

- .1 the Contractor has fully performed the Contract (including the correction of punch-work) except for the Contractor's responsibility to correct Work as provided in the Contract, and to satisfy other requirements, if any, which extend beyond final payment and Owner has approved such Work and the Contractor has first delivered to the Owner such other evidences of the Contractor's full payment of Subcontractors (with the exception of retentions and final payments which are to be paid out of the final payment of the Owner to the Contractor) and the absence of any liens generated by the Work as may be required by the Owner, Owner's construction or permanent lender; and provided further, that (a) the Owner has first received from the Contractor a final Application for Payment which includes evidence delivered by Contractor that is sufficient to indicate said payment of Subcontractors and absence of liens, and (b) the Contractor has delivered to Owner (i) maintenance and operating manuals for all equipment, (ii) all warranties and guaranties in connection with the Work, and (iii) as-built drawings for the Project in Owner's required format;
- .2 the Final Application for Payment shall also include a final accounting of the Cost of the Work and Contractor has recorded a valid Notice of Completion with respect to the Work and Owner receives a "signed-off" notice of final inspection (or its equivalent in a form acceptable to Owner) from the city where the Project is located with respect to when the Work or designated portion thereof;
- .3 a Certificate of Occupancy (or its functional equivalent) has been issued by the appropriate governmental agencies; and
- .4 a Conditional Waiver and Release of Lien Upon Final Payment has been issued by Contractor and its Subcontractors, materialmen, vendors and suppliers of all tiers.

§ 9.10.2 Upon receipt of the Contractor's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the 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, if approved by Owner, 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, subject to Owner's agreement therewith. All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Architect as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Architect until all warranties and guarantees have been received and accepted by the Owner.

- .1 A list will be made of any items of the Work determined by the Owner and Architect to be unacceptable. Such items shall be corrected and will be reinspected for final acceptance upon written notification by the Contractor to the Owner and Architect and the Owner that such items have been corrected. Failure to complete satisfactorily the items on the list will necessitate further reinspections by the Owner and the Architect which shall be paid for by the Contractor.
- .2 Prior to the final payment, the Contractor shall furnish to the Owner and the Lenders a certificate of Final Completion and assurance, satisfactory to the Owner and the Lenders, that the Project is free of mechanic's lien claims suffered by or under the Contractor or its Subcontractors, laborers or material suppliers. Such assurance will be in the form of receipts and mechanic's lien waivers and releases in the form required by Section 9.3.1 of these General Conditions and in substance satisfactory to the Owner and the Lenders. The Owner will accept mechanic's lien waivers and releases upon final payment that are conditioned only on such final payment.
- .3 Prior to and as a condition to final payment, all warranties and guarantees, operating and maintenance data, and architectural product care and maintenance data required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Owner as part of the final Application for Payment as provided in Section 3.5.3 of these General Conditions. The final Certificate for Payment will not be issued by the Architect until all warranties and guarantees have been received and accepted by the Owner.

§ 9.10.3 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect and the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment (5) other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, stop notices, claims, security interests or encumbrances arising out of the Contract Documents, to the extent and in such form as may be designated by the Owner, (6) all warranties, guarantees, operating manuals and record drawings for the Project, including the materials to be maintained by Contractor pursuant to Section 3.11, above, and (7) all other items required as a condition precedent to Final Completion or final payment under the Contract Documents. 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 or stop notice. If such lien or stop notice remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien or stop notice, including, without limitation, all costs and reasonable attorneys' fees.

§ 9.10.4 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, with the approval of Owner, and conditioned on approval by Owner's construction lender, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted.

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

§ 9.10.6 Notwithstanding anything in this Article 9 to the contrary, Owner may withhold from final payment one hundred fifty percent (150%) of the amount of any disputed items, including any unsettled claims and the cost of correcting incomplete or incorrect or defective Work.

## ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

### § 10.1 SAFETY PRECAUTIONS AND PROGRAMS

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract Documents. The Contractor shall provide such watchman services as reasonably necessary or as required by applicable governmental agencies, to properly safeguard materials, tools, appliances, and Work during all hours that operations under the Contract are not being actively prosecuted. The Owner shall not assume any responsibility for the loss of or damage to materials, tools, appliances, or Work arising from acts of theft, vandalism, malicious mischief or other causes, except to the extent caused by Owner or its agents.

### § 10.2 SAFETY OF PERSONS AND PROPERTY

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

- .1 all employees on the Work and other persons who may be affected thereby, including, without limitation, invitees, licensees, trespassers and persons on adjacent properties;
- .2 all the Work and all materials and equipment to be incorporated therein, whether in storage on or off the Project site, under care, custody or control of the Contractor or the Contractor's Subcontractors; and
- .3 Owner's personal and real property and other property at the Project 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.

Further, Contractor shall at all times take such precautions as may be necessary to shore, brace, secure and protect the Work and shall protect such parts of the Work and shall provide and maintain such security, including, without limitation, rules, guards, fences, lights and signs, as may be necessary or required to comply with this Section 10.2.1. Contractor shall further post necessary danger signs and other warnings against hazards, promulgate and enforce safety codes, rules and regulations and notify owners, lessees and users of adjacent property. Equipment, operable machinery and hazardous parts of the construction subject to mischief, shall be kept locked or otherwise made inoperable when left unattended. Contractor shall particularly ensure and be responsible for compliance with all applicable state and federal safety laws, ordinances, rules, regulations and lawful orders of all governmental authorities and other persons or entities having jurisdiction. In any emergency threatening the Work or adjoining property, Contractor may act pursuant to Section 10.4. Contractor shall not be responsible for the costs of such emergency work, unless the emergency was due to the fault or neglect of Contractor or its Subcontractors.

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

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

Contractor or its Subcontractors to such property or improvements shall be promptly repaired and paid for by the Contractor, but subject to use of Contingency funds pursuant to Section 5.3 of the Agreement.

§ 10.2.4 When use or storage of explosives or other "Hazardous Materials" (as that term is defined in Section 10.3.2 below) 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. When use or storage of explosives or other Hazardous Materials or equipment or unusual construction methods are necessary, the Contractor shall give the Owner and the Architect reasonable advance notice.

§ 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 of these General Conditions caused in whole or in part by the Contractor, a Subcontractor, or anyone directly or indirectly employed by any of the foregoing, or by anyone for whose acts any of the foregoing may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3 of these General Conditions, except to the extent of damage or loss attributable to the sole or active negligence or willful misconduct 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 of these General Conditions and shall survive termination of the Contract Documents.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the Project 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 permit any part of the construction or Project site to be loaded so as to cause damage or create an unsafe condition.

#### § 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding twenty-four (24) hours after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.2.9 When all or a portion of the Work is suspended for any reason, the Contractor shall securely fasten down all coverings and protect the Work, as necessary, from injury by any cause. The Contractor shall, or shall require its Subcontractors to: (1) be responsible for the adequate strength and safety of all scaffolding, staging and hoisting equipment and for temporary shoring, bracing and tying; (2) furnish approved hard hats, other personal protective equipment as required, approved first aid supplies, names of two (2) first aid attendants present on each shift and a posted list of emergency facilities; (3) take prompt action to correct any hazardous conditions reported; and (4) comply with the requirements of the Occupational Safety and Health Act ("OSHA") and the Construction Safety Act of 1968, as amended, including all standards and regulations which have been promulgated by the governmental authorities which administer such Acts and said requirements, standards and regulations are incorporated herein by reference. The Contractor shall be directly responsible for compliance therewith on the part of its agents, employees, Subcontractors, and materialmen and shall directly receive and be responsible for all citations, assessments, fines or penalties which may be incurred by reason of the failure of its agents, employees, materialmen, Subcontractors to so comply. Contractor shall provide adequate fire protection procedures during the use of cutting torches, welding equipment, plumbers torches and other flame and spark producing apparatus and comply with NFPA Standard No. 51B, as amended, or its replacement.

§ 10.2.10 The Contractor shall promptly report in writing to the Owner and Architect all accidents arising out of or in connection with the Work that cause death, personal injury, or property damage, giving full details and statements of any witnesses. In addition, if death, serious personal injuries, or serious property damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and the Architect. The Contractor, in all cases, shall comply with OSHA, EPA and all other applicable Governmental Requirements (including, without limitation, those requiring reporting to appropriate governmental authorities or other parties). The term "Governmental Requirements" or "law" as used in the Contract Documents shall mean building, zoning, subdivision, traffic, parking, land use, environmental, occupancy, health, accessibility for disabled and other

applicable laws, statutes, ordinances, regulations or decrees, of any federal, state, county, municipal or other governmental or quasi-governmental authority or agency pertaining (1) to the Work, the Project and/or the Land, or (2) to the use and operation of the Project or the Land for their intended purposes.

§ 10.2.11 The Contractor shall comply with and enforce all of the Owner's regulations pertaining to the use of the Project site or the safety and protection of persons and property and all instructions of the Owner including but not limited to instructions relating to signs, advertisements, fires, smoking and hazardous materials.

### § 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from concealed and undisclosed "Hazardous Materials" (as that term is defined in Section 10.3.2 below), 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. The Work in the affected area shall not thereafter be resumed except by written agreement of Owner and Contractor if in fact the material is a Hazardous Material as defined in Section 10.3.2 below and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of Hazardous Material(s), or when it has been rendered harmless.

§ 10.3.2 For purposes of the Contract Documents, the term "Hazardous Material" includes, without limitation, any material or substance which is (A) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6903), (B) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, (42 U.S.C. §6901), (C) asbestos, (D) petroleum, (E) polychlorinated biphenyl (PCB), or (F) any other hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, the state in which the Project is located and the United States Government; or (G) any hazardous or toxic material, substance, chemical, waste, contaminant, emission, discharge or pollutant or comparable material listed, identified, or regulated pursuant to any federal, state or local law, ordinance or regulation which has as a purpose the protection of health, safety or the environment, including but not limited to petroleum, petroleum products and wastes derived therefrom. Each reference to a statute, law or regulation herein shall be deemed to include any amendments thereto which are enacted from time to time and which are in effect at the time that the act or omission occurs which gives rise to the liability of the indemnifying party. The Contractor shall advise and notify Owner, to the best of its knowledge, of the extent of the Hazardous Material, and shall assist Owner in retaining qualified consultants and/or contractors to survey and/or remove such Hazardous Materials. Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum or Guaranteed Maximum Price, as applicable, shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up. Owner shall sign all manifests as the "Owner" of any pre-existing hazardous materials with respect to the disposal thereof. In the event Contractor or any Subcontractor causes any Hazardous Material condition, then Contractor shall, at its sole cost and expense, perform any and all remediation measures necessary to remove the Hazardous Materials that Contractor caused to be installed in the building.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor 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 in the affected area if in fact the material or substance presents the risk of bodily injury or death and has not been rendered harmless, provided that, and only to the extent that such claim, damage or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of

tangible property (other than the Work itself). The foregoing obligation to indemnify and save harmless shall apply and be effective only if (a) such claim, damage, loss or expense is not caused in part by the negligent acts or omissions of the Contractor, a Subcontractor or anyone directly or indirectly employed by them or for whose acts they may be liable (including, without limitation, failure by any of such parties to take reasonable precautions to prevent such loss, including, without limitation, the adoption and implementation of reasonable safety precautions for identification, exposure to and handling of such materials or substances) and (b) such claim, damage, loss or expense is not otherwise covered by (i) workers' compensation, disability or similar benefits or (ii) available insurance (and no insurer or similar party shall be entitled to subrogation rights on account of making payments on account of any such claim, damage, loss or expense). The foregoing obligation to indemnify and save harmless shall not apply if the existence of any such materials or substances was known to a Contractor Party or should have been known to a Contractor Party or disclosed in the Contract Documents, reports or other materials provided to the Contractor.

The term "rendered harmless" shall be interpreted to mean that levels of asbestos and polychlorinated biphenyls are less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the Project site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall save, defend, indemnify defend and hold harmless the Owner from any and all third party claims, losses, liabilities, damages, fines, penalties, judgments, awards, costs and expenses, including but not limited to attorney's fees, that the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, (2) where the Contractor or any Subcontractor fails to perform its obligations under this Section or other provisions of the Contract Documents, (3) any use, storage, release, spill, leak, discharge, disposal, dumping, escape, generation, treatment, abatement, removal, handling or transportation of Hazardous Material by the Contractor or any Subcontractor (and irrespective of the ownership of such Hazardous Materials) which hazardous material either the Contractor or any Subcontractor has introduced onto the property, (4) any investigation, inquiry, order, hearing, action or other proceeding by or before any governmental agency regarding a potential violation by the Contractor and/or any Subcontractor of the provisions of any Environmental Requirements, or (5) any claim, whether meritorious or not, brought or asserted against Owner which relates to, arises from or is based on a potential violation by the Contractor and/or any Subcontractor of the provisions of any Environmental Requirements.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a Hazardous Material solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.3.7 For the purpose of this Section, "Subcontractor" shall include Subcontractor, sub-subcontractor or other person furnishing labor, services, goods, materials or equipment to the Project. As herein used, "Environmental Requirements" means any and all federal, state or local laws, statutes, ordinances, rules, regulations, orders, directives, authorizations, judgments, decrees, or other governmental restrictions or requirements that are in effect during any portion of the term of this contract and relate to the protection of human health and safety, natural resources or the environment or to the use, generation, storage, transportation, treatment or disposal of Hazardous Materials.

- .1 The Contractor, during and in the course of performance by Contractor of the Work, shall comply with and shall cause each Subcontractor to comply with all Environmental Requirements. Nothing in the preceding sentence shall impose any obligation upon Contractor to comply with Environmental Requirements following Final Completion except in connection with (1) correction of any defective nonconforming work pursuant to 12.2.2 and (2) performance by Contractor of its obligations.



- .2 Prior to the introduction of any Hazardous Material on or about the Owner's property by the Contractor or any Subcontractor, the Contractor or such Subcontractor shall provide to the Owner a list of Hazardous Materials that will be used to complete the Work. Material Safety Data Sheets (MSDS) shall be provided to Owner for each Hazardous Material listed. Information shall also be provided to Owner by the Contractor or Subcontractor if the presence on or about the property or the use of any Hazardous Material on or about the property by the Contractor or any Subcontractor requires a warning under Proposition 65 or other applicable law. Responsibility for providing such Proposition 65 warnings shall be the sole responsibility of the Contractor.

§ 10.3.8 To the extent that any of the Work includes or involves remediation, handling, transporting and/or disposal of Hazardous Materials, the following provisions of this Section shall supplement and/or modify Sections 10.3.1 through 10.3.7 and any other inconsistent provision in the Contract Documents to the extent applicable: (a) all of the Work shall be performed in strict compliance with all Environmental Requirements and other applicable laws and requirements of governmental authorities having or asserting jurisdiction over any portion or aspect of, or relating to, the remediation, handling, transporting and disposal of Hazardous Materials included in the Work; (b) the Contractor shall implement appropriate and sufficient safeguards to protect persons and property from exposure to contaminated or hazardous materials and/or substances included in the Work; (c) all bills of lading, manifests, waste shipping and disposal records shall be signed by the Contractor, transporter and operator of any repository authorized to, and which does, receive and dispose of contaminated or hazardous materials and/or substances included in the Work (however, to the extent required by such forms, the Project shall be identified as the originating source of preexisting materials removed from the Project site); (d) the indemnification, defense and hold harmless provisions of Section 3.18 shall include, without limitation, any claim, loss, liability or damage attributable in whole or in part to any failure by any Contractor Party to comply with the legal and contractual requirements governing the remediation, handling, transporting and disposal of Hazardous Materials; and (e) the Contractor shall be solely responsible for any delays, except to the extent of a proven concurrent delay for which Contractor would otherwise be entitled to an extension of the Contract Time under the Contract, and associated costs arising from any suspension or partial suspension of the Work, and subsequent acceleration to recover time lost, attributable to any failure to comply with the requirements of this paragraph.

#### § 10.4 EMERGENCIES

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

#### § 10.5 SECURITY MEASURES

§ 10.5.1 The Contractor hereby acknowledges that the nature of the Owner's operations may require strict security measures. The Contractor and Subcontractors and anyone and any party for whom any of them may be liable, shall cooperate with the Owner's security personnel and shall comply with all security requirements of the Owner's security personnel. The foregoing, however, shall not relieve the Contractor of any obligation to provide a safe and secure workplace for all parties, materials, equipment and personal items entering the Project site.

§ 10.5.2 The Owner reserves the right to bar access to any individual for reasonable security reasons. Furthermore, the Owner reserves the right to limit the location of entries to the Project which may be used by the Contractor, Subcontractors, or any party for whom any of them may be responsible.

### ARTICLE 11 INSURANCE AND BONDS

#### § 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 TYPES OF CLAIMS. Contractor shall purchase and maintain until the Work is completed, from a company or companies lawfully authorized to do business in California, such insurance as will protect Contractor from claims set forth below which may arise out of or result from Contractor's operations under the Contract Documents and for which Contractor may be legally liable, whether such operations be by 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;

- .2 claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
- .4 claims for damages insured by the usual personal injury liability coverage;
- .5 claims for damages, other than damage to the Work itself during the performance of the Work, because of injury to or destruction of tangible property, including explosion, collapse, and damage to utilities, and 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 arising out of Contractor's indemnification obligations under the Contract Documents.

§ 11.1.2 MINIMUM COVERAGES. The insurance required by Section 11.1.1 shall, at a minimum, include the following insurance coverages:

(A) Workers' Compensation Insurance providing statutory benefits for all persons employed in connection with the construction at the Project Site, regardless of whether such coverage or insurance is mandatory or merely elective under applicable law, with limits of liability and coverage as required by applicable law, or participation in a monopolistic state workers' compensation fund; and Employer's Liability Insurance, or in a monopolistic state Stop Gap Liability insurance, in an amount not less than \$1,000,000 each accident/\$1,000,000 each employee/\$1,000,000 annual policy limit, including occupational disease coverage with a limit of \$1,000,000 per person subject to an aggregate limit of \$1,000,000 per annum. Workers' Compensation and Employer's Liability Insurance shall be kept in force for at least one year after Work is completed.

(B) Commercial General Liability Insurance, on an "occurrence" basis, insuring against liability for bodily injury and death, for property damage, and for advertising and personal injury, in an amount not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate for bodily injury, death, and property damage, and \$1,000,000 per occurrence and \$2,000,000 annual aggregate for advertising and personal injury. This insurance shall be on a form at least as broad as Insurance Services Office ("ISO") Commercial General Liability Coverage "occurrence" form CG 00 01 10 01 or another ISO Comprehensive General Liability "occurrence" form providing equivalent coverage approved in writing by Owner. This insurance shall include: operations-premises liability, contractor's protective liability on the operations of Contractor and all Subcontractors; products and completed operations; broad form contractual liability coverage including coverage for the indemnity obligations of the Contractor under the indemnity provisions of this Agreement and the Contract Documents; no exclusion for professional services, or for work performed by subcontractors, or for explosion, collapse, underground operations, foundation work, damage to utilities, or loss of use resulting therefrom; if applicable, liability arising out of elevators and escalators; pollution coverage for losses arising out of a hostile fire; and an endorsement amending the aggregate limits to apply on a per location or per project basis. Such coverages and limits are to be maintained continuously for a period of ten (10) years after the Work is completed.

(C) Automobile Liability Insurance for all owned, non-owned, leased, rented, borrowed, and/or hired vehicles (Symbol 1) insuring against liability for bodily injury and death and property damage in an amount not less than One Million Dollars (\$1,000,000) combined single limit per occurrence, issued on a form at least as broad as ISO Business Auto Coverage form CA 00 01 07 97 or other form approved in writing by Owner.

(D) Contractor's Pollution Liability policy, on an occurrence form, with limits of not less than **[[TO BE CONFIRMED** - \$10,000,000 per occurrence and in the annual aggregate]]. Contractor's Pollution Liability coverage shall include third party claims for bodily injury, property damage and clean-up costs for pollution conditions (including without limitation for mold, fungi and bacterial matter) arising from Contractor's or any

Subcontractor's acts or omissions, negligence or willful misconduct. Contractor agrees to maintain coverage for losses or claims arising from "completed operations" for a minimum of ten (10) years following the completion of the Work. Contractor's Pollution Liability coverage shall be primary for pollution conditions arising as a result of the performance of the Work.

(E) Excess/Umbrella Liability Insurance of not less than \$200,000,000 annual aggregate, to be excess over the Employer's Liability, Commercial General Liability, Contractor's Pollution Liability Insurance, and Automobile Liability Insurance described above. The policy must include an "Aggregate Per Project" endorsement. Such coverages and limits are to be maintained continuously for a period of ten (10) years after the Work is complete.

(F) Contractor's Equipment or Property Insurance covering all tools, molds, forms and all other property of Contractor and Subcontractors not being incorporated into the Project and not specifically covered by the Property Insurance provided by Owner. Contractor and its Subcontractors may elect to self insure this exposure. However, Contractor and its Subcontractors waive any claims against Owner and the Indemnified Parties for theft, loss or destruction of such property, and any deductibles and/or self-insurance shall be treated as insurance for the purposes of the waiver of claims in Section 11.5 below.

(G) Professional Liability Insurance covering errors or omissions of a professional nature made by or on behalf of Contractor in an amount not less than \$10,000,000 each claim and in the aggregate, with no exclusions or limitations for claims arising from Contractor's negligent inspection of work performed or materials provided by vendors or trade contractors, or arising from pollution, delay/consequential damage, design-build or mold. Claims-made coverage is permissible, provided the policy retroactive date is not advanced beyond the date services were first rendered to Owner. Contractor agrees to continue to purchase this coverage without advancing the retroactive date through the expiration of the warranty period, or ten (10) years.

(H) Separate Commercial General Liability Insurance as required by the "Mission Square and Pedestrian Bridge Easement Agreement" attached as Exhibit "P".

§ 11.1.3 All policies of insurance to be provided by Contractor in accordance with this Article 11 shall: (i) be issued by financially responsible companies that are authorized to issue such insurance in all applicable states, have an A.M. Best rating of "A" or better and a financial size category of X or larger, and are otherwise satisfactory to Owner and each party designated herein as an Additional Insured Party; and (ii) be in form and substance satisfactory to Owner and to each party designated herein as an Additional Insured Party; and (iii) be primary and noncontributory (including all primary and excess/umbrella policies). All policies of insurance to be provided by Subcontractors shall be consistent with the requirements set forth in Exhibit "I-3".

§ 11.1.3.1 Prior to commencement of the Work, Contractor shall submit to Owner a certificate of insurance in form and substance acceptable to Owner and Lender, if any, evidencing existence of the insurance coverages required under Section 11.1.2. (An acceptable form of such a certificate is attached as Exhibit "O"). Each certificate shall contain a provision that the coverages provided under the respective policies will not be canceled, materially changed, or allowed to expire or be exhausted until at least 30 days' prior written notice has been given to Owner. If any of the insurance coverages are to remain in effect after final payment is made to Contractor, additional certificate(s) evidencing continuation of such coverage shall be submitted to Owner together with the Contractor's final Application for Payment. Additional certificate(s) shall be delivered to Owner, from time to time after final payment, to evidence the existence of all coverages that are to continue in effect following final payment. Such certificates evidencing the renewal of the applicable policy or policies shall be delivered to Owner not less than fifteen (15) days prior to the expiration date of each applicable insurance policy. This requirement shall remain in effect for as long as the Contractor is required to keep the insurance coverage(s) in effect. In jurisdictions requiring mandatory participation in a monopolistic state workers' compensation fund, the insurance certificate requirements for the coverage required for workers' compensation will be satisfied by a letter from the appropriate state agency confirming participation in accordance with statutory requirements. Such current participation letters required by this Section shall be provided every six (6) months for the duration of Contractor's performance of this Agreement. Failure by the Contractor to provide the certificates or letters required by this Section shall not be deemed to be a waiver of the requirements in this Section. Upon request by the Owner, true and complete copies of the insurance policies shall be delivered to Owner within ten (10) days following Owner's request.

§ 11.1.3.2 To the fullest extent permitted by law, the Owner, the Owner Parties, and such other parties as may be designated by Owner (each, an “Additional Insured Party”) shall each be named as an additional insured with respect to the Commercial General Liability Insurance, the Automobile Liability Insurance, Contractor's Pollution Liability Insurance, the Excess/Umbrella Liability Insurance, and such other liability insurance as is provided and maintained in accordance with this Agreement. Such policies shall cover the Additional Insured Parties with respect to liability arising out of the Work, including but not limited to liability to employees of Contractor or its Subcontractors, or their personal representatives, heirs, and beneficiaries. Such policies shall also (i) provide that the coverage provided thereunder shall be primary and any liability insurance of each Additional Insured Party shall be secondary and non-contributory; and (ii) waive any right of subrogation against each Additional Insured Party. There shall be no endorsement or modification to any policies required by this Agreement to make them excess over other available insurance; alternatively, if any such policies state that they are excess or pro rata, the policy shall be endorsed to state that it is primary with respect to each Additional Insured Party, and that any other available insurance is secondary and non-contributory. For the avoidance of doubt, each primary policy and each excess/umbrella policy through which Contractor satisfies its obligations under this Section must provide coverage to the Additional Insureds that is primary and noncontributory. The certificate of insurance submitted by Contractor to Owner prior to commencement of the work shall confirm that the Contractor's policies comply with the requirements of this Section, or Contractor shall submit to Owner copies of the provisions in its insurance policies complying with the requirements of this Section.

§ 11.1.3.3 Contractor shall require all Subcontractors to supply certificates of insurance evidencing liability insurance that complies with the requirements of Section 11.1.2, with limits according to a schedule of Subcontractor's liability insurance to be submitted by Contractor and approved by Owner. Subcontractors shall also (a) supply copies of the provisions in their insurance policies (i) to the fullest extent permitted by law, naming Owner and each Additional Insured Party as an additional insured with respect to liability arising out of the operations of Subcontractor and with respect to claims by employees of Subcontractor or their personal representatives, heirs, and beneficiaries; (ii) providing that the insurance of Subcontractor is primary and the insurance of Owner and each Additional Insured Party is secondary and non-contributory; and (iii) waiving any right of subrogation against Owner and each Additional Insured Party; or (b) supply certificates of insurance that confirm such terms. Contractor shall obtain from the Subcontractors the certificates of insurance and/or policy provisions required by this Section. Contractor shall be responsible for identifying and remedying any deficiencies in the certificates of insurance or policy provisions. Contractor shall make such certificates of insurance and/or policy provisions available to Owner upon Owner's request.

§ 11.1.3.4 Subject to the prior written consent of Owner and Lender, if any, some or all of the insurance coverages provided in accordance with Section 11.1 may be provided by Contractor under what is known as a Contractor Controlled Insurance Program (“CCIP”). The insurance coverages provided pursuant to the CCIP must satisfy all the requirements of Section 11.1.

§ 11.1.3.5 Owner reserves the right, in its sole discretion and upon written notice to Contractor, to procure project-specific insurance coverage otherwise required by this Section 11.1 for the Contractor and such Subcontractors as Owner desires pursuant to an Owner Controlled Insurance Program (“OCIP”). In such instance, the project-specific insurance pursuant to the OCIP shall apply only to Work performed at the Project Site and be in lieu of the particular corresponding project-specific insurance policy or policies required by this Paragraph 11.1. Contractor and its Subcontractors will provide a credit to Owner, equal to the amount of savings Contractor or its Subcontractors receive, on the applicable insurance premiums and charges for the pre-funding of deductibles and self-insured retentions relating to this procurement based on the bids provided. If Contractor or a Subcontractor did not provide separate bids (with and without insurance in the bidding process), then the applicable credit shall be based on the then-current rate on the applicable policies as determined by Owner. Contractor and all Subcontractors shall fully cooperate with Owner and any broker or underwriter selected by Owner in the procurement process and shall provide any information requested by such parties in connection with the procurement or maintenance of the project-specific policy or policies. As part of the Work, Contractor shall comply with the requirements of any project-specific insurance policy or policies obtained by Owner. Notwithstanding the foregoing, in the event that Owner elects to provide any on-site insurance coverage required hereunder pursuant to a project-specific policy, then Contractor and the applicable Subcontractors shall maintain, at their sole cost and expense, the insurance policies required hereunder for claims for off-site matters, and the other provisions of this Section II shall apply with respect to such insurance policies. Owner reserves the right to terminate or modify any coverages maintained by Owner hereunder on sixty (60) calendar days' written notice to Contractor and the applicable Subcontractors. To

the extent that any such coverage is so terminated or modified, or if and when Owner determines to not enroll or to cease enrollment of Contractor or a Subcontractor in any of such coverages, then, as applicable, Contractor shall obtain or amend, and shall require its affected Subcontractors to obtain or amend, their own respective policies of insurance as required in this Article to include coverage for all operations not included or no longer included in the coverage to be furnished by Owner hereunder. A prorated portion of the actual cost of such alternative insurance which was originally identified in the bid documents of Contractor or the applicable Subcontractor will be reimbursed by Owner as a Change Order with the Contract Sum amended accordingly. Written evidence of such alternative insurance shall be provided to the Owner prior to the actual date of the termination or modification of any insurance coverage, or promptly after Owner's determination of non-enrollment of a Subcontractor in any such coverage]].

§ 11.1.3.6 All required policies of insurance shall not have deductibles or self-insured retentions which exceed twenty-five thousand and 00/100 dollars (\$25,000.00), unless approved in writing by Owner. All such deductibles or self-insured retentions shall be borne by Contractor or Subcontractor at their sole expense, without reimbursement by Owner, and shall be treated as "insurance" for purposes of the waiver in Section 11.5 below.

§ 11.1.4 If Contractor fails to purchase and maintain, or to require to be purchased and maintained, any insurance required under this Section 11.1, Owner may, but shall not be obligated to, upon five (5) days' written notice to Contractor, purchase such insurance on behalf of Contractor and shall be reimbursed by Contractor upon demand for all amounts paid by Owner in connection therewith, or may deduct such amounts from sums due to Contractor. In no event shall any failure of Owner to receive or demand evidence of such coverage prior to Contractor commencing the Work be construed as a waiver by Owner of Contractor's obligations hereunder. Contractor hereby agrees to indemnify and hold Owner and the Additional Insured Parties harmless from any liability, loss, cost, or expense (including attorneys' fees) that such parties may incur as a result of Contractor failing to purchase and maintain the insurance required hereunder.

§ 11.1.5 Compliance by Contractor with the insurance requirements contained in this Section 11 shall not relieve Contractor of liability under any indemnity or other provision set forth in this Agreement or Contract Documents or limit Contractor's liability under this Agreement or the Contract Documents or applicable law.

## § 11.2 PROPERTY INSURANCE

§ 11.2.1 Owner shall purchase and maintain for the benefit of all parties with an interest in the Project including Owner as named insured, with 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" completed value form or equivalent policy form. 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 Substantial Completion of the Project. This insurance shall include the interests of Owner, Contractor, Subcontractors, each Additional Insured Party, and such other parties as may be designated by Owner. The Property insurance provided by Owner shall not cover any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring and other similar items commonly referred to as construction equipment which may be on the Project site and the capital value of which is not included in the Work. As required by Section 11.1.2 above, Contractor shall make its own arrangements for any insurance it may require on any construction equipment, and all such policies shall include a waiver of subrogation provision in accordance with the requirements of Section 11.5.

§ 11.2.2. 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, testing and startup and temporary buildings.

§ 11.2.3. This property insurance shall cover portions of the Work stored off the Project site, and also portions of the Work in transit in amount up to **[[TO BE CONFIRMED]]**.

§ 11.2.4. The builder's risk insurance shall contain the "permission to occupy upon completion of Work" endorsement.

§ 11.2.4.1. Owner and Contractor hereby acknowledge that Owner has a deductible on the Builder's Risk Insurance Policy carried by Owner. Such deductibles up to \$25,000.00 per claim shall be borne by Contractor at its sole

expense, without reimbursement by Owner, and shall be treated as “insurance” for the purpose of the waiver in Section 11.5 below.

§ 11.2.5. Owner shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by Owner. This insurance shall include the interests of Owner, Contractor, Subcontractors, each Additional Insured Party, and such other parties as may be designated by Owner.

§ 11.2.6. If 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, which risks are typically insured in projects similar to this Project, Owner shall, if possible, include such insurance, and the cost thereof shall be paid by Contractor.

§ 11.2.7. A loss insured under Builder's Risk insurance covering the Project shall be adjusted by Owner in good faith and made payable to Owner in good faith for the insureds as their interests may appear, subject, however, to requirements of any applicable mortgagee clause and of Section 11.2.8. Contractor and each Subcontractor shall indemnify and hold harmless Owner from any and all liabilities, loss, cost, or expense (including attorney's fees) incurred by Owner in making any claim on their behalf under such insurance policy or policies. Contractor shall pay Subcontractors their just shares of insurance proceeds received by Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their sub-subcontractors in a similar manner.

§ 11.2.8. Owner in good faith shall have the right to adjust and settle a loss with insurers unless Lender, if any, exercises its right to join Owner in the adjustment and settlement of any particular loss, in which case the adjustment and settlement shall be conducted jointly by Owner and Lender, if any.

§ 11.3 LOSS OF USE INSURANCE. Owner, at Owner's option, may purchase and maintain such insurance as will insure Owner against loss of use of Owner's property due to fire or other hazards, however caused.

#### § 11.4 CONTRACTOR'S RESPONSIBILITIES.

§ 11.4.1 Contractor shall promptly investigate and make a full written report to Owner and Owner's insurance carriers as to all alleged accidents and/or claims for damages relating to construction of the Project or relating to any other property of Owner, including any damage or destruction to the Project or such other property and the estimated cost of repair and shall perform all necessary recordkeeping related to same. At the request of Owner, Contractor shall acquaint itself with all terms and conditions of Owner's insurance policies and cooperate with and make all reports required by the insurance carrier(s) and shall do nothing to jeopardize the rights of Owner and/or any other party insured under said policies or to cause an increase in the premiums for said policies. Contractor and Owner each shall notify the other (and, at Owner's request, Contractor shall notify Owner's insurance carriers) of any casualty or of any claim made against the other or both jointly and severally on account of personal injury or property damage, and shall cooperate fully with any insurance carrier in connection with any such claim, which cooperation shall include, without limitation, attendance at meetings and court proceedings and the like; provided, however, that by so cooperating Contractor shall not settle any losses, complete loss reports, adjust losses, or endorse loss drafts without the prior written approval of Owner.

§ 11.4.2. Contractor shall notify Owner promptly upon the discovery of any defect with respect to the Work, without relieving Contractor of the responsibility for addressing such defect as a part of its services, as provided elsewhere in this Agreement.

§ 11.4.3. Contractor shall provide such information to Owner and Owner's insurance carriers and shall attend such meetings as shall be necessary from time to time to ensure that the insurance carried hereunder appropriately addresses issues pertaining to and conditions at the Project site, including, without limitation, exposure information, loss control and protection of the Project site, and current replacement cost figures.

§ 11.4.4. Contractor shall be responsible for providing any other insurance and/or employee benefits required of Contractor and any Subcontractor by any municipal, state or federal governmental agency

§ 11.4.5. Contractor shall actively monitor all claims, incidents and occurrences that may affect the insurance coverages that Contractor is required to maintain by this Agreement. Contractor shall furnish to Owner information concerning any reduction of coverage or aggregate limits with reasonable promptness. Contractor shall assure that the application of the aggregate limit will not have the practical effect of reducing the minimum required amount of insurance coverage on a per occurrence or per claim basis. If, at any time, the full minimum per occurrence limit is not available for the payment of claims, or Contractor or Owner reasonably believes that such limits may not be available, Contractor shall promptly notify Owner in writing. Upon request by Owner, and at Contractor's sole cost and expense, Contractor shall either take immediate steps to increase the aggregate limits as necessary to provide such coverage subject to the insurance requirements herein, or shall provide the required coverage under a separate insurance policy that is not subject to the aggregate limit.

§ 11.4.6. Contractor shall fully cooperate with Owner in connection with any claim against Owner that is caused by Contractor or any of its Subcontractors. Contractor shall cause all subcontracts with Subcontractors to contain a similar provision requiring the Subcontractors to fully cooperate with Contractor and Owner in such instance.

§ 11.5 WAIVERS OF SUBROGATION. To the fullest extent permitted by law, Owner and Contractor waive all rights against (1) each other, any of their affiliates, subsidiaries, agents, Subcontractors, or consultants, and their members, principals, other direct or indirect owners, officers, subsidiaries, agents, and employees, including but not limited to Boston Properties Limited Partnership, Boston Properties, Inc., BP Management, L.P., BXP TB Development, LLC, a Delaware limited liability company, Hines Interests Limited Partnership, a Delaware limited partnership, Hines Transbay Tower Associates L.P., a Texas limited partnership, the Transbay Joint Powers Authority, a joint powers authority created under California Government Code Sections 6500 et seq., the City of San Francisco, and the State of California, and; (2) the Architect, Architect's consultants, and other contractors described in this Agreement, if any, and any of their subcontractors, agents and employees; (3) Lender, if any, and its subsidiaries, agents, participants, members, officers and employees; for all liabilities, loss, cost, or expense (including attorney's fees) to the extent of actual recovery of any insurance proceeds under any insurance obtained pursuant to this Section 11, or to the extent that such liabilities, loss, cost, or expense (including attorney's fees) would have been covered if such insurance had been purchased as required by this Agreement, except such rights as they may have to proceeds of such insurance held by Owner in good faith. The insurance policies shall provide such waivers of subrogation by endorsement or otherwise and shall contain no provision that would invalidate or restrict the parties' waiver and release of the rights of recovery in this section. The foregoing waivers 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; even though that person or entity 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. Contractor shall require similar waivers in favor of Owner and Contractor from all Subcontractors.

§ 11.6 Intentionally Omitted.

#### § 11.7 PERFORMANCE BOND AND PAYMENT BOND/SUBGUARD

§ 11.7.1 The Owner shall have the right, in its sole discretion, to require the Contractor to furnish a performance bond and/or a payment bond (collectively, the "Bonds"), each in an amount not less than one hundred percent (100%) of the Contract Sum covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. The Bonds shall be in form and substance satisfactory to Owner and Owner's lenders, if any, in their sole judgment and, without limiting the generality of the foregoing, such Bonds shall be written by a corporate surety licensed in the State where the Project is located and listed on the U.S. Treasury List (Circular 570) (the "Treasury List") as an acceptable surety for bonds in favor of the federal government. Owner may require, in its sole discretion, that its lenders, if any, be named as dual-obligees under such Bonds.

§ 11.7.2 If during the Contract Time, the surety that issued the Bonds ceases to be listed on the Treasury List, the Owner shall have the right to require the Contractor to replace all Bonds issued by such surety with similar Bonds issued by another surety acceptable to Owner. Notwithstanding the foregoing or any other provision of the Contract Documents to the contrary, in no event shall Owner be responsible for any costs incurred by Contractor in connection with the replacement of any Bonds during the Contract Time, whether or not the same is required by Owner pursuant to this Section 11.7.2. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

§ 11.7.3 The Contractor shall keep the surety informed of the progress of the Work, and, where necessary, obtain the surety's consent to, or waiver of, (i) notice of changes in the Work; (ii) request for reduction or release of retention; (iii) request for final payment; and (iv) any other item required by the Surety. The Owner shall be notified by the Contractor, in writing, of all communications with the Surety. The Owner may, in the Owner's sole discretion, inform the Surety of the progress of the Work and obtain consents as necessary to protect the Owner's rights, interest, privileges, and benefits under and pursuant to any bond issued in connection with the Work.

§ 11.7.4 SUBCONTRACTOR'S DEFAULT INSURANCE/SUBGUARD. The Contractor shall purchase from and thereafter maintain in a company or companies acceptable to the Owner and lawfully authorized to do business in the jurisdiction in which the Project is located, subcontractor default insurance or Subguard covering the payment and performance obligations of all Subcontractors performing portions of the Work. The subcontractor default insurance or Subguard shall: (a) include a financial interest endorsement in form and substance satisfactory to the Owner naming the Owner and any other party identified by the Owner as beneficiaries thereunder; (b) be assignable to the Owner at the Owner's request in the event that the Contractor's services are terminated for insolvency only; (c) insure that each covered Subcontractor will perform each and every part of its subcontract(s), cover all guarantees called for and insure prompt payment to all persons furnishing material or labor requirement in prosecution of the work under its subcontract(s); (d) permit additions or deductions from the Work in any amount without diminishing or affecting coverage; and (e) permit the Owner to occupy the Project at any time without diminishing or affecting coverage. Certificates of insurance with the aforementioned financial interest endorsement shall be issued to Owner and such other parties as Owner may request. In the event of a default on the part of a subcontractor, the Contractor shall, without reimbursement as a Cost of the Work or other cost to the Owner, promptly exercise all of the rights under the subcontractor default insurance or Subguard and pay all costs arising from such default (including, without limitation, any deductibles or self insured retention). In the event of a default on the part of a Subcontractor, the Contractor shall, outside of the Cost of the Work and the Guaranteed Maximum Price and without cost to the Owner, promptly cause the cure of such default without charge as a Cost of the Work. The Contractor, if approved by Owner, may elect to exclude certain Subcontractors from the policy, however, in such instances, the Subcontractor will be required to provide payment and performance bonds from such subcontractors (which include the Owner, Lender and any other party having an interest in the Project or the Project site identified by the Owner as co-obligees). The cost for any bond placed this way will be included as a Cost of the Work (within such Subcontractor's subcontract sum) as a separate charge from that of the subcontractor default insurance or Subguard, although the Cost of the Work will not include a subcontractor default insurance or Subguard charge for such unenrolled Subcontractor(s) based on the subcontract cost(s) of such unenrolled Subcontractor(s).

## 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, including any governmental authority, it must, if requested in writing by such party, be uncovered for that party's examination and be replaced at the Contractor's expense without change in the Contract Time or the Guaranteed Maximum Price.

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

### § 12.2 CORRECTION OF WORK

#### § 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

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



Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work, including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner. In addition, the Contractor shall promptly remedy damage and loss arising in conjunction with the Project caused in whole or in part by the Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them, or anyone for whose acts they may be liable and for which the Contractor is responsible.

## § 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5 of these General Conditions and any express or implied warranties or guaranties applicable to the Work, if, within two (2) years after the date of Substantial Completion of the entire Work (completion of all phases of the Work), or after the date for commencement of warranties established under Section 9.8.4 of these General Conditions, 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 at Contractor's sole expense after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall endeavor to give such notice promptly after discovery of the condition (provided that any delay by the Owner in delivering written notice of the condition shall not relieve the Contractor (or any insurer, Subcontractor, surety or other responsible party) from liability or responsibility for such condition. Owner shall have the right, to operate the existing equipment until defects are corrected and warranties met without charge for depreciation, use, or wear. If the Contractor fails to correct nonconforming Work within seven (7) days after receipt of notice from the Owner or Architect, the Owner may correct it and Contractor shall bear the costs relating thereto in accordance with Section 2.4 of these General Conditions; provided that no further notice to Contractor shall be required. This obligation shall survive any termination of the Contract Documents. Contractor agrees to require each Subcontractor to assume the obligations of this Section 12.2.2 at Subcontractor's sole cost and expense, with respect to Work performed by such Subcontractor.

- a. The Owner shall have the right to continue to use or operate any defective part of the Work until the Contractor makes required repairs or replacements.

§ 12.2.2.2 If the Contractor fails to correct nonconforming Work within a reasonable time (not to exceed the time period specified in Section 12.2.2.1 above), the Owner may correct it in accordance with Section 2.4 of these General Conditions. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Owner, the Owner may remove it and store the salvageable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten (10) days after written notice, the Owner may upon ten (10) additional days' written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's or Owner's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum or Guaranteed Maximum Price, as applicable, shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contract shall pay the difference to the Owner. 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 completion of that portion of the Work.

§ 12.2.2.3 Upon completion of any Work under or pursuant to this Section 12.2, the two (2)-year correction period in connection with the Work requiring correction shall be renewed and recommence, however, pursuant to Section 3.5.3, in no event shall said correction period exceed four (4) years in total. The obligations under this Section 12.2.2.3 shall also apply to any part of the Work as to which defects or deficiencies could not reasonably be determined because of the defective Work being corrected and any part of the Work or other property that is damaged by the repairs to the defective Work.

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

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

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the two (2) year period for correction of Work as described in Section 12.2.3 of these General Conditions 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.

§ 12.2.6 Nothing contained in this Contract shall in any way limit the right of Owner to assert claims for damages resulting from patent or latent defects in the Work for the period of limitations prescribed by California law, and the foregoing shall be in addition to any other rights and remedies Owner may have hereunder or at law or in equity.

### § 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may, in its reasonable good faith discretion, elect to accept such Work that is not in accordance with the requirements of the Contract Documents, instead of requiring its removal and correction, in which case the Contract Sum or Guaranteed Maximum Price, as applicable, 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

Contractor shall comply with all applicable local, state and federal Codes, laws, rules and regulations, and shall obtain all applicable licenses and permits for the conduct of its business and the performance of the services called for in the Contract Documents.

### § 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Contractor shall not assign the Contract as a whole without written consent of the Owner, which consent may be withheld in Owner's sole discretion. If Contractor attempts to make such an assignment without such consent, such assignment shall be void. In the event of any assignment by Contractor, Contractor shall not be released from its obligations under the Contract Documents. Should Owner consent to any such assignment, such consent shall not constitute a waiver of any of the restrictions of this Section 13.2.1 and the same shall apply to each successive assignment hereunder, if any.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to (1) another entity or person if such assignee agrees in writing to pay the Contractor all undisputed amounts due and owing the Contractor under the Agreement at the time of assignment and to thereafter perform all obligations of the Owner hereunder accruing before or after the date of such assignment, or (2) a lender providing construction financing or credit enhancement for the Project in accordance with Sections 15.18 or 15.22 of the Agreement. The Contractor shall execute all commercially reasonable consents reasonably required to facilitate any assignment by Owner. In the event of Owner's assignment to a third party (other than a lender providing construction financing), if the Owner provides evidence demonstrating that such third party has sufficient financial capability to perform its obligations hereunder, the Owner shall be released from its executory obligations under the Contract Documents.

§ 13.2.3 Contractor shall not assign the whole or any portion of its interest in the Contract Documents or any payments due or to become due under the Contract Documents without the prior consent of Owner which will be subject to its absolute discretion. No assignment by Contractor whether voluntary or involuntary shall be valid or effective without Owner's consent. If Contractor makes or suffers any such assignment, such shall be a breach of the Contract Documents by Contractor. A change in a majority of the ownership of the Contractor shall be deemed an assignment of Contractor's interest in the Contract Documents for purposes of this Section.

### § 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or

certified mail or by courier service or overnight delivery service providing proof of delivery to, the last business address known to the party giving notice or by facsimile to the facsimile number last given to the other party.

.a Service of Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be sent certified mail, postage prepaid, return receipt requested, or telegraphed, delivered or sent by telex, telecopy or cable and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if mailed, four (4) business days after the date of posting by the United States Post Office, (iii) if given by telegraph or cable, when delivered to the telegraph company with charges prepaid; or (iv) if given by telex or telecopy, when sent. Any notice, request, demand, direction or other communication sent by cable, telex or telecopy must be confirmed within forty-eight (48) hours by letter mailed or delivered in accordance with the foregoing. Discuss whether email is sufficient in certain cases.

.b Any written notice hereunder directed to Contractor may be served on its project manager by the means stated in 13.3.a. to the following address:

CLARK / HATHAWAY DINWIDDIE, a Joint Venture  
7677 Oakport St., Suite 1040  
Oakland, California 94621  
Attention: Steven J. Dell'Orto – Executive Representative and Senior Vice President  
David Wilson – Designated Project Executive and Vice President  
Telephone No.: (510) 430-1700  
Facsimile No.: (510) 430-1705

.c Any written notices hereunder directed to Owner or Architect may be served on the Architect or Owner and Owner's representatives by the means stated in Section 13.3.a, at the following addresses, as applicable:

Owner:

TRANSBAY TOWER LLC,  
a Delaware limited liability company  
c/o Boston Properties Limited Partnership  
Four Embarcadero Center  
Lobby Level, Suite One  
San Francisco, CA 94111  
Telephone: (415) 772-0700  
Facsimile: (415) 772-0665  
Attn: Bob Pester  
Senior Vice President & Regional Manager

with a copies to:

TRANSBAY TOWER LLC,  
a Delaware limited liability company  
c/o Boston Properties Limited Partnership  
Four Embarcadero Center  
Lobby Level, Suite One  
San Francisco, CA 94111  
Telephone: (415) 772-0700  
Facsimile: (415) 772-0665  
Attn: Christine Shen  
Vice President & Regional Counsel

Architect:

KENDALL/HEATON ASSOCIATES, INC.  
3050 Post Oak Boulevard, Suite 1000  
Houston, Texas 77056  
Attention: Rex Woodridge  
Telephone No.: (713) 877-1192  
Facsimile No.: (713) 877-1360

TRANSBAY TOWER LLC,  
a Delaware limited liability company  
c/o Boston Properties Limited Partnership  
Four Embarcadero Center  
Lobby Level, Suite One  
San Francisco, CA 94111  
Telephone: (415) 772-0700  
Facsimile: (415) 772-0665  
Attn: Peter Back  
Vice President, Construction

TRANSBAY TOWER LLC,  
a Delaware limited liability company  
c/o Hines Interests Limited Partnership  
101 California, Suite 1000  
San Francisco, CA 94110  
Telephone: (415) 399-6212  
Facsimile: (415) 398-1442  
Attn: Mr. Paul Paradis  
Senior Managing Director

TRANSBAY TOWER LLC,  
a Delaware limited liability company  
c/o Hines Interests Limited Partnership  
2800 Post Oak Blvd, Suite 4800  
Houston, TX 77056  
Telephone: (713) 966-7695  
Facsimile: (415) 398-1442  
Attn: Mr. Andy Trowbridge  
Senior Vice President

#### § 13.4 RIGHTS AND REMEDIES

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

§ 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.

§ 13.4.3 Notwithstanding any other provision to the contrary contained in the Contract Documents, provided that Owner continues to make payments of amounts not in bona fide dispute in accordance with the provisions of the Contract Documents, during all disputes, actions or claims and other matters in question arising out of, or relating to, the Contract Documents or the breach thereof, Contractor shall carry on the Work and maintain The Project Schedule, unless otherwise agreed between Contractor and Owner in writing.

#### § 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, Building Codes, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided (see attached matrix setting forth the parties' responsibilities for certain tests and third party inspections), the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory selected by 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. Except as provided in Section 13.5.3 or elsewhere in the Contract Documents, the Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 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 of these General Conditions, 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 of these General Conditions, 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 of these General Conditions 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 reasonable compensation for the Architect's services and expenses shall be at the Contractor's expense. The Contractor also agrees that the cost of testing services required for the convenience of the Contractor in its scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work, shall be borne by the Contractor.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect. The Contractor shall obtain and deliver promptly to the Architect the final certificate of occupancy for the Project, certificates of final inspection of any part of the Work and operating permits for any mechanical apparatus, such as elevators, escalators, boilers, air compressors, etc., which may be required by law to permit full use and occupancy of the premises by the Owner. Receipt of such permits or certificates by the Architect shall be a condition precedent to Substantial Completion of the Work.

§ 13.5.5 All tests, inspections or approvals required by the Contract Documents shall be made in the presence of a duly authorized representative of the Owner. Contractor shall provide Owner with reasonable prior written notice of any such tests, inspections or approvals, and Owner shall be present at such tests, inspections or approvals, unless waived in writing by Owner. When the presence of the duly authorized representative of the Owner is so waived, sworn statements, in triplicate, of the tests made and the results thereof shall be furnished to the Owner by the Contractor as soon as possible after the tests are made.

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

#### § 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate specified in the Agreement.

#### § 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified in the Contract or if no time period is stated then within the time period specified by applicable law.

#### § 13.8 GENERAL PROVISIONS

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

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

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

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

#### § 13.9 DESTRUCTION OF THE WORK BY FIRE, ELEMENTS, ETC.

In the event of the Work herein be wholly or partially damaged or destroyed by war, fire, storm, lightning, flood, earthquake, settlement or defective soils, expansion or contraction, cracking or deflection, tidal wave, surface or subsurface water, mob violence, vandalism or other casualty before the final completion of said Work, the Contractor, upon written instruction from the Owner, shall proceed to replace and/or repair said Work in accordance with the plans. In this event, the provisions of this Contract shall remain in full force and effect, except that the Contract Sum stated in Article 5 of the Agreement shall be increased by the total cost of removing and/or replacing all damaged and/or destroyed work, the time for completion shall be extended and the Contractor's fee shall be increased.

In the event of substantial damage or destruction to the work by any cause, the Owner may, upon giving written notice to the Contractor, elect to terminate this Contract. In such case, the Owner shall pay the Contractor for all costs of the Work and all non-cancelable obligations incurred by Contractor in connection with the Work incurred prior to the date of the damage or destruction, and the Contractor's fee earned upon such costs and obligations, provided that Contractor shall use its best efforts to mitigate any such costs and obligations.

§ 13.10 NO ORAL WAIVER The provisions of the Contract Documents shall not be changed, amended, waived, or otherwise modified in any respect except by a writing signed by Owner. No person is authorized on behalf of Owner to orally change, amend, waive or otherwise modify the terms of the Contract Documents or any of the Contractor's duties or obligations under or arising out of the Contract Documents. Any change, waiver, approval, or consent granted to the Contractor shall be limited to the specific matters stated in the writing signed by Owner, and shall not relieve Contractor of any other of the duties and obligations under the Contract Documents. No "constructive" changes shall be allowed.

#### § 13.11 NOTICES REGARDING LIENS

§ 13.11.1 Contractor shall provide all notices required or permitted by the laws of the state in which the Project is located for protection of Owner from liens and claims of lien if permitted or required by applicable law. Contractor shall be responsible for filing in the appropriate court or other governmental office records all such notices as required or permitted by the laws of the state in which the Project is located.

§ 13.11.2 Contractor shall provide Owner with copies of all notices received by Contractor from Subcontractors, sub-subcontractors, and/or suppliers to Contractor.

#### § 13.12 PHOTOGRAPHS

§ 13.12.1 Contractor shall provide monthly digital progress photos depicting four (4) exterior views and appropriate interior views of the Project. Contractor shall secure Owner's approval of the views to be photographed. Contractor shall not permit the taking or use of photographs without the written authorization of Owner. The negatives shall also be made available to Owner and upon completion of the Project become property of Owner. Contractor shall identify each print on the back-side with name and address of photographer, name of Project, date and time of exposure, description of vantage point and photographer's numbered identification of exposure.

**§ 13.13 CONTRACTOR'S OFAC REPRESENTATION AND WARRANTY.** As an inducement to Owner to enter into this Contract, Contractor hereby represents and warrants that: (i) Contractor is not, nor is it owned or controlled directly or indirectly by, any person, group, entity or nation named on any list issued by the Office of Foreign Assets Control of the United States Department of the Treasury ("OFAC") pursuant to Executive Order 13224 or any similar list or any law, order, rule or regulation or any Executive Order of the President of the United States as a terrorist, "Specially Designated National and Blocked Person" or other banned or blocked person (any such person, group, entity or nation being hereinafter referred to as a "Prohibited Person"); (ii) Contractor is not (nor is it owned or controlled, directly or indirectly, by any person, group, entity or nation which is) acting directly or indirectly for or on behalf of any Prohibited Person; and (iii) from and after the effective date of the above-referenced Executive Order, Contractor (and any person, group, or entity which Contractor controls, directly or indirectly) has not conducted nor will conduct business nor has engaged nor will engage in any transaction or dealing with any Prohibited Person in violation of the U.S. Patriot Act or any OFAC rule or regulation, including without limitation any assignment of the Contract or the making or receiving of any contribution of funds, goods or services to or for the benefit of a Prohibited Person in violation of the U.S. Patriot Act or any OFAC rule or regulation. In connection with the foregoing, it is expressly understood and agreed that (x) any breach by Contractor of the foregoing representations and warranties shall be deemed a default by Contractor hereunder and shall be covered by the indemnity provisions of the Contract, and (y) the representations and warranties contained in this subsection shall be continuing in nature and shall survive the expiration or earlier termination of the Contract.

**§ 13.14 BUSINESS CONDUCT BY OWNER.** Boston Properties, Inc. ("Boston Properties"), an affiliate of Owner, strives to maintain the highest ethical standards regarding its business relationships. All Boston Properties employees are subject to the requirements of its Code of Business Conduct and Ethics (the "Code"), which include Guidelines for Acceptance of Business Gifts (the "Guidelines"). The Guidelines prohibit the acceptance of cash or cash equivalents by Boston Properties employees from contractors, among other requirements. Both the Code and the Guidelines are available on the Boston Properties website at [www.bostonproperties.com](http://www.bostonproperties.com). Please be advised that if any employee violates the requirements of the Code or the Guidelines in his or her dealings with a contractor, the contractor may be ineligible to conduct future business with Boston Properties. If there is any reason to question the ethical behavior of any Boston Properties employee, a report should be made to the Ethics Point Reporting System at [www.ethicspoint.com](http://www.ethicspoint.com) or 1-866-294-4442. All such reports may be made anonymously and confidentially.

**§ 13.15** No personal liability arising out of this Agreement shall accrue against any individual, officer, director, shareholder, partner, representative, member, managing member, trustee or fiduciary of the Owner (or any person, firm or entity owning the beneficial fee simple title to the Project, or any principal thereof, disclosed or undisclosed) for the performance of the Owner's obligations hereunder. The Contractor specifically agrees to look solely and exclusively to the Owner's then equity interest in the Project for recovery of any judgment obtained by the Contractor against the Owner arising out of the Owner's breach of this Agreement. Such exoneration from personal liability shall be absolute and complete and with no exception whatsoever.

**§ 13.16** The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. In furtherance and not in limitation of the foregoing, the Contractor shall comply with and shall cause its Subcontractors and suppliers to comply with, in connection with the Work, all applicable federal, state or local laws, regulations, ordinances, rules or codes relating to employment or conditions of employment of its employees, including, without limitation, laws or regulations concerning workers' compensation, social security, unemployment insurance, classification of employees, hours of labor, wages, working conditions, safety regulations and work practices. The Contractor shall hold the Owner harmless from all loss, liability and expenses of the Owner to third parties arising out of violations of said laws by the Contractor or any Subcontractors or suppliers providing labor, material, equipment or supplies in connection with the Work.

## 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 because the Owner has not made payment for any undisputed amounts owed to the Contractor under the Contract Documents within thirty (30) days of the date such payment was due.

**§ 14.1.2** If one of the reasons described in Section 14.1.1 of these General Conditions exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract Documents and recover from the

Owner payment for Work executed in accordance with the Schedule of Values, including reasonable overhead and profit, on the Work so performed, and out-of-pocket costs incurred by reason of such termination.

#### § 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 In addition to any other rights of Owner to terminate the Contract Documents, and without prejudice to any other rights or remedies the Owner may have, the Owner may terminate the Contractor's Services under the Contract Documents in whole or in part if the Contractor:

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents, including, without limitation Contractor's failure to satisfy Owner's schedule requirements as described in Article 4 of the Agreement;
- .5 breaches any warranty made by the Contractor under or pursuant to the Contract Documents;
- .6 fails to furnish the Owner with assurances satisfactory to the Owner evidencing the Contractor's ability to complete the Work in compliance with all the requirements of the Contract Documents;
- .7 makes changes to Contractor's Key Personnel (Exhibit "F") without Owner's consent;
- .8 fails to perform any other obligation under this Construction Contract and does not correct such failure or breach;
- .9 Intentionally Deleted;
- .10 files a petition under any federal or state law concerning bankruptcy, reorganization, insolvency or relief from creditors, or if such a petition is filed against the Contractor without its consent, it is not dismissed within sixty (60) days; or
- .11 is generally not paying its debts as they become due; or if the Contractor becomes insolvent; or if the Contractor consents to the appointment of a receiver, trustee, liquidator, custodian or the like of the Contractor or of all or any substantial portion of its assets; or if a receiver, trustee, liquidator, custodian or the like is appointed with respect to the Contractor or takes possession of all or any substantial portion of its assets and such appointment or possession is not terminated within sixty (60) days; or if the Contractor makes an assignment for the benefit of creditors.

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

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery vehicles, offices and other facilities on the Project site, and all materials intended for the Work, wherever stored;
- .2 Accept assignment of subcontracts pursuant to Section 5.4 of these General Conditions; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.



§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1 of these General Conditions, the Contractor shall not be entitled to receive further payment until the Work is completed in accordance with the Contract Documents.

§ 14.2.4 In the event of termination pursuant to this Section 14.2 of the General Conditions Owner shall be entitled to collect from the Contractor all damages to which the Owner is entitled by law on account of the Contractor's default subject to 4.6 of the Agreement. If the costs and damages incurred by the Owner, including, without limitation, costs of completing the Work in accordance with the Contract Documents, compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived (collectively, "Completion Costs and Damages"), such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance of the Guaranteed Maximum Price the Contractor shall pay the difference to the Owner upon demand. If the unpaid balance of the Guaranteed Maximum Price exceeds the Completion Costs and Damages, such excess shall be paid to the Contractor to the extent necessary to reimburse the Contractor for Work properly executed by the Contractor in accordance with the Contract Documents prior to termination. The respective obligations of the Owner and the Contractor under this Section shall survive the 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 Guaranteed Maximum Price 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 Guaranteed Maximum Price shall not 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. Termination by the Owner under this Section shall be by a notice of termination delivered to the Contractor specifying the extent of termination and the effective date.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall immediately, in accordance with reasonable instructions from the Owner, proceed with performance of the following duties regardless of delay in determining or adjusting amounts due under this Section:

- .1 cease operations as directed by the Owner in the notice, vacate the Project site, and remove all equipment and materials therefrom;
- .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 or Work not terminated, terminate all existing subcontracts and purchase orders except for the subcontracts and purchase orders, if any, that the Owner elects to assume or have its designee assume and enter into no further subcontracts and purchase orders with respect to terminated Work.
- .4 place no further orders and enter into no further subcontracts for materials, labor, services or facilities except as necessary to complete continued portions of the Contract;
- .5 terminate all subcontracts and orders to the extent they relate to the Work terminated; and
- .6 proceed to complete the performance of Work not terminated.

§ 14.4.3 Upon such termination, the Contractor shall recover as its sole remedy payment for Work properly performed in connection with the terminated portion of the Work prior to the effective date of termination, reasonable demobilization costs, and for items properly and timely fabricated off the Project site, delivered and stored in accordance with the Owner's instructions. The Contractor hereby waives and forfeits all other claims for payment and damages, including, without limitation, anticipated profits. Contractor shall not be entitled to consequential or incidental damages, including, but not limited to, damages for loss of anticipated profits on Work

not performed, on account of any termination described in Section 14.4.1. Upon a determination by a court of competent jurisdiction that termination of Contractor's services pursuant to Section 14.2.1 was wrongful, such termination will be deemed converted to a termination for convenience pursuant to Section 14.4.1 and Contractor's remedy for wrongful termination shall be limited to the recovery of the payments for termination for convenience as set forth in this Section 14.4.

§ 14.4.4 The Owner shall be credited for (1) payments previously made to the Contractor for the terminated portion of the Work, (2) claims which the Owner has against the Contractor under the Contract and (3) the value of the materials, supplies, equipment or other items that are to be disposed of by the Contractor that are part of the Contract Sum or Guaranteed Maximum Price, as applicable. If Contractor has, prior to the date of termination, collected sums toward the cost of the Work or Contractor's Fee in excess of the reimbursable amounts set forth above, Contractor shall promptly pay such excess to Owner or, at Owner's option, such excess shall be deducted from any amounts payable by Owner to Contractor.

§ 14.5 In no event shall Contractor have a claim for damages, lost profits or otherwise on account of the termination of the agreements contained within the Contract Documents by Owner or Contractor.

## ARTICLE 15 CLAIMS AND DISPUTES

### § 15.1 CLAIMS

#### § 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, 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. The responsibility to substantiate Claims shall rest with the party making the Claim.

#### § 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party. Claims by Contractor must be initiated within ten (10) days after occurrence of the event giving rise to such Claim or within ten (10) days after the Contractor first recognizes the condition giving rise to the Claim, whichever is later. Notwithstanding anything the foregoing or anything in the Contract to the contrary, any Claim by the Owner against the Contractor, any Subcontractor, supplier, agent or employee of any of them may be made at any time within the time period specified in the applicable statute of limitations. Inclusion by the Contractor of a proposed change in a proposed change order log or other similar listing, or discussion of the basis of the Claim and the relief sought by the Contractor and/or including the basis of the Claim and the relief sought by the Contractor in any meeting minutes or records shall not, without a specific notice, be sufficient to provide notice of a Claim as required herein. Notwithstanding anything to the contrary, no delay by the Owner or any of the other Indemnified Parties in delivering written notice of any Claim shall relieve the Contractor (or any insurer, Subcontractor, surety or other responsible party) from liability or responsibility for such Claim.

#### § 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14 of these General Conditions, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments or amounts not in dispute in accordance with the Contract Documents.

#### § 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Guaranteed Maximum Price written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4 of these General Conditions.

#### § 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. The Contractor shall have the burden of demonstrating the effect of the claimed delay on the Contract Time, and shall furnish such documentation relating thereto as may be reasonably required by the Owner. For all Claims for an extension of the Contract Time, the Contractor must furnish a written time impact analysis ("TIA") illustrating the influence of each change or delay on the Contract Time utilizing the Project Schedule and establish that the change or delay will extend the date of

Substantial Completion of the Work. Each TIA shall include a fragnet demonstrating how Contractor proposes to incorporate the change or delay into the Project Schedule. The TIA shall also demonstrate the estimated time impact based upon the date the change was issued to Contractor, the events of the delay, the status of the Work at that point in time, and the event time computation of all activities affected by the change or delay. The event times used in the TIA shall be those included in the latest update of the Project Schedule in effect at the time the change or delay was first encountered. The Project Schedule must clearly display that Contractor has used, in full, all the float time available on the Critical Path for the work involved with any request for an extension of the Contract Times. The determination as to the number of allowable days of Contract Time extension shall be based upon the Project Schedule dates in effect for the time period in question and other factual supporting data. Unless agreed to by the Owner in writing, all information must be provided within the time period set forth in Section 15.1.2.

§ 15.1.5.2 If Weather Delays are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were unusual, unforeseeable, and extreme and had an adverse effect on the critical path of the Project Schedule.

#### § 15.1.6 CLAIMS FOR CONSEQUENTIAL DAMAGES

The Contractor hereby waives any and all Claims against Owner for consequential damages arising out of or relating to this Contract.

§ 15.2 INITIAL DECISION – [INTENTIONALLY DELETED]

§ 15.3 MEDIATION – [INTENTIONALLY DELETED]

§ 15.4 ARBITRATION – [INTENTIONALLY DELETED]