

CONTRACT FOR CONSTRUCTION

1450 Veterans Blvd
Redwood City, California

Gene Theory
and
DPR CONSTRUCTION

February 8, 2021

Table Of Contents

<u>Article 1: The Contract Documents</u>	2
ARTICLE 2 : THE WORK OF THIS CONTRACT	3
ARTICLE 3 : RELATIONSHIP OF THE PARTIES.....	4
ARTICLE 4 : DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION	5
ARTICLE 5 : CONTRACT SUM	6
ARTICLE 6 : CHANGES IN THE WORK	6
<u>ARTICLE 7 : Costs To Be Reimbursed</u>	7
<u>ARTICLE 8 Costs Not To Be Reimbursed</u>	11
<u>ARTICLE 9 : Discounts, Rebates, and Refunds</u>	11
<u>ARTICLE 10: Subcontracts and Other Agreements</u>	12
ARTICLE 11 : ACCOUNTING RECORDS	13
<u>ARTICLE 12: Progress Payments.</u>	14
<u>ARTICLE 13 . Final Payments.</u>	18
<u>ARTICLE 14: Miscellaneous Provisions.</u>	19
<u>ARTICLE 15 . Enumeration of Contract Documents</u>	21

CONTRACT FOR CONSTRUCTION
(With or Without a Guaranteed Maximum Price)

This AGREEMENT is made as of the 8th day of February in the year of Two Thousand and Twenty-One (2021).

BETWEEN the Owner:

Gene Theory
1450 Veterans Blvd
Redwood City, California 94063

and the Contractor:

DPR CONSTRUCTION
5010 Shoreham Place
Redwood City, CA
92122

the Project is:

Construction services, and associated work for the project located at 1450 Veterans Blvd, Redwood City, California, as further described in Contractor's proposal attached hereto as Exhibit A.

The Owner and Contractor agree as set forth below.

ARTICLE 1

THE CONTRACT DOCUMENTS

1.1. The Contract Documents consist of this Agreement, Contractor's LOA's, dated February 8, 2021 and November 16, 2021 (referred to as "Contractor's Proposal"), attached hereto as Exhibit A, Owner's standard form Conditions of the Contract for Construction, current as of the date hereof, Drawings, Specifications, addenda issued prior to execution of this Agreement, other documents listed in Article 15 of this Agreement and Modifications issued after execution of this Agreement; these form the Contract, and are as fully a part of the Contract as if attached to the is Agreement or repeated herein. Should any discrepancies arise between this Agreement and Exhibit A, the provisions of this Agreement shall prevail The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than Modifications, appears in Article 15. If anything in the other Contract Documents is inconsistent with this Agreement, this Agreement shall govern.

1.2. If, and to the extent of, any inconsistency, ambiguity, discrepancy or error in the Contract Documents (referred to collectively in the is Paragraph 1.2 as discrepancy), the Contractor shall immediately seek clarification from the Architect and notify the Owner that clarification has been requested. In the event that the Architect fails to clarify such discrepancy, within a reasonable time under the circumstances, the Contractor shall proceed with the Work and give precedence to the Contract Documents in the following order of priority:

- .1 Modifications issued after execution of the Owner-Contractor Agreement, including all exhibits not specifically referenced in this Paragraph 1.2;
- .2 Supplemental Conditions to Contract attached hereto as Exhibit B.
- .3 the Owner-Contractor Agreement;
- .4 Addenda issued prior to the execution of the Owner-Contractor Agreement, with the Addenda bearing the latest date taking precedence ;
- .5 The General Conditions of the Contract for Construction, attached hereto;
- .6 The Final Drawings and Specifications;
- .7 The Schedule of Contractor's Qualifications, Clarifications and Assumptions; and
- .8 The Preliminary Drawings and Specifications.

ARTICLE 2

THE WORK OF THIS CONTRACT

2.1. The Contractor shall execute the entire Work described in the Contract Documents and as is reasonably inferable by the Contractor as necessary to produce the results intended by the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

2.2. An Index of Drawings and Specifications which have been furnished to the Contractor as of the date of this Agreement (the "Preliminary Documents") is set forth in Exhibit A-1 attached hereto and made a part hereof. As the Preliminary Documents are revised and completed, an Exhibit A-2 shall be prepared to identify the final Drawings and Specifications. Upon acceptance by the Owner of each item to be included in Exhibit A-2 as final, such item shall be set forth in Exhibit A-2 and be considered a Contract Document. Exhibit A-2 shall be continuously updated as necessary.

2.3. Without limiting the provisions of Section 4.2 below, the Contractor shall not be entitled to any adjustments in the Guaranteed Maximum Price or the Contract Time as a result of any action, or failure to act, in connection with any work or other services performed by the Contractor, or any entity affiliated with the Contractor, for portions of the Project other than the Work, such as, without limitation, tenant finish work, whether such work or other services are performed under contract with the Owner or an independent third party.

2.4. The Contractor shall assist the Owner and the Architect in expediting the development of the final Drawings and Specifications by furnishing recommendations to the Owner and the Architect and performing value engineering services, which will cause the final Drawings and Specifications prepared from the Preliminary Documents to assist in achieving all of the Owner's design objectives, including, without limitation, the time of construction, cost of construction, functional performance and aesthetic goals. Factors that the Contractor shall consider include, without limitation, site use, selection of building materials and systems, availability of labor, methods of construction and any other similar items benefiting from evaluation prior to the completion of the Drawings and Specifications. Particular attention shall be given to alternate design proposals, possible economies and identification of options that will maximize the benefits that the Owner will derive from the completion of the Work. As requested by the Owner, the Contractor shall prepare a specific analysis of the cost-effectiveness and performance capabilities of any building system or component under consideration or specified for the Work, recommendations on field logistics and any other studies that are required to complete successfully the Work.

2.4.1 The Owner shall cause Architect to furnish the Contractor with design documents, information and materials as reasonably necessary for the Contractor to perform the services described under this Paragraph 2.4. The Contractor shall compile value engineering analyses, advice and recommendations in a written summary to be submitted to both the Owner and the Architect for review and consideration. An initial value engineering summary will be completed within thirty (30) days following the execution of this Agreement, or sooner if agreed to between the Owner and the Contractor, and updated thereafter every two (2) weeks until final completion of the Drawings and Specifications.

2.4.2 Each value engineering proposal submitted by the Contractor shall include, without limitation, the following: (i) a detailed description of the difference between the requirements of the Contract Documents and the proposed changes and the comparative advantages and disadvantages of each; (ii) itemization of aspects of the Contract Documents affected by enactment of the proposal; (iii) impact of the proposal upon both cost and the Construction Schedule; (iv) list of the projects to the extent known, where the proposal or similar proposal was used and the results experienced; (v) other information reasonably necessary to fully evaluate the proposal; and (vi) date by which the Owner must accept the proposal in order for Contractor's cost and time estimates to remain valid.

2.4.3 The Contractor shall proceed with performance of the Work as required by the Contract Documents, and shall not modify such requirements in accordance with any value engineering recommendations unless such value engineering recommendations are accepted by the Owner in a Change Order or Construction Change Directive.

2.5. The Contractor shall furnish only skilled and properly trained staff for the performance of the Work. The key members of the Contractor's staff shall be persons agreed upon with the Owner and identified in the "Schedule of Key Personnel" attached hereto and incorporated herein as Exhibit C.

2.5.1 Such key members of the Contractors staff shall not be changed without the written consent of the Owner, unless such person becomes unable to perform any required duties due to death, disability, transfer or termination of employment with the Contractor. If a key member is no longer capable of performing in the capacity described in Exhibit C, the Owner and the Contractor shall agree on a mutually acceptable substitute.

2.5.2 During the performance of the Work, the Contractor shall keep a competent superintendent at the Project site, fully authorized to act on behalf of the Contractor. Notice from the Owner or the Architect to such superintendent in connection with defective Work or instructions for performance of the Work shall be considered notice of such issues to the Contractor.

ARTICLE 3

RELATIONSHIP OF THE PARTIES

3.1. The Contractor accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and utilize the Contractor's best skill, efforts and judgment in furthering the interests of the Owner; to furnish efficient business administration and supervision; to make best efforts to furnish at all times an adequate supply of workers and materials; and to perform the Work consistent with the representations and warranties set forth in Paragraph 4 and in the most expeditious and economical manner consistent with the interests of the Owner. The Owner agrees to exercise best efforts to enable the Contractor to perform the Work by furnishing and approving in a timely way information required by the Contractor and making payments to the Contractor in accordance with requirements of the Contract Documents.

ARTICLE 4

DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

4.1. The date of commencement is the date from which the Contract Time of Paragraph 4.2 is measured; it shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner to the Contractor which shall be issued no less than five (5) days prior to the Date of Commencement.

Unless the date of commencement is established by a notice to proceed issued by the Owner, the Contractor shall notify the Owner in writing not less than five days before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

4.2. The Contractor shall diligently prosecute the work and achieve Substantial Completion of the entire Work by September 15, 2013, subject to adjustments of this Contract Time as provided in the Contract Documents Attached hereto as Exhibit D is the Construction Schedule for the Work. The Contractor covenants to abide by the Construction Schedule.

The Contractor acknowledges and recognizes that the Owner and/or the tenants of Owner are entitled to full and beneficial occupancy and use of the Project and the completed Work following expiration of the Contract Time. The Contractor further acknowledges and agrees that if the Contractor fails to complete substantially or cause the Substantial Completion of any portion of the Work within the Contract Time, the Owner will sustain additional extensive damages, expenses, losses and other economic harm as a result thereof, which may include, without limitation, the loss of rent, the costs of arranging for substitute occupancy and the continued administrative expenses of the Project and the Work. The exact amount of such damages will be extremely difficult to ascertain.

If the Contractor fails to achieve Substantial Completion of the Work within the Contract Time, the Owner shall be entitled to retain or recover from the Contractor, as liquidated damages and not as a penalty, pursuant to California, Civil Code Section 1671, the sum of \$19,000 per week, commencing on the first day following expiration of the Contract Time and continuing until the actual Date of Substantial Completion, regardless of whether or not the Owner's actual damages are more or less than such liquidated sum. Such liquidated damages are hereby agreed to be a reasonable pre-estimate of damages the Owner will incur as a result of delayed Substantial Completion of the Work.

The Owner's rights to certain liquidated damages as provided above shall not limit Owner's rights against the Contractor for any damages claimed by third parties arising out of the Contractor's delay in achieving Substantial Completion.

The Owner may deduct liquidated damages described herein from any unpaid amounts then or thereafter due the Contractor under the is Agreement. Any liquidated damages not so deducted from any unpaid amounts due the Contractor shall be payable to the Owner at the demand of the Owner, together with interest from the date of the demand at a rate equal to the lower of the twelve percent (12%) per annum or the highest lawful rate of interest payable by the Contractor.

ARTICLE 5

CONTRACT SUM

5.1. The Owner shall pay the Contractor in current funds for the Contractor's performance of the Contract and the Contract Sum consisting of the Cost of the Work as defined in Article 7 and the Contractor's Fee determined as follows:

As limited by the Final Guaranteed Maximum Price set forth in **Paragraph 5.2**, the Contractor shall receive a fee of [REDACTED] of the Cost of the Work during performance of the Work (the "Contractor's Fee"). For changes in the Work, the rate of the Contractor's Fee shall not be adjusted and shall remain equal to [REDACTED] the Cost of the Work directly attributable to any such change which is incurred or paid by the Contractor during performance of the Work. Consequently, the total amount earned by the Contractor as the Fee may increase or decrease, depending upon the nature of any changes in the Work, but the basis of the Contractor's Fee shall always remain at [REDACTED]

5.2 GUARANTEED MAXIMUM PRICE

5.2.1 The sum of the Cost of the preconstruction and associated work is subject to a Preliminary Guaranteed Maximum Price of [REDACTED]. The Final Guaranteed Maximum Price ("GMP") shall be submitted through a Change Order and as agreed to between Owner and Contractor, which amount shall include the General Conditions, subject to additions and deductions by Change Order as provided in the Contract Documents. Such maximum sum is referred to in the Contract Documents as the Guaranteed Maximum Price. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Contractor without reimbursement by the Owner. The Guaranteed Maximum Price is subject to adjustment for change orders, authorized in accordance with the requirements of the Contract Documents.

ARTICLE 6

CHANGES IN THE WORK

6.1 CONTRACTS WITH A GUARANTEED MAXIMUM PRICE

6.1.1 Adjustments to the Guaranteed Maximum Price on account of changes in the Work may be determined by any of the methods listed in Subparagraph 7.3.3 of the General Conditions.

6.1.2 In calculating adjustments to subcontracts (except those awarded with the Owner's prior consent on the basis of cost plus a fee), the terms "cost" and "fee" as used in Clause 7.3.3.3 of the General Conditions and the terms "costs" and "a reasonable allowance for overhead and profit" as used in Subparagraph 7.3.6 of the General Conditions shall have the meanings assigned to them in the General Conditions and shall not be modified by Articles 5, 7 and 8 of this Agreement. Adjustments to subcontracts awarded with the Owner's prior consent on the basis of cost plus a fee shall be calculated in accordance with the terms of this Agreement, unless the Owner has furnished the Contractor with prior written approval of the

form and substance of a subcontract, in which case such adjustments shall be calculated in accordance with the terms and conditions of that subcontract.

6.1.3 In calculating adjustments to this Contract, the terms "cost" and "costs" as used in the above-referenced provisions of the General Conditions shall mean the Cost of the Work as defined in Article 7 of this Agreement and the terms "fee" and "a reasonable allowance for overhead and profit" shall mean the Contractor's Fee as defined in Paragraph 5.1 of this Agreement.

6.2 CONTRACTS WITHOUT A GUARANTEED MAXIMUM PRICE

6.2.1 Increased costs for the items set forth in Article 7 which result from changes in the Work shall become part of the Cost of the Work, and the Contractor's Fee shall be adjusted as provided in Paragraph 5.1.

6.3 ALL CONTRACTS

6.3.1 If no specific provision is made in Paragraph 5.1 for adjustment of the Contractor's Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Paragraph 5.1 will cause substantial inequity to the Owner or Contractor, the Contractor's Fee shall be equitably adjusted on the basis of the Fee established for the original Work.

ARTICLE 7

COSTS TO BE REIMBURSED

7.1 The term Cost of the Work shall mean costs necessarily incurred by the Contractor in good faith and the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article 7.

7.1.1 LABOR COSTS

- .1 Wages of construction workers directly employed by the Contractor to perform the construction of the Work at the site or, with the Owner's agreement, at off-site workshops.
- .2 Wages or salaries of the Contractor's supervisory and administrative personnel when stationed at the site with the Owner's agreement.
- .3 Wages and salaries of the Contractor's supervisory or administrative personnel engaged, at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.
- .4 Costs paid or incurred by the Contractor for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary

benefits such as sick leave, medical and health benefits, holidays, vacations and pensions but not merit bonuses, provided such costs are based on wages and salaries included in the Cost of the Work under Clauses 7.1.1.1 through 7.1.1.3.

.5 Unit labor costs are set forth in the "Contractor's Proposal" attached hereto and made a part hereof.

7.1.2 SUBCONTRACT COSTS Payments made by the Contractor to Subcontractors in accordance with the requirements of the subcontracts properly entered into under this Agreement.

7.1.3 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

- .1 Costs, including transportation, of materials and equipment incorporated or to be incorporated in the completed construction.
- .2 Costs of materials described in the preceding Clause 7.1.3.1 in excess of those actually installed but required to provide reasonable allowance for waste and for spoilage. Unused excess materials, if any, shall be properly stored at the Project site, or in accordance with the Owner's instructions, and turned over to the Owner at the completion of the Work or, at the Owner's option, shall be sold by the Contractor; amounts realized, if any, from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

7.1.4 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS

- .1 Costs, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities and hand tools (not owned by the workers) consumed in the performance of the Work. Any such items used but not consumed, which are paid for by the Owner, shall become the property of the Owner and shall be delivered to the Owner upon completion of the Work in accordance with instructions furnished by the Owner. If the Owner elects, however, the Contractor shall purchase any such items from the Owner at a purchase price equal to the original cost charged to the Owner, less the reduction in fair market value resulting directly from use of any such item in connection with the Work or such other price which is mutually acceptable to the Owner and the Contractor. Upon demand by the Owner, the Contractor shall furnish the Owner with any information and documentation necessary to verify the period of time for which such items were used in connection with the Work.
- .2 Rental charges of all necessary machinery and equipment, exclusive of hand tools, used at the site of the Work, whether rented from the Contractor or others, including installation, minor repairs and replacements, dismantling, removal, transportation and delivery costs thereof. Rental charges shall be consistent with those generally prevailing in the location of the Project. The Contractor shall obtain bids for all machinery and equipment to be rented from

no less than two (2) responsible suppliers other than the Contractor itself, or an Affiliate as defined in Paragraph 10.4. The Owner shall, with the advice of the Contractor, determine which bid is to be accepted. In no event shall the Contractor be entitled to reimbursement for any cumulative total of rental charges in connection with any single piece of machinery or equipment in excess of [REDACTED] its fair market value as of the date that such machinery or equipment is first put into service in connection with the Work. The Contractor shall pay any excess rental charges.

- .3 Costs of removal of debris from the site.
- .4 Costs of telegrams and long-distance telephone calls, postage and parcel delivery charges, telephone service at the site and reasonable petty cash expenses of the site office.
- .5 That portion of the reasonable travel and subsistence expenses of the Contractor's personnel incurred while traveling in discharge of duties connected with the Work shall be approved by the Owner in advance and in writing. Expenses shall be substantiated by documentation in form and substance satisfactory to Owner.

7.1.5 MISCELLANEOUS COSTS

- .1 That portion directly attributable to this Contract of premiums for insurance and bonds required by the Contract, provided, However, that such costs shall not be included in the Cost of the Work for purposes of calculating the Contractor's Fee.
- .2 Sales, use or similar taxes imposed by a governmental authority which are related to the Work and for which the Contractor is liable, provided, however, that such costs shall not be included in the Cost of the Work for purposes of calculating the Contractor's Fee.
- .3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Contractor is required by the Contract Documents to pay, provided, however, that such costs shall not be included in the Cost of the Work for purposes of calculating the Contractor's Fee.
- .4 Fees of testing laboratories for tests required by the Contract Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Subparagraph 13.5.3 of the General Conditions or other provisions of the Contract Documents and which do not fall within the scope of Subparagraphs 7.2.2 through 7.2.4 below.
- .5 Royalties and license fees paid for the use of a particular design, process or product required by the Contract Documents; payments made in accordance with legal judgments against the Contractor resulting from such suits or claims and payments of settlements made with the Owner's consent; provided, however, that such costs of legal defenses, judgment and settlements shall not be included in the calculation of the Contractor's Fee or of a Guaranteed

Maximum Price, if any, and provided that such royalties, fees and costs are not excluded by the last sentence of Subparagraph 3.17.1 of the General Conditions or other provisions of the Contract Documents.

- .6 Deposits lost for causes other than the Contractor's fault or negligence.
- .7 Costs incurred by the Contractor prior to the date of commencement in good faith with written approval of Owner.

7.1.6 OTHER COSTS

- .1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

7.2 EMERGENCIES: REPAIRS TO DAMAGED, DEFECTIVE OR NONCONFORMING WORK The Cost of the Work shall also include Costs described in Paragraph 7.1 which are incurred by the Contractor:

7.2.1 In taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Paragraph 10.3 of the General Conditions to the extent not (1) caused by the Contractor, Subcontractor or anyone for whom either is responsible, or (2) capable of being prevented through timely notice of an unsafe condition to the Owner.

7.2.2 In repairing or correcting Work damaged or improperly executed by construction workers in the employ of the Contractor, provided such damage or improper execution did not result from the fault or negligence of the Contractor or the Contractor's foremen, engineers or superintendents, or other supervisory, administrative or managerial personnel of the Contractor.

7.2.3 Losses and expenses, not compensated by insurance or otherwise, sustained by Contractor in connection with the Work, provided they have resulted from causes other than the fault or neglect of Contractor or failure of Contractor to comply with all of the requirements of the Contract Documents. Such losses shall include settlements made with the prior written consent and approval of Owner. No such losses and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's Fee unless such loss requires substantial reconstruction and Contractor is placed in charge thereof.

7.2.4 In correcting defective or nonconforming Work performed or supplied by a Subcontractor or material supplier and not corrected by them, provided such defective or nonconforming Work did not result from the fault or neglect of the Contractor or the Contractor's personnel adequately to supervise and direct the Work of the Subcontractor or material supplier, and only to the extent that the cost of correcting the defective or nonconforming Work is not recoverable by the Contractor from the Subcontractor or material supplier.

7.2.5 Costs as defined herein shall be actual costs paid by the Contractor, less all discounts, rebates and salvages which shall be taken by the Contractor, subject to Article 9 of the Agreement. All payments made by the Owner pursuant to this Article 7, whether those payments are actually made before or after the execution of the Contract, are included within the Guaranteed Maximum Price specified in Paragraph 5.2 above; provided, however, that in no event shall the Owner be required to reimburse the Contractor for any portion of the Cost of the

Work incurred prior to the Commencement Date unless the Contractor has received the Owner's written consent prior to incurring such cost.

7.2.6 Notwithstanding the breakdown or categorization of any costs to be reimbursed in this Article 7 or elsewhere in the Contract Documents, there shall be no duplication of payment in the event any particular items for which payment is requested can be characterized as falling into more than one of the types of compensable or reimbursable categories.

ARTICLE 8

COSTS NOT TO BE REIMBURSED

8.1 The Cost of the Work shall not include:

8.1.1 Salaries and other compensation of the Contractor's personnel stationed at the Contractor's principal office or offices other than the site office, except as specifically provided in Clauses 7.1.1.2 and 7.1.1.3 or as may be provided in Article 14.

8.1.2 Expenses of the Contractor's principal office and offices other than the site office.

8.1.3 Overhead and general expenses, except as may be expressly included in Article 7.

8.1.4 The Contractor's capital expenses, including interest on the Contractor's capital employed for the Work.

8.1.5 Rental costs of machinery and equipment, except as specifically provided in Clause 7.1.4.2.

8.1.6 Except as provided in Subparagraphs 7.2.2 through 7.2.4 and Paragraph 13.5 of this Agreement, costs due to the fault or negligence of, or failure to comply with the requirements of the Contract Documents by, the Contractor, Subcontractors, anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable, including but not limited to costs for the correction of damaged, defective or nonconforming Work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work.

8.1.7 Any cost not specifically and expressly described in Article 7.

8.1.8 Costs which would cause the Guaranteed Maximum Price, if any, to be exceeded.

ARTICLE 9

DISCOUNTS, REBATES AND REFUNDS

9.1. Cash discounts obtained on payments made by the Contractor shall accrue to the Owner if (1) before making the payment, the Contractor included them in an Application for Payment and received payment therefor from the Owner, or (2) the Owner has deposited funds with the Contractor with which to make payments; otherwise, cash discounts shall accrue to the

Contractor. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Contractor shall make provisions so that they can be secured. The Contractor shall not obtain for its own benefit any discounts, rebates or refunds in connection with the Work prior to providing the Owner with seven (7) days prior written notice of the potential discount, rebate or refund and an opportunity to furnish funds necessary to obtain such discount, rebate or refund on behalf of the Owner in accordance with the requirements of this Paragraph 9.1.

9.2. Amounts which accrue to the Owner in accordance with the provisions of Paragraph 9.1 shall be credited to the Owner as a deduction from the Cost of the Work.

ARTICLE 10

SUBCONTRACTS AND OTHER AGREEMENTS

10.1. Those portions of the Work that the Contractor does not customarily perform with the Contractor's own personnel shall be performed under subcontracts or by other appropriate agreements with the Contractor. The Contractor shall obtain bids from Subcontractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Architect and the Owner. The Owner will then determine, with the advice of the Contractor and subject to the reasonable objection of the Architect, which bids will be accepted. The Owner may designate specific persons or entities from whom the Contractor shall obtain bids; however, if a Guaranteed Maximum Price has been established, the Owner may not prohibit the Contractor from obtaining bids from others if the bid from the person specified by the Owner exceeds the cost allocated to the portion of the Work to be performed by such person; provided, however, that in no event shall the Contractor obtain bids from persons or entities who are involved in a threatened, pending or on-going labor dispute. The Contractor shall not be required to contract with anyone to whom the Contractor has reasonable objection.

10.2. If a Guaranteed Maximum Price has been established and a specific bidder among those whose bids are delivered by the Contractor to the Architect (1) is recommended by the Owner to the Contractor; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid which conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted; then the Contractor may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Contractor and the amount attributable to such subcontract or other agreement in the original Schedule of Values submitted by the Contractor and accepted by the Owner.

10.3. Subcontracts or other agreements shall conform to the payment provisions of Paragraphs 12.7 and 12.8, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner.

10.4. Except as otherwise agreed in writing by both parties hereto, the Contractor must competitively bid any trade Work that the Contractor wishes to perform with the Contractor's own forces, or through an Affiliate, and shall obtain no less than two (2) additional responsive bids from responsible Subcontractors acceptable to the Owner. The Contractor, or an Affiliate, shall be permitted to perform such trade Work only if (i) the Owner consents thereto in writing after full disclosure in writing by the Contractor to the Owner of the affiliation or relationship of Affiliate to the Contractor; and (ii) the Owner approves in writing any subcontract, contract,

purchase order, agreement or other arrangement between the Contractor and such Affiliate in form and substance. In no event will the Contractor be permitted to charge any overhead, profit or other form of mark-up or fee as a general contractor for trade Work performed with its own forces or an Affiliate including, without limitation, the Contractor's Fee under Paragraph 5.1 of this Agreement. Any trade Work performed by the Contractor's own forces or by an Affiliate, if required by the Owner, shall be covered in a separate agreement between the Owner and the Contractor or the Affiliate. Such agreement shall, without limitation, satisfy all requirements for Subcontracts as set forth in Paragraph 5.3.1 of the General Conditions. The term "Affiliate" is hereby deemed to mean any party or entity related to or affiliated with the Contractor or in which the Contractor has direct or indirect ownership or control, including, without limitation: (i) any entity owned in whole or in part by the Contractor; (ii) any party or entity with more than a ten percent (10%) interest in the Contractor; and (iii) any entity in which any officer, director, employee, partner or shareholder (or member of the family of any of the foregoing persons) of the Contractor or any entity owned by the Contractor has a direct or indirect interest.

ARTICLE 11

ACCOUNTING RECORDS

11.1. The Contractor shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants shall be afforded access (at a location in reasonably close proximity to the Project site) and shall be entitled to make copies of, the Contractor's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Contract, and the Contractor shall preserve these for a period of three years after final payment, or for such longer period as may be required by law. All records shall be maintained in accordance with generally accepted accounting procedures, consistently applied. Subcontractors retained by the Contractor on a cost-plus basis shall have the same obligations to retain records and permit audits as required of the Contractor under this Article 11.

11.2, If any inspection by the Owner of the Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and any other data relating to the Contract Documents reveals an overcharge, including, without limitation, any untimely request for payment as described in Paragraph 13.3, the Contractor shall pay the Owner upon demand an amount equal to [REDACTED] of such overcharge, as reimbursement for said overcharge and the administrative expenses incurred in determining the overcharge. The requirements of this Paragraph 11.2 shall not apply to any portion of an overcharge which is the subject of a good faith dispute between the Owner and the Contractor.

ARTICLE 12

PROGRESS PAYMENTS

12.1 Based upon Applications for Payment, which shall be prepared and submitted in accordance with Section 9.3 of the Owner's standard form General Conditions of the Contract for Construction, current as of the date hereof, including all supporting documentation, submitted to the Architect by the Owner and the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents. The Application for Payment shall be made on AIA Document G702, shall include the Schedule of Values and the Contractor's signature thereon shall be notarized by a notary in the State of California.

On or before the 25th day of the month immediately preceding a month in which the Contractor will submit an Application for Payment, the Owner, the Architect and the Contractor shall meet to review a preliminary draft of such Application for Payment (hereinafter referred to as a "Pencil Draw") prepared by the Contractor. The Contractor shall revise the Pencil Draw in accordance with any objection or recommendation of either the Owner or the Owner's representative, its lender (if any) or the Architect that is consistent with the requirements of the Contract Documents. Such revised Pencil Draw shall be re-submitted by the Contractor to the Owner or the Owner's representative as the Application for Payment due on the 5th day of the month immediately following the month in which the Pencil Draw was first submitted. The Contractor shall also submit with each Application for Payment, a written narrative describing the basis for any item set forth in the Application for Payment that does not conform to instructions of the Owner or the Architect in connection with any applicable Pencil Draw.

12.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, immediately preceding the month in which the Application for Payment is received.

12.3 Provided an Application for Payment is received by the Architect and Owner not later than the fifth day of a month, the Owner shall make payment to the Contractor no later than the fifth day of the following month, subject to adjustment in order to conform to the administrative requirements of the Owner's lender(s), if any, provided, however, that in no event shall a timely submitted Application for Payment that reflects all off the comments of the Owner, its lender and the Architect (as required in Section 12.1 above) if any, be paid later than such 5th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment, subject to adjustment in order to conform to the administrative requirements of the Owner's lender(s), if any.

12.4 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment; plus (4) retainage provided in Subparagraph 12.5.4, if any, applicable to prior progress payments.

In addition to other required items, if required by Owner, each Application for Payment shall be accompanied by the following, all in form and substance satisfactory to the Owner and in compliance with applicable California statutes:

- .1 A duly executed and acknowledged Contractor's Sworn Statement showing all Subcontractors with whom the Contractor has entered into subcontracts, the amount of 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, when appropriate, from lower tier subcontractors;
- .2 Duly executed Waivers of Mechanics' and Materialmen's Liens from the Contractor and all such Subcontractors, establishing payment or satisfaction of the payment requested by the Contractor in the Application for Payment; and
- .3 Such other information, documentation and materials as the Owner or the Owner's lender(s) or the Architect may require.

12.5 CONTRACTS WITH A GUARANTEED MAXIMUM PRICE

12.5.1 Each Application for Payment shall be based upon the most recent schedule of values submitted by the Contractor 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 each of the Contractor's Fee and the General Conditions shall be shown as a single separate item. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect or the Owner may require. This schedule, unless objected to by the Architect or the Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

12.5.2 Applications for Payment shall show the percentage completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage completion shall be the lesser of (1) the percentage of the portion of the Work which has actually been completed or (2) the percentage obtained by dividing (a) the expense which 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, as substantiated by invoices in form and substance satisfactory to the Owner, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

12.5.3 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 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. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute may be included as provided in Subparagraph 7.3.7 of the General Conditions, even though the Guaranteed Maximum Price has not yet been adjusted by Change Order.

- .2 If approved in advance in writing 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 or, if approved in advance in writing by the Owner, suitable stored off the site at a location agreed upon in writing.
- .3 Add the Contractor's Fee, less retainage of ten percent (10%). The Contractor's Fee shall be computed upon the Cost of the Work described in the two preceding Clauses at the rate stated in Paragraph 5.1 or, if the Contractor's Fee is stated as a fixed sum in that Paragraph, shall be an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in the two preceding Clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion.
- .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 by Paragraph 12.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation.
- .6 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Paragraph 9.5 of the General Conditions and other amounts, not including retainage described in Paragraph 12.5.3.3 and Paragraph 12.5.4 property held by the Owner at the time of each progress payment.

12.5.4 Additional retainage, if any, shall be as follows

The Owner shall withhold as retainage ten percent (10%) of all Cost of the Work items included in each Application for Payment. The owner shall have the option, but not the obligation, to reduce the retainage requirements of this Agreement or release any portion of retainage prior to the date specified in the Contract Documents. Any exercise of this option, however, shall not be a waiver of (1) any of the Owner's rights to retainage in connection with other payments to the Contractor or (2) any other right or remedy that the Owner has under the Contract Documents, at law or in equity.

12.6 In order to assist Owner in its management of the cash needs for the Project, prior to the first payment hereunder, Contractor shall submit to Owner a schedule of anticipated payment requests (the "Cash Flow Estimate"), setting forth Contractor's best estimate of the amounts for which it will be requesting payment with each Application for Payment to be submitted by it during the next six (6) months. Thereafter, as part of each Application for Payment, Contractor will present Owner with a revised projected Cash Flow Estimate to update previously furnished information and maintain a six (6) month forecast. The parties acknowledge and agree, however, that although a projected Cash Flow Estimate is to serve as a cash management aid to Owner, the amounts shown in any such schedule shall not be determinative of the actual amounts to be paid to the Contractor during the six (6) months covered thereby.

12.7 Except with the Owner's prior approval, payments to Subcontractors included in the Contractor's Applications for Payment shall not exceed an amount for each Subcontractor calculated as follows:

12.7.1 Take that portion of the Subcontract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Subcontractor's Work by the share of the total Subcontract Sum allocated to that portion in the Subcontractor's schedule of values, less retainage of ten percent (10%). Pending final determination of amounts to be paid to the Subcontractor for changes in the Work, amounts not in dispute may be included as provided in Subparagraph 7.3.7 of the General Conditions even though the Subcontract Sum has not yet been adjusted by Change Order.

12.7.2 If approved in advance in writing by the Owner, add that portion of the Subcontract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work 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%).

12.7.3 Subtract the aggregate of previous payments made by the Contractor to the Subcontractor.

12.7.4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment by the Owner to the Contractor for reasons which are the fault of the Subcontractor and other amounts, not including retainage described in Paragraphs 12.7.1 and 12.7.2, property held at the time of each such request for payment.

12.7.5 Add, upon Substantial Completion of the entire Work of the Contractor, a sum sufficient to increase the total payments to the Subcontractor to [REDACTED] the Subcontract Sum, less amounts, if any, for incomplete Work and unsettled claims; and, if final completion of the entire Work is thereafter materially delayed through no fault of the Subcontractor, add any additional amounts payable on account of Work of the Subcontractor in accordance with Subparagraph 9.10.3 of the General Conditions.

The Subcontract Sum is the total amount stipulated in the subcontract to be paid by the Contractor to the Subcontractor for the Subcontractor's performance of the subcontract.

12.8 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

12.9 In taking action on the Contractor's Applications for Payment, the Architect 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 has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Paragraph 12.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract.

ARTICLE 13

FINAL PAYMENT

13.1 Final payment shall be made by the Owner to the Contractor when (1) the Contract has been fully performed by the Contractor except for the Contractor's responsibility to correct defective or nonconforming Work, as provided in Subparagraph 12.2.2 of the General Conditions, and to satisfy other requirements, if any, which necessarily survive final payment; (2) a final Application for Payment and a final accounting for the Cost of the Work and all required supporting documentation have been submitted by the Contractor and reviewed by the Owner's accountants; (3) a final Certificate for Payment has then been issued by the Architect; such final payment shall be made by the Owner not more than 30 days after the issuance of the Architect's final Certificate for Payment; (4) the Owner receives final, unconditional lien waivers from the Contractor, the Subcontractors and, as the Owner or the Owner's lender(s) may reasonably require, the Sub-subcontractors; and (5) the Owner receives final, unconditional certificates of occupancy for each portion of the Project and evidence, satisfactory to the Owner that all governmental approvals for the Project and each part thereof have been obtained, or as follows.

13.2 The amount of the final payment shall be calculated as follows

13.2.1 Take the sum of the Cost of the Work substantiated by the Contractor's final accounting and the Contractor's Fee; but not more than the Guaranteed Maximum Price, if any.

13.2.2 Subtract amounts, if any, for which the Architect with holds, in whole or in part, a final Certificate for Payment as provided in Subparagraph 9.5.1 of the General Conditions or other provisions of the Contract Documents.

13.2.3 Subtract the aggregate of previous payments made by the Owner.

13.3. If required by the Owner, the Owner's accountants will review and report in writing on the Contractor's final accounting within 30 days after delivery of the final accounting to the Architect and the Owner by the Contractor. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Contractor's final accounting, and provided the other conditions of Paragraph 13.1 have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Subparagraph 9.4.1 of the General Conditions.

13.4. Intentionally Deleted

13.5. If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price, if any. If the Contractor has participated in savings as provided in Paragraph 5.2, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

ARTICLE 14

MISCELLANEOUS PROVISIONS

14.1 Where reference is made in the is Agreement to a provision of the General Conditions or another contract Document, the reference refers to that provision as amended or supplemented by other provisions of the contract Documents.

14.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

14.3 Other provisions:

14.3.1 The Contractor represents and warrants the following to the Owner (in addition to any other representations and warranties contained in the Contract Documents) as a material inducement to the owner to execute the is Agreement, which representations and warranties shall survive the execution and delivery of this Agreement, any termination of this Agreement and the final completion of the Work:

- .1 the Contractor and its Subcontractors are financially solvent, able to pay all debts as they mature and possessed of sufficient working capital to complete the Work and perform all obligations hereunder;
- .2 the Contractor is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
- .3 the Contractor is authorized to do business in the State of California and is properly licensed by all necessary governmental and public and quasi-public authorities having jurisdiction over the Contractor and over the Work and the Project;
- .4 the Contractor's execution of this Agreement and performance thereof is within the Contractor's duly authorized powers;
- .5 the Contractor's duly authorized representative has visited the site of the Project and is familiar with the local conditions under which the Work is to be performed and has correlated observations with the requirements of the Contract Documents; and
- .6 the Contractor is a large, sophisticated contractor who possesses a high level of experience and expertise in the business administration, construction, construction management and superintendence of projects of the size, complexity and nature of this particular Project involving, among other things, the demolition and site development activities and will perform the Work with the care, skill and diligence of such a contractor.

14.3.2 Intentionally deleted.

14.3.3 The Contractor acknowledges that the Owner may finance the Work with a loan from a Lender. In order to perform under the Contract Documents, the Owner must comply with certain terms and conditions embodied in Lender's construction loan agreement. The Contractor agrees to use its best efforts to comply with the requirements of Lender which bear upon the performance of the Work. The Contractor shall also:

- .1 make the site of the Work available at reasonable times for inspection by Lender or Lender's representatives;
- .2 consent to and execute all documents reasonably requested by the Owner in connection with the assignment of the is Agreement and the Drawings and Specifications to Lender for collateral purposes. Such assignment shall provide that the Contractor agrees that notwithstanding a default by the Owner under the provisions of the is Agreement, which would give the Contractor the right to terminate this Agreement, the Contractor will continue to perform its obligations hereunder (on the same terms and conditions as are set forth herein) for and on account of the Lender if the Lender shall agree to pay the Contractor all amounts due and owing the Contractor under the Agreement and shall agree in writing to perform all obligations of the Owner hereunder accruing from and after the date of such default by the Owner; and
- .3 promptly furnish the Owner with information, documents and materials that the Owner may reasonably request from time to time in order to comply with the requirements of Lender.

14.3.4 Notwithstanding anything to the contrary contained in this Agreement or in any of the other Contract Documents, neither the Owner, any partner of the Owner, nor any person or entity holding any interest in the Owner, shall be personally liable, whether directly or indirectly, by reason of any default by the Owner in the performance of any of the obligations of the Owner under this Agreement, including, without limitation, the Owner's failure to pay the Contractor as required hereunder, and in the event of any such default, the Contractor hereby agrees to look solely to its lien rights against the Project site to secure the performance and payment of all such obligations. From time to time, however, the Owner may elect to sell, lease, mortgage or otherwise transfer any of Owner's interest in any portion of the Project site, not including any part of the Project site covered by the Building ("Site Conveyance'). In connection with any Site Conveyance, the Contractor shall execute and deliver to the Owner and shall cause any Subcontractors to execute and deliver to the Owner, such documents for the benefit of the Owner, any purchaser and any title insurance company issuing title insurance, a full and complete release of all mechanics' and materialmen's liens and rights, with respect to the property which is the subject of such Site Conveyance, together with such other documents as a title company may require to induce it to issue its policy of title insurance with respect to the Site Conveyance without requiring the Owner's indemnity against mechanics' and materialmen's liens.

14.3.5 This Agreement may be executed by one or more of the parties hereto in counterparts. Each such counterpart shall be deemed an original and all such counterparts together shall constitute one and the same Agreement.

14.3.5 Except as may be specifically provided herein to the contrary, all notices, consents, requests, reports, demands or other communications hereunder (collectively, "Notices") shall be in writing and may be given personally, by reputable overnight delivery service or by facsimile transmission (with in the case of a facsimile transmission, confirmation by reputable overnight delivery service).

To Owner: Gene Theory
 1450 Veterans Blvd
 Redwood City, CA 94063

Notices to Contractor shall be sent to:
 DPR Construction 5010
 Shoreham Place
 Redwood City, CA 92122

The addresses of the parties may be changed by like written notice effective upon receipt. Notices given by facsimile transmission shall be deemed to be received when confirmed; and all other Notices shall have been deemed to have been given on the date of delivery or refusal.

ARTICLE 15

ENUMERATION OF CONTRACT DOCUMENTS

15.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

15.1.1 The Agreement is the is Agreement.

15.1.2 The General Conditions are the General Conditions of the Contract for Construction attached hereto.

15.1.3 The Supplementary and other Conditions of the contract are those contained in Exhibit B.

15.1.4 The Specifications are those contained in the Project Manual and are listed in Exhibit A-1.

15.1.5 The Drawings are listed in Exhibit A-1

15.1.6 The addenda, if any, are as follows:

Number	Date	Pages
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15.1.7 Other Documents, if any forming part of the Contract Documents are as follows:

Confidential and Non Disclosure Agreement, dated February 8, 2021

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

[SIGNATURES ON FOLLOWING PAGE]

This Agreement is entered into as of the day and year first written above.

OWNER:

GENE THEORY

X_____

CONTRACTOR

DPR CONSTRUCTION
a California corporation

X_____

EXHIBIT A
CONTRACTORS PROPOSAL

EXHIBIT A-1
PRELIMINARY DOCUMENTS

EXHIBIT A-2

FINAL DRAWINGS AND SPECIFICATIONS

Exhibit B
Supplemental Conditions to Contract

1. Contractor shall take appropriate and customary measures including, but not limited to site fencing and locking gates for the security of their own materials, equipment, and work, as well as that of its subcontractors. Owner shall be responsible for Builder's Risk insurance which shall provide coverage for all materials, equipment machinery and supplies which are used in the construction of the Project.
2. Contractor shall be responsible for the coordination of the work of all its MEP contractors including all associated piping, ductwork, conduit, cable tray or other related work and will ensure their work is fully coordinated with all other trades.
3. Intentionally deleted.
4. Contractor will provide at its own expense in General Conditions, final cleaning of all work including exterior cleaning.
5. The Guaranteed Maximum Price as set forth in Section 5. 2.1 above is inclusive of all cost escalations that occur during the course of the Work and shall not be increased except pursuant to a Change Order agreed to in writing by the Owner.
6. The warranties of all building systems shall begin upon substantial completion in accordance with the Agreement. Contractor will startup and commission all MEP systems and elevators, or cause such commissioning to occur prior to substantial completion. Commissioning of MEP systems shall be on a point by point basis, include all sequences of operations, and be documented on checklists provided to and approved by Owner and Architect's consultants prior to the commencement of any commissioning and startup activities. Contractor will provide Owner and Architect's with notifications necessary for Owner and Architect or its consultants to be able to witness all startup and commissioning activities.
7. Contractor's GMP includes all costs to provide all construction related permits and to obtain all required governmental approvals for the Work, with the exception of building, grading, street improvement, street encroachment or sidewalk permits. This includes all required permits necessary to perform the work whether these permits are normally furnished by Contractor or its subcontractors or not. Specialty trades requiring permits will be included with the subcontractor bids as required by the General Contractor's bidding instructions.
8. Building permits will be provided by Owner, but Contractor shall do all necessary coordination and provide all requested assistance to Owner in managing the building permit process and Contractor shall take all possible measures necessary to ensure the timely receipt of permits. Contractor will modify their schedule in all ways possible to minimize the additional cost of critical path work that may be delayed by permits. Contractor is to reschedule non critical path work at no cost to Owner due to late receipt of permits.

- 9 Contractor's GMP includes the cost to repair sidewalks, streets, curbs, gutters, utilities or adjacent property damaged during construction.
10. Contractor will price all change orders no later than 14 days, of receipt of drawings or specifications. Contractor will provide independent cost estimates or validation of subcontractor pricing when requested by Owner.
11. Contractor will coordinate its work with work performed by other contractors or subcontractors, including those contractors or subcontractors contracted by Owner or tenants. Contractor will make available to these other contractors and subcontractors its hoists, temporary utilities, sanitary facilities, material and personnel hoisting equipment, cranes or other facilities to the same extent that contractor provides such facilities to its own subcontractors.
12. If required of Contractor, Contractor will cooperate with Owner's other contractors and subcontractors, or Owner's future tenant contractors or subcontractors in order to ensure tenant and Owner the lowest possible cost to perform their tenant or Owner work.
13. Contractor is responsible for the proper management of all storm water on the project.
14. Contractor's GMP includes all taxes and fees required by authorities having jurisdiction during the performance of the work. General Contractor's General Conditions do not include permits or fees. Specialty trades requiring permits or fees will be included with the subcontractor bids as required by the General Contractor's bidding instructions.
15. *Contractor* is to keep adjacent business or institutions in full operation while performing their work
16. Contractor will be required to submit all instructions to bidders and owner to bidding all subcontractor work.
17. Contractor will at owner's request submit all subcontractors to owner upon owner's request. If Subcontractors are with than agreed GMP pricing, owner will have option to lower GMP by Change Orders to meet Subcontractor's pricing or Contractor to raise Subcontractor value to GMP value.
18. Contractor is to include all Project Supervision, general clean-up, trash removal, insurance, temporary toilets, pest control, safety protection, quality control program, temporary stairs, project security consisting of fencing and locking gates, red line sets of as-builts, all drawing reproduction (except bid documents), protection of work, weather protection, site fax, telephone, site office, site OAC meeting table and office furniture in Contractor's General Conditions. General Conditions are not to be included in Subcontractor's instruction to bidders or Subcontractor's work.
19. Subcontractor will be approved in advance by Owner. Bid documents will be provided by architect at no cost to contractor. Contractor will include four to five Contractors for each trade and obtain at least 3 bids, for each trade. Bids will be opened in front of Owner when requested. Bid interviews of major subcontractors will be scheduled and conducted with Owner when requested.

EXHIBIT C
SCHEDULE OF KEY PERSONNEL

EXHIBIT D

CONSTRUCTION SCHEDULE

EXHIBIT E
SCHEDULE OF VALUES

EXHIBIT F
INSURANCE REQUIREMENTS

Contractor shall procure and maintain, at its sole cost and expense, the following insurance coverages pursuant to policies written by insurance companies authorized to do business in the State of California and whose rating in the most recent A.M. Best's Rating Guide is not less than

1. Workers' Compensation:

Coverage shall insure the Contractor and Contractor's employees under the Workers' Compensation and Occupational Disease statutes and other statutes of the State of California together with Employer's Liability insurance with the following limits of liability:

Coverage A Statutory Benefits

Coverage B Employers' Liability as follows.

Bodily Injury by accident	\$1,000,000 each accident
Bodily Injury by disease	\$1,000,000 policy limit
Bodily Injury by disease	\$1,000,000 each employee

Coverage shall also include Voluntary Compensation Endorsement and an All-States Endorsement.

In the event Workers' Compensation coverage cannot be obtained from an insurance company with a rating of A -:VIII or greater as required above, Contractor shall provide Owner with written confirmation that no such company will offer such Workers' Compensation coverage.

2. Commercial Auto Liability Coverage:

Coverage shall insure all owned, hired and non-owned vehicles with limits of liability of not less than \$1,000,000 combined single limit, per accident, for Bodily Injury and Property Damage.

3. Commercial General Liability:

Coverage shall insure Contractor for all of the Work performed under this Contract against claims for damages because of property damage, bodily injury, sickness or disease, or death of any person and shall insure Contractor for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom; and the limits of liability shall not be less than:

Each Occurrence Limit	\$2,000,000
Personal Advertising Injury Limit	\$2,000,000
Products/Completed Operations Aggregate Limit	\$5,000,000
General Aggregate Limit (other than Products/Completed Operations)	\$5,000,000

Contractor shall provide Excess Liability (umbrella) Insurance, with following form coverage and with limits not less than \$25,000,000 per occurrence and in the aggregate.

The policy must include.

- a) Premises and Operations coverage with no explosions, collapse, or underground damage (XCU) exclusion.
- b) Products and Completed Operations coverage (Contractor agrees to maintain this coverage for a minimum of ten (10) years following completion of its Work and to continue to name Owner and any other required parties as Additional Insured(s) for the entire 10 year period).
- c) Blanket contractual coverage with Employee Exclusion deleted, or its equivalent, and to cover, at a minimum, the Contractor's indemnity obligations contained in this Contract, which coverage shall apply to both written and oral agreements.
- d) Broad Form Property Damage coverage, including completed operations or its equivalent.
- e) Broad Form Comprehensive General Liability Endorsement or its equivalent.
- f) Protective Liability to cover Contractor liability arising out of Work performed by its subcontractors.
- g) Personal Injury Coverage with exclusion (a) contractual and (c) employee deleted.
- h) Standard ISO CG 0001 0196 Contractual Liability coverage or its equivalent, and a Separation of Insureds clause and Severability of Interests clause, with no exclusions or limitations.
- i) An endorsement in the form approved in advance by Owner naming Owner and all Indemnitees described in Article 12 of the Contract, as additional insureds. Such endorsement shall contain the following provision:

"It is understood and agreed that coverage afforded by this policy shall also apply to Gene Theory and all Indemnitees and all of their divisions, subsidiaries, partners, partnerships, shareholders, affiliated companies, successors and assigns, officers, directors, agents, servants and employees, as additional insureds."

The above endorsement shall not be acceptable unless it is on ISO form CG2010 11/85 or CG2026 11/85 or its equivalent. ISO forms

GC2010A or CG2010 10/93 or their equivalent ARE NOT ACCEPTABLE. In the event Contractor cannot obtain the above endorsement on an ISO form CG2010 11/85 or CG2026 11/85, Contractor shall provide to Owner a copy of the form proposed by Contractor in lieu of the above endorsement, which form of endorsement shall be subject to Owner's approval exercised in Owner's sole and absolute discretion.

- j) A primary coverage endorsement stating: "Such coverage as is afforded by this policy for the benefit of the additional insured(s) is primary and any other coverage maintained by such additional insured(s) shall be excess and non-contributing with the coverage provided under this policy."
- k) There shall be no exclusions for continuing or progressive losses not known by Contractor to exist prior to policy inception.
- l) Coverage must be on an "occurrence" basis. "Claims Made" and "Modified Occurrence" forms are not acceptable.

B. Other Requirements:

1. All policies and all coverage forms must be acceptable to Owner. Contractor agrees to provide a fully certified copy of any policy maintained by Contractor for Owner's review in the local Contractor's office upon Owner's request therefor. Contractor agrees to provide Owner a Certificate of Insurance.
2. Certificates of Insurance with the required endorsements evidencing the required coverages must be delivered to the Owner prior to commencement of any Work under this Contract and in all events prior to the payment of any Request for Payment. Such certificates of insurance shall state "All Operations" of Contractor or its Subcontractors performed on behalf of Contractor shall be covered by such insurance. The wording "Endeavor" and ... "but failure to mail such notice shall impose no obligation or liability of any kind upon the company" must be deleted from the certificate. If Contractor's carrier or broker will not remove such language from the certificate, a separate endorsement requiring 30-day notice of cancellation will be required.
3. If the Contractor fails to secure and maintain the required insurance, Owner shall have the right (without any obligation to do so, however) to secure same in the name and for the account of Contractor in which event the Contractor shall pay the costs thereof and furnish upon demand all information that may be required in connection therewith. Owner reserves the right, but shall have no obligation, to procure the insurance, or any portion thereof, for which Contractor is herein responsible and which is described in this Contract. Owner shall notify Contractor if Owner exercises its right, whereupon Contractor's responsibility to carry such insurance shall cease and all the premiums and other charges associated with such insurance shall be refunded to the Owner. Owner further reserves the right at any time, with thirty (30) days written notice to Contractor, to require that Contractor resume the procurement and maintenance of any insurance for which Owner has

elected to become responsible pursuant to this subsection; in such event, the sums paid to Contractor by Owner shall increase to the extent of any previously agreed and implemented reduction (as noted above) attributable to Owner's prior assumption of the particular insurance coverages. Such refund shall be equitably pro-rated based upon Contractor's completed Work at the time of such adjustment.

4. Owner reserves the right, in its sole discretion and at Owner's cost, to require higher limits of liability coverage if, in Owner's opinion, operations by or on behalf of Contractor create higher than normal hazards, and, to require Contractor to name additional parties in interest to be Additional Insureds.
5. In the event that materials or any other type of personal property ("Personal Property") is acquired for the Project or delivered to the Project site, Contractor agrees that it shall be solely responsible for such personal property until it becomes a fixture on the Project, or otherwise is installed and incorporated as a final part of the Project. Such responsibility shall include, but not be limited to, theft, fire, Vandalism, and use by unauthorized persons.
6. Contractor, for itself and on behalf of its Subcontractors and their respective employees, hereby waives all rights of recovery against Owner, the other Indemnitees, and each of their respective partners, officers, directors, agents, representatives, employees and successors and assigns (the "Waiver Parties"), for all injuries, losses and/or damage, including consequential losses and/or damage, that may affect persons or property in connection with the Work, notwithstanding that such injuries, losses and/or damage may result from the negligence or fault of any Waiver Party. Contractor shall procure an appropriate clauses in, or endorsements to, all insurance policies that Contractor is required to obtain hereunder (including, without limitation, workers' compensation), pursuant to which clauses or endorsements the insurance carriers waive their rights of subrogation and any conditions that they consent to Contractor's waiver of right of recovery as set forth in the prior sentence

EXHIBIT G

CERTIFICATE OF INSURANCE

1450 Veterans Blvd, Redwood City, CA 94063

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

Table of contents

	Page
ARTICLE 1.....	1
1.1 BASIC DEFINITIONS	1
1.2 EXECUTION, CORRELATION AND INTENT	3
1.3 OWNERSHIP AND USE OF ARCHITECT'S DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS	5
1.4 CAPITALIZATION	5
1.5 INTERPRETATION	6
1.6 CONFIDENTIALITY	6
ARTICLE 2.....	6
2.1 DEFINITION	6
2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER.....	7
2.3 OWNER'S RIGHT TO STOP THE WORK.....	7
2.4 OWNER'S RIGHT TO CARRY OUT THE WORK.....	7
2.5 EXTENT OF OWNER RIGHTS	8
ARTICLE 3.....	8
3.1 DEFINITION	8
3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR.....	8
3.3 SUPERVISION AND CONSTRUCTION PROCEDURES.....	9
3.4 LABOR AND MATERIALS	10
3.5 WARRANTY	11
3.6 TAXES	12
3.7 PERMITS, FEES AND NOTICES.....	12
3.8 ALLOWANCES.....	13
3.9 SUPERINTENDENT.....	13
3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES	14
3.11 DOCUMENTS AND SAMPLES AT THE SITE	15
3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES	15
3.13 USE OF SITE	17
3.14 CUTTING AND PATCHING	18
3.15 CLEANING UP.....	18
3.16 ACCESS TO WORK.....	18
3.17 ROYALTIES AND PATENTS.....	18
3.18 INDEMNIFICATION	19
ARTICLE 4.....	21
4.1 ARCHITECT	21
4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT	21
4.3 CLAIMS AND DISPUTES	23
4.4 RESOLUTION OF CLAIMS AND DISPUTES.....	25
ARTICLE 5.....	26
5.1 DEFINITIONS	26
5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK.....	26
5.3 SUBCONTRACTUAL RELATIONS	27
5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS.....	28
5.5 SUBCONTRACTOR'S CLAIMS.....	29

ARTICLE 6.....	29
6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS.....	29
6.2 MUTUAL RESPONSIBILITY.....	30
6.3 OWNER'S RIGHT TO CLEAN UP.....	30
ARTICLE 7.....	31
7.1 CHANGES.....	31
7.2 CHANGE ORDERS	31
7.3 CONSTRUCTION CHANGE DIRECTIVES	32
7.4 MINOR CHANGES IN THE WORK	34
ARTICLE 8.....	35
8.1 DEFINITIONS.....	35
8.2 PROGRESS AND COMPLETION	35
8.3 DELAYS AND EXTENSIONS OF TIME	36
ARTICLE 9.....	37
9.1 CONTRACT SUM	37
9.2 SCHEDULE OF VALUES	37
9.3 APPLICATIONS FOR PAYMENT	37
9.4 CERTIFICATES FOR PAYMENT	39
9.5 DECISIONS TO WITHHOLD CERTIFICATION.....	39
9.6 PROGRESS PAYMENTS	40
9.7 FAILURE OF PAYMENT.....	41
9.8 SUBSTANTIAL COMPLETION.....	4J
9.9 (INTENTIONALLY DELETED)	42
9.10 FINAL COMPLETION AND FINAL PAYMENT	42
ARTICLE 10.....	43
10.1 SAFETY PRECAUTIONS AND PROGRAMS.....	43
10.2 SAFETY OF PERSONS AND PROPERTY.....	43
10.3 EMERGENCIES	45
ARTICLE 11	45
11.1 CONTRACTOR'S INSURANCE	45
11.2 (INTENTIONALLY DELETED).....	47
11.3 (INTENTIONALLY DELETED).....	47
11.4 PERFORMANCE BOND AND PAYMENT BOND.....	47
11.5 GENERAL REQUIREMENTS	48
ARTICLE 12.....	48
12.1 UNCOVERING OF WORK.....	48
12.2 CORRECTION OF WORK	48
12.3 ACCEPTANCE OF NONCONFORMING WORK	49
ARTICLE 13.....	50
13.1 GOVERNING LAW.....	50
13.2 SUCCESSORS AND ASSIGNS.....	50
13.3 WRITTEN NOTICE.....	50
13.4 RIGHTS AND REMEDIES.....	51
13.5 TESTS AND INSPECTIONS.....	51
13.6 (INTENTIONALLY DELETED).....	52
13.7 7 (INTENTIONALLY DELETED)	52
13.8 GENERAL PROVISIONS	52
ARTICLE 14.....	53

14.1 TERMINATION BY THE CONTRACTOR53
14.2 TERMINATION BY THE OWNER FOR CAUSE.....54
14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE55
14.4 TERMINATION BY THE OWNER FOR CONVENIENCE.....55
14.5 LIMITATION ON LIABILITY 55

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

ARTICLE 1

GENERAL PROVISIONS

1.1 BASIC DEFINITIONS

1.1.1 THE CONTRACT DOCUMENTS

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

1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. Except as set forth in Paragraph 5.3 and Paragraph 5.4, the Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor or (3) between any persons or entities other than the Owner and Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

1.1.3 THE WORK

The term "Work" means the labor, materials, equipment and services provided or to be provided by the Contractor, Subcontractors, Sub-subcontractors, material suppliers or any other entity for whom the Contractor is responsible. The Work shall consist of all items set forth in, required by or reasonably inferable from the Contract Documents in order to fully complete the Project, including all demolition and construction services, supervision, administration, coordination, tests, inspections, clean up, repairs and other items that are necessary or appropriate, together with all additional, collateral and incidental work and services required for completion of the Work as set forth in the Contract Documents. Nothing contained in this Subparagraph 1.1.3 shall alter the responsibilities established in Subparagraph 3.3.1.

1.1.4 THE PROJECT

The Project has the meaning set forth in the Agreement between Owner and Contractor.

1.1.5 THE DRAWINGS

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

1.1.6 THE SPECIFICATIONS

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

1.1.7 THE PROJECT MANUAL

The Project Manual is the volume assembled for the Work that includes these General Conditions, the Specifications and all Addenda issued prior to the execution of the Contract. When required by the Agreement, the Project Manual will additionally include bidding requirements and documents and sample forms.

1.1.8 APPROVED

When the words "approved," "satisfactory," "proper" or "as directed" are used, approval by the Architect shall be understood.

1.1.9 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.

1.1.10 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.

1.1.11 BULLETINS

Bulletins are written or graphic instruments issued by the Architect 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.

1.1.12 KNOWLEDGE

The terms "knowledge," "recognize" and "discover," their respective derivatives and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows (or should know), recognizes (or should recognize) and discovers (or should discover) in exercising the care, skill, and diligence required by the Contract Documents. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill and diligence required of the Contractor by the Contract Documents.

1.1.13 PERSISTENTLY

The phrase "persistently fails" and other similar expressions, as used in reference to the Contractor, shall be interpreted to mean any combination of acts and omissions, which causes the Owner or the Architect to reasonably conclude that the Contractor will not complete the Work within the Contract Time, for the Contract Sum or in substantial compliance with the requirements of the Contract Documents.

1.2 EXECUTION, CORRELATION AND INTENT

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

1.2.2 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents. The Contractor and each Subcontractor shall evaluate and satisfy themselves as to the conditions and limitations under which the Work is to be performed, including, without limitation (1) the location, condition, layout and nature of the Project site and surrounding areas, (2) generally prevailing climatic conditions, (3) anticipated labor supply and costs, (4) availability and cost of materials, tools and equipment and (5) other similar issues. 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. The Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or Contract Time in connection with any failure by the Contractor or any Subcontractor to comply with the requirements of this Paragraph 1.2.2.

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

applicable standards, codes and ordinances, the Contractor shall (1) provide the better quality or greater quantity of Work or (2) comply with the more stringent requirement; either or both in accordance with the Architect's interpretation. The terms and conditions of this Paragraph 1.2.3, however, shall not relieve the Contractor of any of the obligations set forth in Paragraphs 3.2 and 3.7.

- .1 On the Drawings, given dimensions shall take precedence over scaled measurements, and large scale drawings over small scale drawings.
- .2 Before ordering any materials or doing any Work, the Contractor and each Subcontractor shall verify measurements at the Project site and shall be responsible for the correctness of such measurements. No extra charge or compensation will be allowed on account of differences between actual dimensions and the dimensions indicated on the Drawings. Any difference which may be found shall be submitted to the Architect for resolution before proceeding with the Work.
- .3 If a minor change in the Work is found necessary due to actual field conditions, the Contractor shall submit detailed drawings of such departure for the approval by the Architect before making the change.

1.2.4 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade, nor shall such organization or arrangement relieve the Contractor of its responsibility for the entire Work. Instructions and other information furnished in the Specifications, including, without limitation, items in connection with prefabricated or prefinished 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 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

- .1 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, tradenames, or similar reference, no substitutions may be made unless accepted prior to execution of the Contract or if accepted as a change in the

Work in accordance with Paragraphs 3.4.4-3.4.6. When two or more products are shown or specified, the Contractor has the option to use either of those shown or specified.

1.2.6 Any material specified in the Specifications by reference to the symbol or title of specific standards, such as Commercial Standards, Federal Specifications, trade association standards, or similar standards, shall comply with requirements in the latest revision thereof and any amendment or supplement thereto in effect on the date of this Contract. The standards referred to, except as modified in the Specifications, shall have full force and effect as though printed in the Specifications. These standards have not been furnished to the Contractor, as the Contractor and its manufacturers and Subcontractors are assumed to be familiar with their requirements.

1.2.7 Whenever a provision of the Specifications conflicts with agreements or regulations in force among members of trade associations, unions or councils which regulate or distinguish the portions of the Work which shall or shall not be performed by a particular trade, the Contractor shall make necessary arrangements to reconcile such conflict without delay, damage or cost to the Owner, or recourse to the Architect or the Owner. Delays in the Work resulting from the failure of the Contractor to so reconcile any such conflicts shall not result in an extension of the Contract Time.

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

1.3.1 The Drawings, Specifications, electronic files and other documents prepared by the Architect are instruments of the Architect's service through which the Work to be executed by the Contractor is described. The Contractor may retain one contract record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect. The Owner shall be deemed the author of all such documents and will retain all common law, statutory and other reserved rights, in addition to the copyright and any and all intellectual property rights therein. All copies of them, except the Contractor's record set, shall be returned or suitably accounted for to the Owner upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect 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 Drawings, Specifications and other documents prepared by the Architect on behalf of the Owner. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's copyright or other reserved rights.

1.4 CAPITALIZATION

1.4.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to Paragraphs, Subparagraphs and Clauses in the document or (3) the titles of corresponding documents published by the American Institute of Architects.

1.5 INTERPRETATION

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

1.6 CONFIDENTIALITY

The Contractor warrants and represents that Contractor shall be subject to and bound by the terms and conditions of that certain Confidential Information and Non-Disclosure Agreement, dated February 8, 2021, as executed by and between Owner and Contractor and such terms and conditions are incorporated herein by this reference as though fully set forth herein.

1.6.1 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.

1.6.2 The Contractor shall specifically 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 Paragraph 1.6.

1.6.3 The representations and warranties contained in this Paragraph 1.6 shall survive the complete performance of the Work or earlier termination of the Agreement.

ARTICLE 2

OWNER

2.1 DEFINITION

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 term "Owner" refers to Gene Theory. Stu Berry is hereby designated by the Owner as its representative and is authorized to act on behalf of the Owner, unless and until a new representative is subsequently designated by the Owner.

2.1.2 The Owner upon reasonable written request shall furnish to the Contractor in writing information which is necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein at the time of

execution of the Agreement and, within ten days after any change, information of such change UI title, recorded or unrecorded.

2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.2.1 During the performance of the Work, Owner shall provide Contractor with access to designated restroom facilities for use by the Contractor's and Subcontractors' employees. Contractor shall, at its own cost, supply such restroom facilities and shall keep such facilities in a clean and sanitary condition at all times. Upon final completion of the Work, Contractor shall return such facilities to the same condition as existed upon the Contractor's initial possession thereof.

2.2.2 During the performance of the Work, the Owner shall retain, at its own cost, those agencies necessary to perform testing required under the Contract Documents.

2.2.3 (Intentionally Deleted)

2.2.4 Information or services under the Owner's control shall be furnished by the Owner with reasonable promptness to avoid delay in orderly progress of the Work.

2.2.5 The Contractor will be furnished, free of charge, two (2) Project Manuals. Additional copies will be furnished at the cost of reproduction, postage and handling as determined by the Architect. The Contractor shall furnish all required copies of the Project Manual to each entity or person required to have such copies.

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

2.3 OWNER'S RIGHT TO STOP THE WORK

2.3.1 If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Paragraph 12.2 or fails to carry out Work in accordance with the Contract Documents, or if the Owner otherwise reasonably determines that it is necessary or desirable, the Owner, by written order signed personally or by an agent specifically so empowered by the Owner in writing, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Subparagraph 6.1.3. The exercise by the Owner of this right shall not give rise to a Claim by the Contractor for an extension in the Contract Time or increase in the Contract Sum. This right shall be in addition to and not in restriction or derogation of the Owner's rights and remedies under Article 14 hereof.

2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect

with diligence and promptness, the Owner may immediately, 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 cost of correcting such deficiencies, including compensation for the Architect's additional services and expenses made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay immediately the difference to the Owner.

2.5 EXTENT OF OWNER RIGHTS

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.

2.5.2 In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

ARTICLE 3

CONTRACTOR

3.1 DEFINITION

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

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1 The Contractor shall carefully study and compare the Contract Documents with each other and shall at once report to the Architect and the Owner (i) errors, inconsistencies or omissions discovered, and (ii) any variance from applicable laws, statutes, ordinances, building codes, rules, regulations or any lawful orders of any governmental body, or public or quasi-public authority. The Contractor shall not be liable to the Owner or Architect for damage resulting from errors, inconsistencies, omissions or variances in the Contract Documents, unless the Contractor recognized or should have recognized such error, inconsistency, omission or variance and failed to report it to the Architect and the Owner. If the Contractor performs any construction activity involving an error, inconsistency, omission or variance in the Contract Documents which the Contractor recognized or should have recognized, and does so without such notice to the Architect and the Owner, the Contractor shall assume complete responsibility for such performance and shall bear the full amount of the attributable costs for correction.

3.2.2 The Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to the Contractor with the Contract Documents before commencing activities.

Errors, inconsistencies or omissions discovered shall be reported to the Architect and the Owner at once.

- .1 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.
- .2 The Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions and locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, locations or dimensions shall be promptly rectified by the Contractor without any additional cost to the Owner.

3.2.3 The Contractor shall perform the Work in accordance with the Contract Documents and submittals approved pursuant to Paragraph 3.12.

3.2.4 The Contractor represents that it has carefully examined the Drawings and Specifications, and that the Drawings and Specifications are sufficient in content and detail to complete the Work and to enable the Contractor to deliver the Work within the Contract Sum and the Contract Time.

3.2.5 The Contractor agrees that the dimensions and quantities set forth in the Drawings, Specifications and other Contract Documents are approximate measurements supplied by the Owner for the Contractor's information and convenience, that the Contractor may not rely on such estimated dimensions and quantities, and that it is the Contractor's responsibility to verify such measurements. The Contractor agrees and acknowledges that it shall not be entitled to a Change Order to increase either the Contract Time or the Contract Sum for any inconsistencies, errors or omissions in such dimensions or quantities.

3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. The Contractor shall review any specified construction procedure, and shall advise the Architect:

1. If and in what respect(s) the specified procedure deviates from good construction practice;
2. If following the procedure may affect any warranties; or
3. Of any objections which the Contractor may have as to the procedure, together with the Contractor's recommendations for resolving any such objections.

3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and any

entity or other persons performing portions of the Work or claiming by, through or under the Contractor, and for any damages, losses, costs and expenses resulting from such acts or omissions.

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

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

3.4 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, gas, heat, utilities (except for electricity and water), 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.

The Contractor will have access to the Owner's existing water and electrical facilities at no cost. To the extent that any modifications are required thereto in order to perform the Work, the Contractor shall make such modifications at its own cost, and after completion of the Work, shall return such facilities to their original condition.

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

3.4.3 After the Contract has been executed, the Owner and the Architect will consider a formal request for the substitution of materials in place of those specified, only if the Contractor submits a written request to the Owner and the Architect, and only under the following circumstances:

- .1 When the specified material is discontinued and not available from the manufacturer;
- .2 When a guarantee of performance is required and, in the reasonable judgment of the Contractor, the specified material or process will not produce the desired results; or
- .3 When a proposed substitution, in the opinion of the Architect and the Owner, is in the best interests of the Owner.

The Architect will consider only such substitution requests which comply with this Subparagraph 3.4.3. A recommendation by the Architect or approval by the Owner shall not make the Owner or Architect responsible for such substitution.

Requests for substitutions shall be in writing and will be accompanied by evidence that the proposed substitution: (1) is equal or superior in quality and serviceability to the specified item; (2) will not entail changes in details and construction of related work; and (3) shall not involve additional cost to the Owner, unless the specified material is discontinued and unavailable from the manufacturer.

Regardless of the evidence submitted or any review or independent investigation by the Owner or the Architect, a request for a substitution of products, materials or processes shall constitute a representation, warranty and covenant by the Contractor of the matters set forth in Subparagraph 3.4.4 hereof.

Contractor shall bear and be responsible for all additional costs resulting from or arising in connection with such substitutions requested by Contractor, unless the substitution is required due to the discontinuation of and inability to obtain a material which did not arise and could not have reasonably been anticipated until after the execution of the Contract.

3.4.4 By making requests for substitutions based on Subparagraph 3.4.3 above, the Contractor represents, warrants and covenants that:

- .1 the Contractor has personally investigated the proposed substitute material and determined that it is equal or superior in all respects to that specified;
- .2 the Contractor shall provide the same warranty for the substitution that the Contractor would for the material specified;
- .3 the cost data presented is complete and includes all related costs under this Contract, and the Contractor waives all claims for additional costs related to the substitution which subsequently become apparent; and
- .4 the Contractor will coordinate the installation of the accepted substitute, making such changes as may be required for the Work to be complete in all respects.

3.5 WARRANTY

3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects, that the Work will conform with the requirements of the Contract Documents and that the Work will be completed on a lien-free. Work not conforming to these requirements, including substitutions not properly approved and authorized, shall be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage. The Contractor's warranty will not be affected by the specification of any material or procedure, unless the Contractor objects promptly to such material or procedure and so advises the Architect, in writing, of proposed materials and procedures which will not affect the Contractor's warranty. The Contractor's warranty will not be restricted by any manufacturer's warranty. The Contractor is responsible for

Subcontractors' nonperformance on warranty Work. The refusal of a Subcontractor or supplier to correct defective work for which it is responsible will not excuse the Contractor from liability under the Contractor's warranty. No limitation on warranties contained anywhere in these General Conditions shall be deemed to apply to the warranties made pursuant to this Subparagraph. This warranty is not limited by the provisions of Paragraph 12.2. If required by the Architect and the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Contractor's warranty that the Work will be free from defects shall survive for a one year period after Substantial Completion as evidenced by a fully executed AIA form G704 or, with respect to any defective work corrected by the Contractor after final payment for a one year period after such corrected work has been accepted by the Owner.

3.5.2 The Contractor agrees to assign to the Owner at the time of final completion of the Work, any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturers' warranties.

3.5.3 Intentionally deleted.

3.5.4 Upon the Owner's request, the Contractor shall provide the Owner, in sufficient time to extend any manufacturers' warranties, with information concerning the cost to extend such manufacturers' warranties and the duration and terms of such extension.

3.6 TAXES

3.6.1 The Contract Sum may include state and local sales tax for materials used in performing the Work. Except as provided above, the Contractor shall pay all sales, consumer, use and similar taxes for the Work or portions thereof provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect. The Contractor shall provide the Owner with an estimate of the taxes which will be incurred in connection with the prosecution of the Work.

3.7 PERMITS, FEES AND NOTICES

3.7.1 The Contractor shall secure and pay for all other permits, fees, licenses, approvals and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required. All connection charges, assessments or inspection fees as may be imposed by any municipal agency or utility company are included in the Contract Sum and shall be the Contractor's responsibility. Owner has paid for and provides the building permit for the work.

3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders and all other requirements of public authorities bearing on performance of the Work. Unless waived in writing by the Owner or if the Contract Documents provide to the contrary, the Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the municipality in which the Project is located or by 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 back-up 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

3.7.3 If entry on or encroachment upon adjoining property or public right-of-way is necessary to perform the Work, the Contractor shall obtain any necessary permissions, permits or licenses and pay all costs and fees therefor.

3.7.4 If the Contractor performs Work which it knows, or should have known, would be contrary to laws, statutes, ordinances, building codes, rules and regulations without notice to the Architect and Owner, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs, losses, damages and expenses.

3.7.5 A photocopy of the building permit shall be delivered to the Architect and Owner as soon as it is obtained. Upon final completion of the Work, the Contractor shall deliver all original permits, licenses and certificates to the Owner and shall deliver photocopies to the Architect.

3.8 ALLOWANCES

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

3.8.2 Unless otherwise provided in the Contract Documents:

- .1 materials and equipment under an allowance shall be selected promptly by the Owner to avoid delay in the Work;
- .2 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .3 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances;
- .4 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Clause 3.8.2.2 and (2) changes in Contractor's costs under Clause 3.8.2.3.

3.9 SUPERINTENDENT

3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. The superintendent shall be satisfactory to the Owner in all respects, and the Owner shall have the right to require the Contractor to replace any superintendent whose performance is not satisfactory to the Owner. The Contractor shall not replace the superintendent except with the prior consent of the Owner, which shall not be arbitrarily withheld, provided that if the superintendent proves to be unsatisfactory to the Contractor or ceases to be in its employ, then the Contractor need not obtain the Owner's consent to terminate the superintendent from the Project; provided, however, any replacement superintendent must be satisfactory to the Owner.

3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

3.10.1 The Contractor shall prepare and submit for the Owner's and the Architect's approval a contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and the Project, shall be related to the entire Project to the extent required by the Contract Documents and shall provide expeditious and practicable execution of the Work. If requested by Owner, Contractor shall promptly provide Owner with an electronic copy of Contractor's schedule with all substantiating electronic data. Notwithstanding the above, Contractor shall update its schedule no less than once each calendar month.

3.10.2 The Contractor shall prepare and keep current, for the Architect's and the Owner's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals. The Contractor shall submit the schedule of submittals within ten (10) calendar days after execution of the Contract.

3.10.3 The Contractor shall conform to the most recent schedules.

3.10.4 The construction schedule shall be in a detailed critical path management ("CPM") format satisfactory to the Owner and the Architect that shall also (i) identify each phase of construction; and (ii) 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 (hereinafter referred to as "Milestone Dates"). Upon review and acceptance by the Owner and the Architect of the Milestone Dates, the construction schedule shall be deemed part of the Contract Documents and attached to the Agreement as Exhibit D. 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 Supplementary Conditions as "progress reports") as set forth in Subparagraph 3.10.1 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, or

the Contract Sum unless any such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

3.10.5 The Contractor shall prepare at least monthly a progress report in a form, in sufficient detail, and of a character approved by the Owner. The progress report shall specify, among other things, an estimated percentage of completion, whether the Work is on schedule, and if not, the reasons therefor and the projected Work to be completed in the next succeeding month. Accompanying the progress report shall be an updated status of all Modifications.

The Contractor shall hold weekly progress meetings at the Project site, or at such other time and frequency as the Owner requests. Progress of the Work shall be reported in detail with reference to construction schedules. The Contractor shall prepare such additional reports as the Owner may reasonably request.

3.10.6. Contractor, Subcontractors and multi-tier subcontractors and suppliers shall be a part of and in agreement with the project schedule, as approved by Owner. Contractor shall coordinate with Subcontractors, materialmen and suppliers all work and deliveries as required to adhere to the Owner's approved schedule.

3.11 DOCUMENTS AND SAMPLES AT THE SITE

3.11.1 The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction, and in addition approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work, signed by the Contractor and certifying that they show complete and exact "as built" conditions, stating sizes, kind of materials, locations and similar matters.

3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required the way the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Subparagraph 4.2.7.

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

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

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

3.12.8 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 the Architect has given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the 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.

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

3.12.11 When professional certification of performance criteria of materials, systems, or equipment is required by the Contract Documents, the Contractor shall provide the person or party providing the certification with full information on the relevant performance requirements and on the materials, systems, or equipment that are expected to operate at the Project site. The certification shall be based on performance under the operating conditions generally prevailing or expected at the Project site. The Architect and the Owner shall be entitled to rely upon the accuracy and completeness of such certificates.

3.12.12 All shop drawings for any architectural, structural, mechanical or electrical work must be submitted to, and approved by, the Architect. The Contractor represents and warrants that all shop drawings shall be prepared by persons and entities possessing expertise and experience in the trade for which the shop drawing is prepared and, if required by the Architect or applicable law, by a licensed engineer.

3.13 USE OF SITE

3.13.1 The Contractor shall confine operations at the Project site to areas permitted by law, ordinances, permits and as is otherwise designated from time to time by the Owner, and shall not unreasonably encumber the Project site with materials or equipment.

3.13.2 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.

3.13.3 Other than signs which are required to be erected by applicable law (which signs the Contractor shall erect, at its sole cost, as and when required by applicable law), 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. Any sign erected by the Contractor shall be at the Contractor's sole cost and expense and shall not be included in the Cost of the Work.

3.13.4 Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work 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 site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions. Without limitation of any other provision of the Contract Documents, Contractor shall use its best efforts to minimize any interference with the occupancy or beneficial use of (1) any areas and buildings adjacent to the site of the Work or (2) the Building in the event of partial occupancy, as more specifically described in Paragraph 9.9.

3.13.5 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. Without limitation of any other provision of the Contract Documents, the Contractor shall use its best efforts to comply with 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 with 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. 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.

3.14 CUTTING AND PATCHING

3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering Such construction, or by excavation. The Contractor shall confirm the structural integrity of the Project and shall obtain a certificate from the structural engineer confirming the structural integrity of the Project prior to commencing the Work. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

3.15 CLEANING UP

3.15.1 The Contractor shall, on a daily basis, clean the Project site and the surrounding area so that they are free from the accumulation of waste materials, rubbish and similar items. The Contractor shall insure that no burning of trash or debris occurs on the Project site or adjacent premises, and that no dust or trash from Work in progress creates a public nuisance. The Contractor shall comply with all city and other governmental regulations concerning environmental pollution. The Contractor shall promptly remove all spillage and tracking arising from the performance of the Work, and shall establish a regular maintenance program of sweeping and hosing to minimize the accumulation of dirt and dust upon the Project site and surrounding properties. At completion of the Work, the Contractor shall remove from and about the Project site and the surrounding areas all waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

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

3.16 ACCESS TO WORK

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

3.17 ROYALTIES AND PATENTS

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

3.18 INDEMNIFICATION

3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend and hold harmless the Owner and its affiliates and each of such parties' respective members, partners, officers, directors, stockholders, trustees, employees and agents (collectively "Indemnitees") from and against all suits, liabilities, damages, costs, expenses, losses, claims, demands and actions of any nature whatsoever, including all court costs and attorneys' fees, which arise out of, or are connected with, any accident, matter or occurrence caused in whole or in part by any act or omission of Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable (regardless of whether or not it is caused in part by any Indemnitee) which happens, or is alleged to have happened, as a result of the performance of or failure to perform the Work, or the condition of the Work, the Project site, adjoining land, driveways, streets, alleys, parking lots, or areas used in connection with the Work, as well as from any and all claims by workmen, suppliers or Subcontractors who are involved in the performance of the Work; including without limiting the generality of the foregoing, all suits, liabilities, damages, losses, claims, demands and actions on account of personal injury, death or property loss to any Indemnitee, any Indemnitee's employees, agents, contractors, invitees, licensees or frequenters, or any other contractor, and to any other persons, whether based upon or claimed to be based upon statutory (including, without limiting the generality of the foregoing, workers' or workmen's compensation), contractual, tort or other liability of any Indemnitee, contractor or any other person provided, however, that Contractor's actual out-of-pocket payments in connection with the indemnification in this Section 12, which payments shall specifically exclude any amounts payable for premiums or deductibles for any of Contractor's insurance policies and amounts payable by any of Contractor's insurance carriers, shall not exceed an amount equal to the aggregate of the insurance coverages set forth on the Schedule of Insurance. Contractor shall not be required hereunder to indemnify any Indemnitee hereunder from or against damage, loss, cost or expense arising from such Indemnitee's sole negligence or willful misconduct or that of its agents, servants or independent contractors (other than the Contractor) who are directly responsible to such Indemnitee, or for defects in design furnished by those persons, nor shall Contractor be obligated to indemnify the Owner to the extent the liability is caused by the active negligence of the Owner, including that of the Owner's employees. The provisions of this indemnification paragraph shall not be construed to eliminate or reduce any other indemnification or right which any Indemnitee has by law. In the event any term or provision of this Subsection 3.18.1 shall be deemed void or unenforceable, it shall not thereby invalidate or be construed to invalidate any other term or provision contained in this Section 3.18 or elsewhere in the Contract Documents, all of which shall remain in full force and effect.

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

3.18.3 The obligations of the Contractor under this Paragraph 3.18 shall not extend to the liability of the Architect, the Architect's consultants, and agents and employees of

any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Architect, the Architect's consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

3.18.4 The Contractor shall indemnify, defend and hold harmless the Owner from and against any claim, demand or cause of action arising from or related to a notice of lien, claim for lien, lien, or suit to foreclose a lien filed, given, made or maintained by a Contractor, Subcontractor, Sub-subcontractor or supplier. The Contractor shall immediately discharge all liens, by bonding or payment, filed or recorded against the Project.

3.18.5 If the Contractor or any Subcontractor becomes aware of any materials reasonably believed by contractor to constitute a hazardous environmental condition in, under, on or about the Project site, Contractor shall immediately notify Owner and stop the Work unless otherwise directed by Owner or otherwise required by law. Contractor shall not disturb, handle or take any remedial action with regard to such condition at the Project site or other lands of Owner, without owner's express prior written authorization, except as may be required by law. The Owner hereby indemnifies, defends and holds the Contractor (but not any Subcontractor) harmless from and against any and all claims, demands, losses, damages, disbursements, liabilities, obligations, fines, penalties, costs and expenses (but excluding any consequential damages) incurred or suffered by the Contractor in connection with any Hazardous Materials (as defined below) existing at the Project site on the date hereof; provided that the foregoing indemnity shall not apply to the extent any such claim, demand, loss, damage, disbursement, liability, obligation, fine, penalty, cost or expense arises or is incurred in connection with the disturbance or handling of such Hazardous Materials by the Contractor or any Subcontractor. For the purposes of this paragraph, the term "Hazardous Materials" shall mean any substance, material, waste, pollutant, or contaminant listed or defined as hazardous or toxic, or regulated by reason of its impact or potential impact on humans, animals and/or the environment under the Comprehensive Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; and all state and local counterparts thereto, and any regulations or policies promulgated or issued thereunder.

ARTICLE 4

ADMINISTRATION OF THE CONTRACT

4.1 ARCHITECT

4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative. Any reference in the Contract Documents to the Architect 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 Architect. Consent shall not be unreasonably withheld.

4.1.3 In case of termination of employment of the Architect, the Owner shall appoint an Architect whose status under the Contract Documents shall be that of the former Architect.

4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents, and will be the Owner's representative, and shall advise and consult with the Owner. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument in accordance with other provisions of the Contract.

4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction to become familiar with the progress and quality of the completed Work and to determine if the Work is being performed in a manner indicating that the Work, when 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 quality or quantity of the Work except as may be otherwise required in the Contract Documents. On the basis of on-site observations as an Architect, the Architect will keep the Owner informed of progress of the Work, and will endeavor to guard the Owner against defects and deficiencies in the Work.

4.2.3 The Architect will not have control over or charge of and will not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility as provided in Paragraph 3.3. The Architect will not be responsible for the Contractor's failure to carry out the Work in accordance with 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 of any other persons performing portions of the Work. The Architect will not have authority or responsibility to stop the Work.

4.2.4 Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall

endeavor to communicate through the Architect, with copies of any written notices or communications being delivered to the Owner. 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 Based on the Architect's observations and evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

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

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

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

4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner for the Owner's review and records written warranties and related documents required by the Contract and assembled by the Contractor, and will issue a final Certificate for Payment upon compliance with the requirements of the Contract Documents.

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 Subject to Paragraph 4.3 below in respect of Claims, the Architect will, in the first instance, interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made with reasonable promptness and in no event later than 7 days after the date on which such request is made. The Architect's response to any request hereunder shall not be binding upon the parties hereto, but shall be advisory only.

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

4.3 CLAIMS AND DISPUTES

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

4.3.2 Claims may, upon the request of both the Contractor and the Owner, be referred initially to the Architect for action as provided in Paragraph 4.4 if the claimant first recognizes the claim prior to the date of final payment.

4.3.3 Claims by either party must be made within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later; provided, however, that the claimant shall use its best efforts to furnish the Architect and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such Claim is recognized, and shall cooperate with the Architect and the party against whom the Claim is made in any effort to mitigate the alleged or potential damages, delay or other adverse consequences arising out of the condition which is the cause of such a Claim. Claims must be made by written notice. An additional Claim made after the initial Claim has been implemented by Change Order will not be considered unless submitted in a timely manner. Claims may also be reserved in writing within the time limits set forth in this Paragraph 4.3.3. If a Claim is reserved, the Resolution of Claims and Disputes procedures described in Paragraph 4.4 shall not commence until a written notice from the claimant is received by the Architect. Any notice of Claim or reservation of Claim must clearly identify the alleged cause and the nature of the Claim and include data and information then available to the claimant that will facilitate prompt verification and evaluation of the Claim.

4.3.4 Pending final resolution of a Claim, unless otherwise agreed in writing, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents (except for any amounts in dispute).

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

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

4.3.5 If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents, or do not materially differ from those ordinarily found to exist and generally recognized as inherent in construction activities of this character, and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Paragraph 4.4. No adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition which does not differ materially from those conditions disclosed or which reasonably should have been disclosed by the Contractor's (1) prior inspections, tests, reviews and preconstruction services for the Project, or (2) inspections, tests, reviews, and preconstruction services which the Contractor had the opportunity to make or should have performed in connection with the Project.

4.3.7 If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Paragraph 10.3. If the Contractor believes additional cost is involved for reasons including but not limited to (1) an order by the Owner to stop the Work where the Contractor was not at fault, (2) failure of payment by the Owner, (3) termination of the Contract by the Owner, or (4) the Owner's suspension, the Claim shall be filed in accordance with the procedure established herein.

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

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

4.3.10 If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, of any of the other party's employees or agents, or of others for whose acts such party is legally liable, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after first observance. The notice shall provide sufficient detail to enable the other party to investigate the matter. If a Claim for additional cost or time related to this Claim is to be asserted, it shall be filed as provided in Subparagraphs 4.3.7, 4.3.8 or 4.3.9.

4.4 RESOLUTION OF CLAIMS AND DISPUTES

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

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

4.4.3 If a Claim has not been resolved, the party making the Claim shall, within ten days after the Architect's preliminary response, take one or more of the following actions: (1) submit additional supporting data requested by the Architect, (2) modify the initial Claim or (3) notify the Architect that the initial Claim stands.

4.4.4 If a Claim has not been resolved after consideration of the foregoing and of further evidence presented by the parties or requested by the Architect, the Architect will notify the parties in writing that the Architect's decision will be made within seven days. Upon expiration of such time period, the Architect will render to the parties the Architect's written decision relative to the Claim, including any change in the Contract Sum or Contract Time or both. If there is a surety and there appears to be a possibility of a Contractor's default, the Architect may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy. The written decision of the Architect with respect to any Claim shall be advisory only and shall not be binding on the parties hereto.

4.4.5 The Contractor shall comply with the requirements of any surety regarding Claims, including without limitation, notifying said surety thereof.

ARTICLE 5

SUBCONTRACTORS

5.1 DEFINITIONS

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

5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site or to supply materials, equipment or goods in relation to the Work. 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 Contractor, within five (5) days of the execution of the Contract, shall furnish in writing to the Owner and the Architect the names of all Subcontractors and Sub-subcontractors proposed for each portion of the Work. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed Subcontractor or Sub-subcontractor. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection. The Contractor will not knowingly, after diligent investigation, employ any Subcontractor or accept any Sub-subcontractor who is involved in a threatened, pending or on-going labor dispute. After consultation with the Owner and without adjustment to the Contract Sum or the Contract Time, the Contractor shall discharge, or cause to be discharged (and if the Contractor fails to do so, the Owner shall have the right to do so and, without limitation upon the generality of Paragraph 3.18, the Contractor's indemnification obligations under Paragraph 3.18 shall include all costs, claims and losses incurred by the Owner in connection therewith), any Subcontractor or Sub-subcontractor who becomes involved in a threatened, pending or on-going labor dispute.

5.2.2 The Contractor shall not contract with a proposed Subcontractor or Sub-subcontractor to whom the Owner or Architect has made reasonable and timely objection.

5.2.3 If the Owner or Architect has reasonable objection to a Subcontractor or Sub-subcontractor proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. No adjustment in the Contract Sum shall be made in the event the Owner or the Architect so objects to a proposed Subcontractor or Sub-subcontractor.

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

6.3 SUBCONTRACTUAL RELATIONS

5.3.1 By appropriate written agreement, the form of which shall be approved in advance by the Owner, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. All subcontracts shall contain the following sentence: The Owner is an intended third party beneficiary of this subcontract. At the Owner's request, the Contractor shall provide the Owner, at no expense, with copies of all of the agreements with the Subcontractors and the Sub-subcontractors.

5.3.2 Any part of the Work performed for the Contractor by a Subcontractor shall be pursuant to a written subcontract between the Contractor and such Subcontractor, which shall be prepared on a master form of subcontract which the Contractor has, prior to the execution of any such subcontract, submitted to the Owner to insure that each such subcontract contains provisions that:

- .1 require that such portion of the Work be performed in accordance with the requirements of the Contract Documents;
- .2 require timely submission of Subcontractor applications for payment and ancillary materials in order to enable the Contractor to apply for payment in accordance with the provisions of Article 9;
- .3 waive all rights the subcontracting parties may have against one another or that the Subcontractor may have against the Owner for damages caused by fire or other perils;
- .4 recognize the rights of the Owner pursuant to the Contingent Assignment of Subcontracts under

Subparagraph 5.4.1 and require the Subcontractor (upon notice by the Owner that the Owner has terminated the Contract with the Contractor pursuant to the terms of Article 14, and that the Owner has elected, pursuant to Subparagraph 5.4.1, to retain the Subcontractor pursuant to the terms of its subcontract with the Contractor) to complete the unperformed obligations under such subcontract and, if requested by the Owner, to enter into an appropriate agreement evidencing the fact that the Subcontractor is bound to the Owner under its subcontract in the manner in which it had been bound to the Contractor;

- .5 require the Subcontractor to carry and maintain workers' compensation insurance in the amounts required by statute, and such other insurance as may be required of such Subcontractor under the Contract Documents; and
- .6 contain no provisions inconsistent with any of the foregoing clauses (1) through (5) of this Subparagraph 5.3.2.

5.3.3 The Contractor shall only employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts, and any other individuals associated with the Project. The Contractor shall also use best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance.

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

.2 In case the progress of the Work is affected by any undue 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 or Construction Change Directive.

5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

5.4.2 If the Work in connection with a subcontract has been suspended for more than thirty (30) days after termination of the Contract by the Owner pursuant to Paragraph 14.2 and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for any increase in direct costs incurred by such Subcontractor as a result of the suspension.

5.4.3 Upon the Owner's reasonable request, the Contractor shall execute further documentation conditionally assigning each subcontract agreement to the Owner (and the Contractor shall cause each Subcontractor to acknowledge said assignment). Copies of the executed subcontract agreements shall be delivered to the Owner within five (5) days after execution thereof.

5.4.4 Each subcontract shall specifically provide that the Owner 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.

5.5 SUBCONTRACTOR'S CLAIMS

5.5.1 The Contractor shall promptly advise the Owner in writing of any claim or demand by a Subcontractor claiming that any amount is due to such Subcontractor or claiming any default by the Contractor in any of its obligations to such Subcontractor.

ARTICLE 6

CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided elsewhere in the Contract Documents.

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

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

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

6.2 MUTUAL RESPONSIBILITY

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

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

6.2.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the party responsible therefor.

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

6.2.5 Claims and other disputes and matters in question between the Contractor and a separate contractor shall be subject to the provisions of Paragraph 4.3 provided the separate contractor has reciprocal obligations.

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

6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If a dispute arises among the Contractor, separate Contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish as described in Paragraph 3.15, the Owner may clean up and allocate the cost among those responsible as the Architect determines to be just.

ARTICLE 7

CHANGES IN THE WORK

7.1 CHANGES

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

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

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

7.2 CHANGE ORDERS

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

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

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

7.2.3 Agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work which is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule. In the event a Change Order increases the Contract Sum, Contractor shall include the Work covered by such Change Orders in Applications for Payment as if such Work were originally part of the Contract Documents.

7.2.4 Owner may order changes in the Work and in such event, the Contract Sum shall be adjusted as set forth in a Change Order in the form of AIA Document G701 or such other form as is acceptable to Owner, executed by Owner, Contractor and Architect in advance of the performance of any additional or modified Work by Owner and Contractor. No Pending Change Order ("PCO") shall be included in any Request for Payment, regardless of whether Owner has agreed to such PCO, unless and until the PCO is contained in a written Change Order as described above, executed by both Owner, Contractor and Architect.

7.3 CONSTRUCTION CHANGE DIRECTIVES

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

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

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

- .1 By estimation and acceptance of a lump sum, The Contractor shall submit change proposals which include a complete itemization of quantities of materials, unit cost of materials when applicable, unit labor cost for each item of Work or total labor hours and applicable hourly rates for each classification of labor, and the number of calendar days (if any) required to complete the extra Work in addition to the Contract Time or the reduction in calendar days (if any) in the Contract Time for omitted Work.
- .2 By unit prices based on the Schedule of Values listed in Exhibit E of the Agreement. The Contractor shall submit an estimate itemizing the number of unit quantities of each part of the Work which is changed, multiplying such unit quantities by the applicable unit prices. The change in Contract Time shall be as described in Sub-subparagraph 7.3.3.1 above.
- .3 By cost and percentage, or by cost and fixed fee. The Contractor shall keep correct records of materials, labor, equipment, transportation, and other items used or expended to effect the required change. Such records shall be kept on forms acceptable to the Architect and the Owner and submitted to the Architect for review each day that such Work is performed. Only acceptable documents will be considered in establishing the cost of the change. The change in Contract Time shall be as described in Sub-subparagraph 7.3.3.1 above.
- .4 as provided in Subparagraph 7.3.6.

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

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

7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Architect, with the Owner's approval, on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Clause 7.3.3.3, the Contractor shall keep and present, in such form as the Architect and the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Subparagraph 7.3.6 shall be limited to the following:

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

7.3.7 Pending final determination of cost to the Owner, amounts not in dispute may be included in Applications for Payment. The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

7.3.8 If the Owner and Contractor do not agree with the adjustment in Contract Time or the method for determining it, the adjustment or the method shall be referred to the Architect for determination pursuant to Article 4 hereof.

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

7.3.10 In Subparagraph 7.3.6, the allowance for the combined overhead and profit included in the total cost to the Owner shall be based on the following schedule:

- .1 For the Contractor, for Work performed by the Contractor's own forces, allowance for overhead shall be and profit shall be [REDACTED] the cost.
- .2 For the Contractor, for Work performed by the Contractor's Subcontractor, [REDACTED] of the amount due to the Subcontractor (excluding the [REDACTED] provided for in 3 below and the [REDACTED] provided for in 4 below).
- .3 For each Subcontractor or Sub-subcontractor, for Work performed by that Subcontractor's or Sub-subcontractor's own forces, not more than _____ of the cost of such Work performed by that Subcontractor or Sub-subcontractor.
- .4 For each Subcontractor, for Work performed by the Subcontractor's Sub-subcontractors, not more than _____ of the amount due the Sub-subcontractor (excluding the [REDACTED] provided for in 3 above). Additionally, if the Work is further subcontracted out, the Sub-subcontractor shall only be entitled to [REDACTED] the amount due its subcontractor.
- .5 Cost to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.6.
- .6 In order to facilitate checking of quotations for extras or credits, all proposals shall be accompanied by a complete itemization of costs including labor, materials and subcontracts. Labor and materials shall be itemized in the manner prescribed in Subparagraph 7.3.6 above. Where major cost items are subcontracts, they shall be similarly itemized as well.

7.3.11 Measurements for Work on a unit price basis, if applicable, shall be made in accordance with United States Standard Measures. When specified by weight, measurement shall be computed from weight slips. Measurement for area and linear quantities shall be taken on a horizontal plane. Volume of other materials shall be computed by multiplication of the surface area on a horizontal plane times the specified depth or thickness. If materials are specified to be placed in a structure, the actual volume within the neat lines of the structure, as shown on the Drawings, shall be the basis for computing the Work.

7.4 MINOR CHANGES IN THE WORK

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

ARTICLE 8

TIME

8.1 DEFINITIONS

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

8.1.2 The date of commencement of the Work is the date established in the Agreement. The date shall not be postponed by the failure to act of the Contractor or of persons or entities for whom the Contractor is responsible.

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

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

8.2 PROGRESS AND COMPLETION

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

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

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

8.2.4 The Contractor shall perform and construct the Work in accordance with the Contract Documents and all applicable laws, codes, rules, ordinances and regulations. Costs associated with performing and constructing the Work on a premium time basis, if necessary to complete the Work within the Contract Time, shall be included in the Contract Sum.

8.2.5 If the Owner orders the Contractor to perform parts of the Work on a premium time basis, the Owner shall pay only an amount equal to that portion of wages which is in excess of the regular rate paid by the Contractor for the Work, including customary benefits. The Contractor shall make no extra charge for overhead, profit or any other item.

8.3 DELAYS AND EXTENSIONS OF TIME

8.3.1 If the Contractor is delayed at any time in progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by labor disputes, fire, unavoidable casualties or other causes beyond the Contractor's reasonable control, then the Contract Time shall be extended by Change Order to the extent such delay will prevent the Contractor from achieving Substantial Completion within the Contract Time and if the performance of the Work is not, was not or would not have been delayed by any other cause for which the Contractor is not entitled to an extension in the Contract Time under the Contract Documents. The Contractor further acknowledges and agrees that adjustments in the Contract Time will be permitted for a delay only to the extent such delay (1) is not caused, or could not have been anticipated, by the Contractor, (2) could not be limited or avoided by the Contractor's timely notice to the owner of the delay and (3) is of a duration not less than one (1) day. The Contractor covenants and agrees to exert all reasonable best efforts to avoid the occurrence of any cause for delay and to avoid any extension of performance dates.

8.3.2 Notwithstanding anything to the contrary contained in the Contract, any claim for extension of time shall be made by the Contractor to the Owner and Architect in writing and shall be received by them not more than five (5) working days after the commencement of the alleged cause for delay. Within five (5) working days after the cessation of such alleged cause for delay, Contractor shall notify the Owner and Architect of such cessation and the total amount of delay, if any, in performance dates which Contractor claims by reason of any such occurrence. Immediately following the commencement of any such cause for delay, representatives of the Contractor, Owner and Architect shall confer for the purpose of endeavoring to determine a course of action which would terminate or eliminate the occurrence or event which is causing delay. Failure of Contractor to timely assert any alleged claim for extension shall constitute a waiver of the particular claim.

Should the Contractor, in the absence of such notification, fail, refuse or neglect to supply sufficient workmen or to deliver materials with such promptness as to prevent the delay in the progress of the Work, or fail in any respect diligently to commence and prosecute the Work and proceed to the point to which the Contractor should have proceeded hereunder, or if the different parts thereof are not commenced, prosecuted, finished, delivered or installed on time as herein specified, or if the Contractor shall fail in the performance of any of the covenants of this Contract, the Owner shall have the right to direct the Contractor to (i) furnish, upon three (3) days' notice and at the Contractor's sole cost and expense, additional labor, which labor shall, in the Owner's opinion, be sufficient to speed up and complete the Work as herein provided, and (ii) at the Contractor's sole cost and expense, to expedite deliveries of materials (or the Owner may expedite such deliveries at the cost of the Contractor). If such additional labor shall not be available, the Owner shall have the right to direct the Contractor, at the latter's own cost and expense, to work overtime to such an extent as will be sufficient to speed up and complete the Work as herein provided.

8.3.3 This Paragraph 8.3 does not preclude recovery of damages by the Owner for delay under other provisions of the Contract Documents. Contractor's sole and exclusive remedy, however, for delay (regardless of the cause thereof), hindrances in the performance of the Work, loss of productivity, impact damages, other consequential

damages and similar damages, shall be an extension in the Contract Time or other adjustment to the Project Schedule. The Owner's exercise of any of its rights and remedies under the Contract Documents, regardless of the extent or frequency with which the Owner exercises any such rights and remedies, shall not under any circumstances be construed as intentional interference by the Owner with the Contractor's performance of the Work.

ARTICLE 9

PAYMENTS AND COMPLETION

9.1 CONTRACT SUM

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

9.2 SCHEDULE OF VALUES

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

9.3 APPLICATIONS FOR PAYMENT

9.3.1 All Applications for Payment shall be submitted on AIA Documents G-702 and G-703. At least ten days before the date established for each progress payment, unless otherwise required by the Agreement, the Contractor shall submit to (he Architect an itemized Application for Payment for operations completed in accordance with the schedule of values, a copy of which shall be attached to the application. Such application shall be notarized and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for elsewhere in the Contract Documents.

.1 Such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives but not yet included in Change Orders.

.2 Such applications may not include requests for payment of amounts the Contractor does not intend to pay to a" Subcontractor or material supplier because of a dispute or other reason.

.3 (Intentionally Deleted)

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

location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. The Owner will not make payment for stored materials which are items of a commodity nature and are readily available through distribution channels. Contractor shall also comply with the following specific requirements:

- .1 The aggregate cost of materials stored off site shall not exceed Fifty Thousand Dollars (\$50,000) at any time without written approval of the 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, 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 insurance satisfactory to the Owner for materials stored off the Project site in an amount not less than the total value thereof and shall provide the Owner with evidence of such 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.

9.3.3 (Intentionally Deleted)

9.3.4 Each Application for Payment shall be accompanied by duly executed (i) sworn statements, and (ii) waivers of mechanics' and materialmen's liens establishing payment or satisfaction of all obligations; provided, however, until such time as the Owner provides the Contractor with written notice, Contractor may furnish with each Application for Payment applicable waivers of lien and affidavits from Subcontractors covering the immediately preceding Application for Payment as opposed to the current Application for Payment. Final payment shall not be forthcoming until final sworn statements, waivers and affidavits from the Contractor and Subcontractors have been delivered to the Owner.

9.4 CERTIFICATES FOR PAYMENT

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

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

9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

- .5 damage to the Owner or another contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 persistent failure to carry out the Work in accordance with the Contract Documents.

9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld. The Owner shall not be deemed in default by reason of withholding payment while any of the above grounds remain uncured.

9.6 PROGRESS PAYMENTS

9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect. The Contractor acknowledges and agrees that payments by the Owner shall only be made in respect of Applications for Payments, or portions thereof, reasonably approved by the Architect. If the Contractor disputes any determination by the Architect with regard to any Certificate of Payment, or amount paid by the Owner in respect thereof, the Contractor shall nevertheless expeditiously continue to prosecute the Work while such dispute is being resolved. Whenever the Owner determines in its reasonable judgment that there is a basis for concern that payments properly owing to any Subcontractor are not being made on a timely basis, the Owner may elect, but shall not be obligated, to make payments to the joint order of the Contractor and such Subcontractor or directly to such Subcontractor, with any such payments satisfying pro tanto any payment obligation otherwise owing by the Owner to the Contractor hereunder.

9.6.2 The Contractor shall promptly pay each Subcontractor, upon receipt of payment from the Owner, out of the amount paid to the Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in similar manner.

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

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

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

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

9.7 FAILURE OF PAYMENT

9.7.1 Except as otherwise provided in Subparagraph 9.6.1, if the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within twenty (20) days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within thirty days after the date established in the Contract Documents the amount certified by the Architect, then the Contractor may, upon fourteen (14) additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, which shall be accomplished as provided in Article 7.

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

9.8 SUBSTANTIAL COMPLETION

9.8.1 Substantial Completion is the stage in the progress of the Work when the Work has been completed in accordance with the Contract Documents, other than insubstantial details of construction and mechanical adjustment; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction thereof necessary for the beneficial occupancy of the Project.

9.8.2 When the Contractor considers that the Work is substantially complete, the Contractor shall prepare and submit to the Architect and the Owner a comprehensive list of items to be completed or corrected. The Contractor shall proceed promptly to complete and correct items on the list. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents. Upon receipt of the Contractor's list, the Architect and the Owner will make an inspection to determine whether the Work is substantially complete. If the Architect's or the Owner's inspections disclose any item, whether or not included on the Contractor's list, which is not in accordance with the requirements of the Contract Documents, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. The Contractor shall then submit a request for another inspection by the Architect and the

Owner to determine Substantial Completion. When the Work is substantially complete, the Architect will prepare a Certificate of Substantial Completion in the form of AIA G704 or such other form as is acceptable to Owner, which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate which shall identify all non-conforming, defective and incomplete Work. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate.

9.8.3 Upon Substantial Completion of the Work and upon application by the Contractor and certification by the Architect, the Owner shall make payment, reflecting adjustment in retainage, if any, for such Work or portion thereof as provided in the Contract Documents.

9.9 (Intentionally Deleted)

9.10 FINAL COMPLETION AND FINAL PAYMENT

9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's observations 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 said final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Subparagraph 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled. Should the Architect find that the Work is not acceptable under the Contract Documents or the Contract not fully performed, costs associated with the Architect's reinspections under this Subparagraph will be reimbursed to the Owner by the Contractor.

9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner, (6) as-built plans and specifications, electronic media and CAD files for the Work and final prints for record drawing use marked by Contractor with record information set forth in the Contract Documents, and

which shows changes made to the Drawings during the Work, utilizing a method which highlights the changes on the prints, and (7) a final Contractor's sworn statement duly executed and acknowledged showing all Subcontractors to be fully paid, and similar final sworn statements from Subcontractors and, where appropriate, from Sub-subcontractors. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

9.10.3 (Intentionally Deleted)

9.10.4 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment. Such waivers shall be in addition to the waiver described in Subparagraph 4.3.5.

9.10.5 Notwithstanding anything to the contrary contained in the Contract, all warranties and guarantees provided in the Contract Documents shall commence on the date of Substantial Completion.

ARTICLE 10

PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY PRECAUTIONS AND PROGRAMS

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

10.2 SAFETY OF PERSONS AND PROPERTY

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

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

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

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

10.2.4 When use or storage of explosive or hazardous materials or equipment or unusual methods are necessary, the Contractor shall give the Owner ten (10) days' notice in advance of such use, storage or unusual methods. All hazardous or toxic materials used or stored at the Project site shall be used, stored, transported and disposed of in strict conformity with applicable laws, codes, rules, regulations and orders of governmental authorities having jurisdiction. The Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

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

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

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

10.2.8 All Construction Documents pertaining to the Work, and the construction hereby contemplated, are to be governed, at all times, by applicable provisions of the Federal Law, including but not limited to the following, including latest amendments to each:

- .1 Williams, Steiger Occupational Safety & Health Act of 1970-Public Law 91-596;
- .2 Part 9J0 - Occupational Safety & Health Standards, Chapter XVII of Title 29, Code of Federal Regulations;
- .3 Part 1518 - Safety & Health Regulations for Constructions, Chapter XIII of Title 29, Code of Federal Regulations.

10.2.9 The provisions of the American Standard Safety Code for Building Construction of the American National Standards Institute A10.2, 1963, as revised by A10.4, 1975, subject to latest revisions, shall be considered as accepted engineering

practice, with respect to safeguards during construction, including such safety requirements as set forth in The Federal Occupational Safety and Health Standards (OSHA).

10.2.10 The Contractor shall immediately report verbally (but in all events within twenty-four (24) hours of the incident) and, within seventy-two (72) hours, shall report in writing to the Owner all accidents arising out of or in connection with the Work which cause death, personal injury or property damage, giving full details of the circumstances, including, without limitation, the extent of any property damage or personal injury and all safety measures taken to prevent a similar accident in the future, and statements of any witnesses. In addition, if death or serious personal injuries or serious damages are caused, the accident shall be reported immediately by telephone or messenger to the Owner and Architect.

10.3 EMERGENCIES

10.3.1 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury or loss.

ARTICLE 11

INSURANCE AND BONDS

11.1 CONTRACTOR'S INSURANCE

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

- .1 claims under workers' or workmen's 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 the Contractor's employees;
- .3 claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 claims for damages insured by usual personal injury liability coverage which are sustained (1) by a person as a result of an offense directly or indirectly related to employment of such person by the Contractor, or (2) by another person;

- .5 claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 claims involving contractual liability insurance
- .8 The Contractor's liability insurance shall include all major divisions of coverage and be on a comprehensive basis including, without limitation:
 - (1) Premises/operations (including X, C and U coverages as applicable).
 - (2)** Independent Contractors' Protective.
 - (3)** Products and Completed Operations.
 - (4) Personal Injury Liability with Employment Exclusion deleted.
 - (5)** Contractual,
 - (6) Owned, non-owned and hired motor vehicles.
 - (7) Broad Form Property Damage including Completed Operations; and
 - (8)** at the Owner's request, claims which would be insured under a builder's risk insurance policy.

11.1.2 The Contractor shall, for the protection and benefit of the Indemnitees and the Contractor and as part of the Contractor's efforts to satisfy the obligations set forth in Paragraph 11.1.1, procure, pay for and maintain in full force and effect, at all times during the performance of the Work until final acceptance of the Work or for such duration as required, policies of insurance issued by a responsible carrier or carriers acceptable to the Owner, and in form and substance reasonably satisfactory to the Owner and the Owner's lender(s), which afford the coverages set forth in the Schedule of Insurance, attached to the Agreement and made a part thereof as Exhibit F. All such insurance shall be written on an occurrence basis, shall be applied per project and shall provide that claims may be brought within three (3) years after completion of the Work.

11.1.3 The Contractor hereby agrees to deliver to the Owner, upon execution of this Owner-Contractor Agreement and prior to any equipment or personnel being brought onto the site of the Work or the Project site, certified copies of all insurance policies procured by the Contractor under or pursuant to this Paragraph 11.1 or, with consent of the Owner, Certificates of Insurance in form and substance satisfactory to the Owner evidencing the required coverages with limits not less than those specified and attached hereto as Exhibit F. The Certificate of Insurance is attached hereto as Exhibit G. The coverage afforded under any insurance policy obtained under or pursuant to this Paragraph 11.1 shall be primary to any valid and collectible insurance carried separately by any of the Indemnitees. The insurance policies shall name Gene Theory, the Indemnitees and the Owner's lender(s) as additional insureds in regards to the Commercial General Liability and Automobile Liability insurance policies, and shall incorporate a provision requiring written notice to the Owner at least thirty (30) days prior to any cancellation, nonrenewal, or material modification of the policies.

11.1.4 In no event shall any failure of the Owner to receive certified copies or certificates of policies required under Paragraph 11.1 or to demand receipt of such certified copies or certificates prior to the Contractor commencing the Work be construed as a waiver by the Owner or the Architect of the Contractor's obligations to obtain insurance pursuant to this Article 11. The obligation to procure and maintain any insurance required by this Article 11 is a separate responsibility of the Contractor and independent of the duty to furnish a certified copy or certificate of such insurance policies.

11.1.5 If the Contractor fails to purchase and maintain, or require to be purchased and maintained, any insurance required under this Paragraph 11.1, Owner may, but shall not be obligated to, upon five (5) days' written notice to the Contractor, purchase such insurance on behalf of the Contractor and shall be entitled to be reimbursed by the Contractor upon demand.

11.1.6 When any required insurance, due to the attainment of a normal expiration date or renewal date shall expire, the Contractor shall supply the Owner with Certificates of Insurance and amendatory riders or endorsements that clearly evidence the continuation of all coverage in the same manner, limits of protection, and scope of coverage as was provided by the previous policy. In the event any renewal or replacement policy, for whatever reason obtained or required, is written by a carrier other than that with whom the coverage was previously placed, or the subsequent policy differs in any way from the previous policy, the Contractor shall also furnish the Owner with a certified copy of the renewal or replacement policy unless the Owner provides the Contractor with prior written consent to submit only a Certificate of Insurance for any such policy, All renewal and replacement policies shall be in form and substance satisfactory to the Owner and written by carriers acceptable to the Owner.

11.1.7 Any aggregate limit under the Contractor's liability insurance shall, by endorsement, apply to this Project separately.

11.2 (Intentionally deleted)

11.3 (Intentionally deleted)

11.4 PERFORMANCE BOND AND PAYMENT BOND

11.4.1 Unless otherwise provided in the Contract Documents and if requested by the Owner, within two days after the execution of the Contract, the Contractor shall submit a performance bond, a completion bond and a payment bond on AIA Document A-312, each in an amount equal to one-hundred percent (100%) of the Contract Sum, from a surety authorized to do business in California, listed on the United States Department of the Treasury Register of Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds, and rated by Best's Insurance Report as A(X) or higher. The Contractor shall be entitled to reimbursement for the actual costs of any bond requested by Owner pursuant to this Paragraph 11.4.1, but such cost shall not constitute a Cost of the Work. If the Owner does not request that the Contractor obtain the bonds contemplated by this Paragraph 11.4.1, the Contractor shall, within two days after the execution of the Contract, submit to the Owner a letter from the surety described above confirming that the Contractor is unconditionally bondable.

11.5 GENERAL REQUIREMENTS

11.5.1 All insurance coverage procured by the Contractor shall be provided by insurance companies having policyholder ratings no lower than "A" and financial ratings not lower than "XII" in the Best's Insurance Guide, latest edition in effect as of the date of the Contract, and subsequently in effect at the time of renewal of any policies required by the Contract Documents.

11.5.2 If the Owner or the Contractor is damaged by the failure of the other party to purchase or maintain insurance required under Article 11, then the party who failed to purchase or maintain the insurance shall bear all reasonable costs (including attorneys' fees and court and settlement expenses) properly attributable thereto.

ARTICLE 12

UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING OF WORK

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

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

12.2 CORRECTION OF WORK

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

12.2.2 If, within two years after the date of the Owner's final payment as provided in Paragraph 9.10 hereof, 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, at the Contractor's sole cost and expense, correct it promptly after receipt of written notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. This obligation under this Subparagraph 12.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice promptly after discovery of the condition.

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

12.2.4 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Paragraph 2.4.

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

12.2.6 Nothing contained in this Paragraph 12.2 shall be construed to establish a period of limitation with respect to other obligations which the Contractor might have under the Contract Documents. Establishment of the time period of two years as described in Subparagraph 12.2.2 relates only to the specific obligation of the Contractor to personally 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 personally correct the Work). In confirmation and furtherance of the foregoing, the Contractor acknowledges and agrees that Subparagraph 12.2.2 does not affect the Contractor's obligations and liabilities under Paragraph 3.5.

12.3 ACCEPTANCE OF NONCONFORMING WORK

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

ARTICLE 13

MISCELLANEOUS PROVISIONS

13.1 GOVERNING LAW

13.1.1 The Contract shall be governed by the law of the place where the Project is located. The Work shall comply with all applicable laws, statutes, ordinances, codes, rules, regulations or orders during its performance and upon its completion.

13.2 SUCCESSORS AND ASSIGNS

13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Contract Documents. Except as set forth in the Agreement, Contractor shall not assign the Contract as a whole, or in part, without written consent of the Owner. If Contractor attempts to make such an assignment without consent of the Owner, Contractor shall nevertheless remain legally responsible for all obligations under the Contract.

13.3 WRITTEN NOTICE

13.3.1 All notices given under the Contract Documents shall be in writing and shall be deemed properly served if delivered in person to the individual to whom it is addressed or, three (3) days after deposit in the United States mail, if sent postage prepaid by United States registered or certified mail, return receipt requested, as follows:

(a) If to the Owner: Gene Theory
 1450 Veterans Blvd Redwood City,
 California 94063

(b) If to the Contractor:

DPR Construction, Inc.

)

or to such other address or addressee as any party entitled to receive notice hereunder shall designate to all other parties in the manner provided herein for the service of notice.

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 at law and/or in equity.

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 No provision contained in the Contract Documents shall create or give to third parties any claim or right of action against the Owner or the Contractor.

13.5 TESTS AND INSPECTIONS

13.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided in the Contract Documents, (i) the Contractor shall coordinate all tests, inspections and approvals with an independent testing laboratory or other entity designated and retained by the Owner, or with the appropriate public authority, and (ii) the Owner shall bear all related costs of such tests, inspections and approvals. The Contractor shall give the Owner and the Architect timely notice of when and where tests and inspections are to be made so the Owner may retain the appropriate agency and the Architect may observe such procedures. The Owner may (but shall not be obligated to) from time to time, at its own cost and expense, perform or cause to be performed such additional tests and inspections of the Work as the Owner may determine to be

necessary or appropriate, and the Contractor shall, upon receipt of reasonable prior written notice identifying any such tests and inspections, coordinate the Work so as to accommodate the performance of such tests and inspections. Copies of any results of such Owner initiated tests and inspections shall be made available to the Contractor if the Contractor so requests, provided, the Contractor shall not be entitled to rely upon such results (and the Owner makes no representation or warranty as to the accuracy or completeness thereof) and the Owner's performance of any such tests and inspections shall not serve to relieve the Contractor of its obligation to perform the Work in accordance with the requirements set forth in the Contract Documents.

13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Subparagraph 13.5.1, the 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 the Architect may observe such procedures. The Owner shall bear such costs except as provided in Subparagraph 13.5.3.

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

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

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

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

13.6 (Intentionally deleted)

13.7 (Intentionally deleted)

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

13.8.3 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 are also hereby deemed to include a Subcontractor of any tier. The omission of a reference to a Subcontractor in connection with any of the Contractor's responsibilities or obligations shall not be construed to diminish, abrogate or limit any responsibilities or obligations of a Subcontractor of any tier under the Contract Documents or the applicable subcontract.

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 forty-five (45) days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor, for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction; or
- .2 an act of government, such as a declaration of national emergency, making material unavailable.

14.1.2 If one of the above reasons exists, the Contractor may, upon fourteen (14) additional days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery.

14.1.3 If the Work is stopped for a period of 60 days or if repeated suspensions, delays or interruptions by the Owner as described in Paragraph 14.3 constitute in the aggregate the lesser of an amount equal to the Contract time or 120 days in any one (1) year period through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has persistently failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the

progress of the Work, the Contractor may, upon fourteen (14) additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Subparagraph 14.1.2.

14.2 TERMINATION BY THE OWNER FOR CAUSE

14.2.1 The Owner may terminate the Contract if the Contractor:

- .1 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 disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.
- .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 fails after commencement of the Work to proceed continue with the construction and completion of the Work for more than ten (10) days, except as permitted under the Contract Documents.

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

- .1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery, thereon owned by the Contractor;
- .2 accept assignment of subcontracts pursuant to Paragraph 5.4; and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient.

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

14.2.4 If the unpaid balance of the Contract Sum exceeds all costs to the Owner of completing the Work, then the excess shall be paid to the Contractor for all Work performed by the Contractor to the date of termination. If such costs to the Owner of completing the Work exceed such unpaid balance, the Contractor shall pay the difference to the Owner immediately upon the Owner's demand. The costs to the Owner of completing the Work shall include (but not be limited to) the cost of any additional architectural, managerial and administrative services required thereby, any costs incurred in retaining another contractor or other subcontractors, any additional penalties or fees which the Owner must pay by reason of a delay in completion of the Work, attorneys' fees and expenses, and any other damages, costs and expenses the Owner may incur by reason of completing the Work or any delay thereof. The preceding obligations of payment 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.

14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

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

14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment from the Owner on the same basis provided in Subparagraph 14.1.2, but also including reasonable overhead.

14.5 LIMITATION ON LIABILITY

14.5.1 The Contractor acknowledges that Owner is a limited liability company created under the laws of California and that the Contractor agrees to look solely to the assets of such limited liability company for the enforcement of any claims against the Owner, and none of the members of such limited liability company nor any of their respective officers, directors, employees, partners, affiliates or shareholders assume any personal liability for any of the obligations entered into on behalf of the Owner.

14.6 OFAC

14.6.1 Contractor, and all beneficial owners and agents of Contractor, are currently (a) in compliance with and shall at all times during the term of this Agreement remain in compliance with the regulations of the Office of Foreign Assets Control ("OFAC") of the U.S. Department of Treasury and any statute, executive order, or regulation relating thereto (collectively, the "OFAC Rules"), (b) not listed on, and shall not during the term of this Agreement be listed on, the Specially Designated Nationals and Blocked Persons List maintained by OFAC and/or on any other similar list maintained by OFAC or other governmental authority pursuant to any authorizing statute, executive order, or regulation, and (c) not a person or entity with whom a U.S. person is prohibited from conducting business under the OFAC Rules. Contractor agrees to defend, indemnify and hold harmless the Owner, Gene Theory, or its permitted assigns from and against any and all claims, damages, losses, risks, liabilities, fines, penalties, forfeitures and expenses (including without limitation costs and attorney's fees) arising from or related to any breach of the foregoing certifications, representations, warranties and covenants.