



## **Planning and Construction**

# General Conditions of the Contract for Construction

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## ARTICLE 1

### GENERAL PROVISIONS

#### 1.1 DEFINITIONS

1.1.1 The Contract Documents consist of the Agreement between Owner and Contractor (the “Agreement”), these General Conditions of the Contract, any Supplementary and other Conditions enumerated in the Agreement, Drawings, Specifications, any addenda issued prior to execution of the Contract, and other documents listed in the Agreement and Modifications issued after execution of the Agreement. A Modification in (1) a written amendment to the Contract (as defined in Paragraph 1.1.2) signed by both parties, (2) a Change Order, or (3) a Written Change Directive. Unless specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (including without limitation 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 Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor, or (3) between any persons or entities other than the Owner and Contractor.

1.1.3 “Architect” means 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.

1.1.4 “Claim Condition” means an event, occurrence, condition, direction, instruction or decision which the Contractor has reason to believe has given rise or may give rise to the right to either an increase in the Contract Price or an extension of the Contract Time.

1.1.5 “Contractor” means 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.

1.1.6 “Contract Time” means the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

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

1.1.8 The term “day” means calendar day unless otherwise specifically defined.

1.1.9 “Drawings” means 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.

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<sup>1</sup> These General Conditions are intended to be used with the agreement between Owner and Contractor (2004 Archdiocese Edition).

1.1.10 “Oral Change Directive” means an oral communication given by the Owner to the Contractor which changes, or to the Contractor’s reasonable understanding may change the work required by the Contract Documents.

1.1.11 “Owner” means the Catholic Bishop of Chicago, a corporation sole. In these General Conditions, the term “Owner” shall also mean the Owner’s authorized representative as identified by the Owner in writing as such.

1.1.12 “Product Data” means 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.

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

1.1.14 “Samples” means physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

1.1.15 “Shop Drawings” means drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a subcontractor to illustrate some portion of the Work.

1.1.16 “Specifications” means 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.

1.1.17 “Subcontractor” means any person or entity either (a) employed or engaged by a person or entity having a contract with the Contractor or (b) performing or furnishing or supplying any portion of the Work, other than at the request of the Owner or the Architect, including without limitation material and equipment suppliers and the agents or employees of any such person or entity.

1.1.18 “Submittals” means any or all of the following: Shop Drawings, Product Data and Samples.

1.1.19 The term “Substantial Completion” means that the Work or designated portion thereof, as certified by the Architect in accordance with Paragraph 9.7, is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

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

1.1.21 “Written Change Directive” means a written order prepared by the Architect and authorized by the Owner directing a change in the Work and stating a proposed basis for adjustment, if any, in the Contract Price or Contract Time.

## 1.2 EXECUTION, CORRELATION AND INTENT

1.2.1 Execution of the Agreement 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.

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

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

1.2.4 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 meanings recognized in the Chicago Metropolitan Area.

1.2.5 In the event of conflict among the Contract Documents, the Drawings and Project Specifications shall take precedence over less specific descriptions of the Work. Large-scale Drawings shall take precedence over small-scale Drawings covering the same subject matter; but the Drawings shall not take precedence over the Specifications, nor the Specifications precedence over the Drawings. If the Drawings and Specifications are at variance with one another, the Contractor shall at once so notify the Owner in writing before proceeding with any part of the Work which is or which may be affected by the variance. The Owner will promptly resolve the discrepancy so as not to delay, if possible, the Work and shall give written instructions on how to proceed to the Contractor. The decision of the Owner as to which is correct shall be final and conclusive. If the Contractor fails to give notice of such variance, any corrective work required shall be done at Contractor's sole expense.

### 1.3 USE OF DRAWINGS, SPECIFICATIONS AND OTHER DOCUMENTS

1.3.1 The Drawings, Specifications 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 shall own or claim a copyright in the Contract Documents. 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 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 and Subcontractors 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.

### 1.4 INTERPRETATION

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

## ARTICLE 2

### **OWNER**

#### 2.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

2.1.1 The Owner shall furnish to the best of its ability (a) surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site and (b) reports prepared by the Owner describing the Owner's actual knowledge of the presence of any asbestos materials or of any underground storage tanks located on the site where the Work is to be performed.

2.1.2 Except for permits and fees which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure with any assistance of the Architect or others, and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

2.1.3 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, such copies of Drawings and Specifications as are reasonably necessary for execution of the Work.

#### 2.2 OWNER'S RIGHT TO STOP THE WORK

2.2.1 If the Contractor fails to correct Work as required by Paragraph 13.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner, by written order signed by the Owner, may order the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. However, the Owner's right to stop the Work shall not give rise to a duty on the part of the Owner to exercise the right for the benefit of the Contractor or any other person or entity.

#### 2.3 OWNER'S RIGHT TO CARRY OUT THE WORK

2.3.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within forty-eight (48) hours after the Owner's transmission of a written notice to the Contractor to commence and complete correction of such default or neglect with diligence and promptness, the Owner may, after such forty-eight hour period, 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, attorneys' fees, 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 promptly pay the difference to the Owner.

## ARTICLE 3

### **CONTRACTOR**

#### 3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.1.1 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner pursuant to Paragraph 2.1.1 and shall at once report in writing to the Architect errors, inconsistencies or Omissions discovered. The Contractor shall not be liable to the owner for damage resulting from errors, inconsistencies or omissions in the Contract Documents unless the Contractor should have recognized such error, inconsistency or omission and failed to report the same



promptly to the Architect. If the Contractor performs any construction activity involving an error, inconsistency or omission in the Contract Documents Contractor should have recognized, without such notice to the Owner, the Contractor shall assume responsibility for such performance and shall pay the attributable costs for correction.

3.1.2 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 in writing to the Architect at once.

3.1.3 The Contractor shall perform the Work in accordance with the Contract Documents and Submittals approved pursuant to Paragraph 3.11.

### 3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

3.2.1 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.

3.2.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees and Subcontractors.

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

3.2.4 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.

### 3.3 LABOR AND MATERIALS

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

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

3.3.3 The Contractor shall pay fair and equitable wages in accordance with geographical area standards so as to maintain labor harmony on the project.

### 3.4 WARRANTY

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

and equipment. This Warranty is not limited by the provisions of Paragraph 13.2.

### 3.5 TAXES

3.5.1 The Contractor shall pay any 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. It is Owner's belief that the Work is tax exempt.

### 3.6 PERMITS, FEES AND NOTICES

3.6.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and the Owner shall pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Agreement and which are legally required when bids are received or negotiations concluded. The Contractor agrees to use its best efforts to cause permit and governmental fees to be waived.

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

3.6.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing.

3.6.4 If the Contractor performs Work Contractor should have known to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner, the Contractor shall assume full responsibility for such performance and shall bear the attributable costs for correction.

### 3.7 ALLOWANCES

3.7.1 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.

3.7.2 Unless otherwise provided in the Contract Documents:

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation Costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum and not in the allowances;
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under clause 3.7.2.1 and (2) changes in Contractor's costs under clause 3.7.2.2.

### 3.8 SUPERINTENDENT

3.8.1 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. Communications shall be confirmed in writing by the Owner on written request.

### 3.9 CONTRACTORS' CONSTRUCTION SCHEDULES

3.9.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits required by the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project and shall provide for expeditious and practicable execution of the Work.

3.9.2 The Contractor shall prepare and keep current, for the Architect's approval, a schedule of Submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review Submittals.

3.9.3 The Contractor shall conform to the most current schedules.

### 3.10 DOCUMENTS AND SAMPLES AT THE SITE

3.10.1 The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, addenda, approved Submittals, Change Orders and other Modifications, in good order and marked currently to record changes and selections made during construction. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work.

### 3.11 SUBMITTALS

3.11.1 Unless otherwise expressly provided by the Contract Documents, the Contractor shall review, approve and submit to the Architect all Submittals required by the Contract Documents for the Architect's review. Submittals are not Contract Documents. The purpose of the 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.

3.11.2 The Contractor shall deliver the Submittals to the Architect with reasonable promptness, in accordance with the schedule of Submittals, 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.

3.11.3 The Contractor shall perform no portion of the Work requiring Submittals 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.

3.11.4 By making 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.

3.11.5 The Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's review or approval of Submittals unless the Contractor has specifically informed the Architects and the owner in writing of such deviation at the time of submittal and the Architect and the Owner have given written approval to the specific deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Submittals by the Architect's review or approval thereof.

3.11.6 The Contractor shall direct specific attention in writing on resubmitted Submittals to revisions other than those requested by the Architect on previous submittals.

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

3.11.8 When professional certification of performance criteria of materials, systems or equipment in required by the Contract Documents, Contractor warrants to the Owner the accuracy and completeness of such calculations and certifications.

### 3.12 USE OF SITE

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

### 3.13 CUTTING AND PATCHING

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

3.13.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the owner by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner except with written consent of the Owner. The Contractor shall not unreasonably withhold from the Owner the Contractor's consent to cutting or otherwise altering the Work.

### 3.14 CLEANING UP

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

3.14.2 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.

### 3.15 ACCESS TO WORK

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

# ARTICLE 4

## ADMINISTRATION OF THE CONTRACT

### 4.1 OWNER ACTION

4.1.1 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.

4.1.2 In case of termination of employment of the Architect, the Owner may appoint an architect whose status under the Contract Documents shall be that of the 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 (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the correction period described in Paragraph 13.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified by written instrument signed by the Owner.

4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the completed 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 3.2.

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. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors shall be through the Contractor. Communications with any separate Owner's contractor shall be through the Owner or Architect, as directed by 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 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 Work in accordance with Paragraph 16.5, 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 or Subcontractors.

4.2.7 The Architect will review and approve or take other appropriate action upon the Contractor's Submittals, 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 and in accordance with the Contractor's approval schedule of Submittals 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, 3.4 and 3.11. 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.

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 approval 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 Unless otherwise provided in the Contract Documents, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. Such representative shall visit the site, during the construction on the Work as may be required by Owner.

4.2.11 The Architect will interpret and decide matters concerning performance under and requirements of the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made with reasonable promptness and within any time limits agreed upon.

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.

#### 4.3 CLAIMS FOR ADDITIONAL COMPENSATION OR CONTRACT TIME.

4.3.1 Subject to and in accordance with the other provisions of the Contract Documents, should the Contractor believe that it is entitled to any increase in the Contract Price or further Contract Time, the Contractor shall, pursuant to this Paragraph 4.3, first notify the Owner of such claim and present the claim to the Owner for review and evaluation.

4.3.2 The Contractor shall notify the Owner in writing of every Claim Condition. The Contractor's notice to the Owner must be delivered to the Owner's Representative within forty-eight (48) hours of the time that the Contractor either knew or should have known of the Claim Condition upon which the Contractor's claim is or will be based. The notice shall include the Contractor's good faith assessment of the impact of the Claim Condition on the Work and the Contractor's best estimate, based upon the information available as to the nature of the claim.

4.3.3 With respect to each claim, the Contractor shall keep each day a separate record identifying the labor hours worked, machinery and equipment hours utilized, and the material expanded or incorporated into the Work because of the Claim Condition. These records shall be delivered to the owner on a daily basis.

4.3.4 As soon as reasonably practicable and based upon its own investigation of the Claim Condition and other information available to it, the Owner will deliver to the Contractor its written evaluation of the claim stating whether, the Owner agrees with the Contractor's claim in whole or in part. To the extent that the Owner agrees with the claim, the Owner will prepare an appropriate Change Order for the Contractor's execution. The Contractor's execution of the Change order shall constitute the Contractor's acceptance of the Owner's evaluation.

4.3.5 Should a Claim Condition involve any third party, the Contractor agrees to provide to the Owner all information and assistance either necessary or desirable to present the Contractor's claim to the third party for payment; however, the Owner shall not be obligated to so present the claim.

4.3.6 Neither the issuance of a Written Change Directive nor any claim, dispute, or controversy between the Contractor and the Owner or between the Contractor and any other person or entity shall excuse the Contractor, except as otherwise provided by the Contract Documents or as permitted by the Owner in writing, from complying with the Contract Documents or from proceeding diligently with the performance of the Work.

4.3.7 Failure of the Contractor to comply with the requirements of this Paragraph shall constitute a waiver, on all grounds, for any claim arising out of or related to a Claim Condition.

#### 4.3.8 NO DAMAGES FOR DELAY

4.3.8.1 The Owner shall not be liable to the Contractor for any damages due to delay in the performance of the Contractor's Work whatsoever which may be suffered by the Contractor (or for which the Contractor may become liable), including, without limitation, any delay caused by any acts, omissions, or negligence on the part of the Owner, its agents, employees, representatives, Indemnitees as described in Paragraph 12.1, independent contractors, or any other party or due to any other cause and which arise from, or are in any way related to, any aspect of the Project or of the Work, including but not limited to, engineering design, construction, inspection, installation, testing or use of the Work as completed. The term "damages" as used in this Paragraph 4.3.8 shall include any type of damages that are or could be awarded by any court or arbitration panel, as such, by way of general example but not limitation, tort damages, contract damages, strict liability damages, liquidated damages, and/or punitive damages. By way of specific example, and not limitation, "damages" may include loss of use, loss of profits, repair, cost of capital, replacement, loss of wages, pain and suffering, loss or production cost loan, loan of use, decrease in value, and/or any other item of damage or loss.

4.3.8.2 This Paragraph 4.3.8 shall be effective to limit the Owner's liability whether or not the Owner is at fault, wholly or partially, actively or passively, (1) for any degree of negligence; (2) for any breach and/or negligent breach of contract, implied or express; (3) for nuisance and/or in strict liability; and/or (4) without limitation, for any acts or omission which may be the subject of causes of action not listed here. This Paragraph shall take precedence over any other Paragraph of the Contract Documents in the event of conflict with such Paragraph.

4.3.9 Without limiting the scope of Paragraph 4.3, the Contractor agrees to make no claim against the Owner, the Indemnitees as described in Paragraph 12.1 or those whom might have a cause of action against the Owner for damages due to delay in the performance of this Agreement occasioned by any act or omission to act of the Owner, its present and future officers, employees, agents, other contractors, and persons, and entities acting on their behalf, and agrees that any such delay shall be fully compensated for by an extension of the Contract Time to complete performance of the Work as provided in the Contract Documents.

#### 4.4 PROJECT MEETINGS

4.4.1 The Contractor shall conduct weekly Progress meetings at the job site to be attended by representatives of the Contractor, the Architect, the Owner, the Subcontractors, and such other persons as required. The Contractor shall keep minutes of each weekly Project meeting and circulate the minutes of the Project meeting to the Owner, the Architect, the Subcontractors and such other persons as appropriate within 7 days of each of Project meeting. The Contractor shall keep current logs showing the disposition of all requests for information, proposed change orders and change orders, shop drawings, amounts for contingencies, amounts for allowances, and shared savings and current copies of each such log shall be distributed at each weekly Project meeting by the Contractor.



4.4.2 Once a month, and at the designated Project meeting, the Contractor shall deliver to the Owner and Architect the applications for payment, waivers of lien, and such other documents required by the Contract Documents, including those required by Article 9 of the General Conditions, and the current CPM schedule.

## ARTICLE 5

### **SUBCONTRACTORS**

#### 5.1 AWARD OF SUBCONTRACTS

5.1.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner, through the Architect, the names of Subcontractors proposed for each principal portion of the Work. The Architect will promptly inform the Contractor in writing if the Owner has any objection to any proposed Subcontractor. Failure of the Owner to reply promptly shall constitute notice of lack of objection.

5.1.2 The Contractor shall not contract with a Subcontractor to whom the Owner has made timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

5.1.3 If the Owner has objection to a Subcontractor proposed by the Contractor, the Contractor shall propose another to whom the Owner has no objection. The Contract Sum shall be increased or decreased by the difference in Cost occasioned by such change and an appropriate Change Order shall be issued. However, no increase in the Contract Sum shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

5.1.4 The Contractor shall not change a Subcontractor previously selected if the Owner makes objection to such change.

#### 5.2 SUBCONTRACTUAL RELATIONS

5.2.1 By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by term 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, 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. The Contractor shall require each Subcontractor to enter into similar agreements with Subcontractor's 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. Subcontractors shall similarly make copies of applicable portions of such documents available to their respective Subcontractors.



### 5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

5.3.1 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 15.2 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.

5.3.2 The Owner shall not be responsible for Contractor obligations incurred, accrued, or arising prior to the termination of the Contract.

## ARTICLE 6

### **CONSTRUCTION BY OWNER**

#### 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 in Paragraph 4.2.

6.1.2 The Owner shall provide for coordination of the activities of the Owner's own forces or of its separate contractors with the Work of the Contractor, who shall cooperate with them.

#### 6.2. MUTUAL RESPONSIBILITY

6.2.1 The Contractor shall afford the Owner reasonable opportunity for introduction and storage of Owner's or its separate Contractors' materials and equipment and performance of their activities and shall connect and coordinate the Contractor's construction and operations with Owner or its contractors.

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

6.2.3 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner.

# ARTICLE 7

## CHANGES IN THE WORK

### 7.1 CHANGES IN GENERAL

7.1.1 Changes in the Work may be accomplished after execution of the Contract Agreement, and without invalidating the Contract, by Change Order or Written Change Directive subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

7.1.2 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly with the changes unless otherwise provided in the Change Order or Written Change Directive.

7.1.3 A Change Order shall be based upon the written agreement among the Owner and the Contractor. A Written Change Directive Shall be used in the absence of total agreement on the terms of a Change Order.

### 7.2 WRITTEN CHANGE DIRECTIVE PROCEDURE.

7.2.1 The Owner may by Change Directive order changes in the work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Price and Contract Time being adjusted accordingly.

7.2.2 If the Written Change Directive provides for an adjustment to the Contract Price, the adjustment shall be based on one of the following methods:

- (a) mutual agreement of the Owner and Contractor,
- (b) Unit Prices stated in the Contract Documents or subsequently agreed upon, or
- (c) cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee.

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

7.2.3 If the Written Change Directive provides for an adjustment to the Contract Time, the adjustment shall be based on one of the following methods:

- (a) mutual agreement of the Owner and the Contractor, or
- (b) the Contractor's records which demonstrates the amount of time spent by the Contractor in performing the change which was not concurrent with either the Contractor's performance of the original Contract Work or any delay for which the Contractor is responsible.

7.2.4 Upon receipt of a Written Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner in writing of the Contractor's agreement or disagreement with either the adjustment in or the method provided in the Written Change Directive for determining the proposed adjustment in the Contract Price or Contract Time.

7.2.5 A Written Change Directive signed by the Contractor indicates the Contractor's agreement with the Directive, including the adjustment in Contract Price and Contract Time, or with the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

7.2.6 If the Contractor does not promptly sign the written Change Directive, or disagrees with either the adjustment in or the method for adjustment in the Contract Price, the method and the adjustment shall be determined by the Owner on the basis of reasonable costs and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Price, the allowance for overhead and profit at the rates provided in the Contract Agreement. In such case, the Contractor shall keep and present an itemized accounting of costs together with appropriate supporting data. Costs for the purposes of this Paragraph shall be limited to the following:

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

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 the net increase in Compensation, if any, with respect to that change.

### 7.3 ORAL CHANGE DIRECTIVE PROCEDURE.

7.3.1 No Oral Change Directive shall be valid or operative unless given by Owner which is confirmed within twenty-four (24) hours in writing by the Owner in the form of a Written Change Directive. An Oral Change Directive which has not been so confirmed shall not serve as the basis for any claim by the Contractor for increased or additional compensation or time.

7.3.2 If the Contractor receives an Oral Change Directive and if that Directive is not confirmed in writing to the Contractor's reasonable satisfaction, then the Contractor shall confirm the Oral Change Directive in a writing delivered to the Owner. The Contractor's written confirmation shall state that the Contractor prefers not to proceed with either the activities required or the portion of the Work affected by the Oral Change Directive until the Owner issues a Written Change Directive.

7.3.3 An Oral Change Directive confirmed by the Owner under either Paragraph 7.3.1 or 7.3.2, above, shall be deemed to be a Written Change Directive.

7.3.4 Should the Owner refuse to confirm an Oral Change Directive by the issuance of a Written Change Directive, the Contractor shall immediately proceed with the Work the Contractor believes is the subject of the Oral Change Directive, and the Contractor shall make any claim for increased or additional compensation or time pursuant to Article 4 of these General Conditions.

7.3.5 Nothing this Paragraph 7.3 shall be construed to prevent or preclude the Contractor from taking action in the event of an emergency within the meaning of Paragraph 10.3.

# ARTICLE 8

## TIME

### 8.1 PROGRESS AND COMPLETION

8.1.1 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.

8.1.2 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 ruled 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.

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

### 8.2 DELAYS AND EXTENSIONS OF TIME

8.2.1 If the Contractor is delayed at any time in the progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, or by delay authorized by the Owner then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.2.

8.2.3 The Contractor agrees to make no claim for damages for delay in the performance of the Work occasioned by any delay described in Paragraph 8.2 or otherwise against the Owner or against any person or entity who or which as a matter of law could assert a claim against the Owner and agrees that any such delays shall be fully compensated for by an extension of time to complete performance of the Work for such reasonable time as the owner, in its sole discretion, may determine.

8.2.4 If, in the Owner's opinion, the Contractor or any of its Subcontractors causes a delay in the performance of the Work, the Contractor shall upon written notice from Owner, develop a plan for mitigating the delay and submit the plan to Owner for its review and information. Owner shall have the right to modify the plan. The Contractor shall comply with and implement the plan as approved or modified by the Owner, including but not limited to, adding additional workers and working overtime. Failure to comply with and to implement the plan as approved or modified by the Owner shall constitute a breach of this Contract. The Owner's review or modification of the plan shall not be construed as consent to such delay or a modification of the date for Substantial Completion. Contractor acknowledges and agrees that it shall have no right or claim to additional compensation for any action it might take to cause the Work to meet the most recent schedule for the performance of the Work and regardless of whether or not the owner approved or modified the plan.

# ARTICLE 9

## **PAYMENTS AND COMPLETION**

### 9.1 CONTRACT SUM

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

### 9.3 APPLICATIONS FOR PAYMENT

9.3.1 Each Application for Payment shall be notarized and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require and reflecting retainage if provided for elsewhere in the Contract Documents.

9.3.1.2 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.

9.3.2 Unless otherwise provided in the Contract Documents, payment 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.

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

### 9.4 CERTIFICATES FOR PAYMENT

9.4.1 The Owner will, within seven days after receipt of the Contractor's Application for Payment, either issue a Certificate for Payment for such amount as the Owner determines is properly due, or notify the Contractor in writing of the Owner's reasons for withholding certification in whole or in part as provided in Paragraph 9.5.

## 9.5 DECISIONS TO WITHHOLD CERTIFICATION

9.5.1 The Owner 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 the Owner is unable to certify payment in the amount of the Application, Owner will notify the Contractor as provided in Paragraph 9.4.1. If the Contractor and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount for which the Owner believes should be certified. The Owner 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 Owner's opinion to protect the Owner from lose 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,
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum,
- .5 damage to the Owner or another contractor,
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay, or
- .7 persistent failure to carry out the Work in accordance with the Contract Documents.

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

## 9.6 PROGRESS PAYMENTS AND ACCEPTANCE

9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents.

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, a portion of the Work, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of such Subcontractor, a portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to the Subcontractor's subcontractors in similar manner.

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

9.6.4 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. Without limiting its rights and remedies, the Owner specifically reserves the right to reimburse itself for any loss or cost incurred or which may be incurred because of any failure of the Contractor to satisfy its Obligations under the Contract Documents from any amount previously approved by the Owner for payment on account of the Work.

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

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

## 9.7 SUBSTANTIAL COMPLETION

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

9.7.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected. 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 will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not 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 to determine Substantial Completion. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, subject to the Owner's review and written approval, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion. The Certificate of Substantial Completion shall be submitted to the Owner and Contractor.

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

## 9.8 PARTIAL OCCUPANCY OR USE

9.8.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Paragraph 9.7.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by the Owner.



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

9.8.3 Unless otherwise agreed in writing by the Owner, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

## 9.9 FINAL COMPLETION AND FINAL PAYMENT

9.9.1 Upon receipt of written notice from the Contractor that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment and the other documents required by paragraph 9.9.2, 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 Owner will promptly issue a final Certificate for Payment which means, among other things, that to the best of the Owner's knowledge, information and belief, and on the basis of the Architect's observation 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 Owner's final Certificate for Payment will constitute a further representation that conditions listed in Paragraph 9.9.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

9.9.2 Prior to final inspection by the Architect, the Contractor shall deliver the following to the Owner and the Architect.

- .1 Two sets for the Owner and one set for the Architect of the record drawings for the Project noted with deviations from the Contract Documents and including sketches provided to the Contractor by the Architect.
- .2 Certificate of occupancy.
- .3 Completed punchlist approved by the Architect and Owner.
- .4 Two sets for the Owner of binders containing warranties, operating instructions and description of material and equipment installed in the Project.
- .5 Subject to paragraphs 9.6.5.1 and 9.9.4, final waivers of lien from the Contractor, Subcontractors, supplies and any other person or firm who furnished labor and/or material for the Project, except for laborers.

9.9.3 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be cancelled, modified, or allowed to expire until at least 30 days, prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), other data establishing payment or satisfaction of obligations, including, without limitation, releases and waivers of liens, claims, security interests or encumbrances of the Contractor and its subcontractors of any tier, including materialmen, arising out of the Contract, to the extent and in such form as designated by the Owner.



9.9.4 Acceptance of final payment by the Contractor or a Subcontractor shall constitute a waiver of all claims by that payee except those previously made in writing and identified by the payee in the payee's written application for payment as unsettled at the time of final Application for Payment and acknowledged in writing by the Owner at the time of final payment as being unsettled.

## 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.

10.1.2 In the event the Contractor encounters on the site material reasonably believed to be asbestos or polychlorinated biphenyl (PCB) or other environmentally toxic material which has not been rendered harmless, the Contractor shall immediately stop work in the area affected and report the condition to the Owner and Architect in writing. The Work in the affected area shall not thereafter be resumed except by written agreement of the owner and Contractor if in fact the material is asbestos or polychlorinated biphenyl (PCB) or other environmentally toxic material and has not been rendered harmless. The Work in the affected area shall be resumed in the absence of asbestos or polychlorinated biphenyl (PCB), or when it has been rendered harmless, by written direction of the Owner.

10.1.3 The Contractor shall not be required pursuant to Article 7 to perform without consent any Work relating to asbestos or polychlorinated biphenyl (PCB) or other environmentally toxic material.

10.1.4 Based upon the Contractor's representation made at Paragraph 1.2.1, the Contractor understands and agrees for itself and for its Subcontractors that it, prior to the commencement of Work, has made its own investigation, in conjunction with the information provided by Owner pursuant to Paragraph 2.1.1, of the possible presence of asbestos or Polychlorinated biphenyl (PCB) or other environmentally toxic materials.

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

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

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

10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Paragraphs 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, or by anyone for whose acts they may be liable, 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 Article 12.

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

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

### 10.3 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. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Paragraph 4.2 and Article 7.

## ARTICLE 11

### INSURANCE AND BONDS

#### 11.1 CONTRACTOR'S LIABILITY INSURANCE

11.1.1 The Contractor shall purchase from and maintain in a company or companies with an A. M. Best rating of at least A-VI lawfully authorized to do business in the jurisdiction in which the Project is located and satisfactory to the Owner and such insurance shall protect the Contractor from claims set forth below which may rise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
- .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; and
- .7 claims involving contractual liability insurance applicable to the Contractor's obligations under Paragraph 3.16.

11.1.2 The insurance required by Subparagraph 11.1.1 shall be written for not less than limits of liability specified below or required by law, whichever coverage is greater and shall name the Owner and the Parish as additional insureds on a primary and non-contributory basis by causing amendatory riders or endorsements to be attached to the Contractor's insurance policies:

1. Commercial General Liability Insurance:  
(for Contract Price \$1,000,000 or less)

Bodily Injury/Property Damage/ Personal Injury:	\$1,000,000.00 Each Occurrence	\$2,000,000.00 Aggregate
Bodily Injury:	\$1,000,000.00 Each Occurrence	\$2,000,000.00 Aggregate
Property Damage:	\$1,000,000.00 Each Occurrence	\$2,000,000.00 Aggregate
Personal Injury:	\$1,000,000.00 Each Occurrence	\$1,000,000.00 Aggregate

2. Completed Operations and Product Liability: Maintain for five (5) years after final payment:  
(for Contract Price \$1,000,000 or less)

Bodily Injury:	\$1,000,000.00 Each Occurrence	\$1,000,000.00 Aggregate
Property Damage:	\$1,000,000.00 Each Occurrence	\$1,000,000.00 Aggregate
Personal Injury:	\$1,000,000.00 Each Occurrence	\$1,000,000.00 Aggregate

3. Automobile Liability Insurance: This insurance must include non-owned, hired, or rented vehicles as well as owned vehicles:  
(for Contract Price \$1,000,000 or less)

Bodily Injury:	\$1,000,000.00 Each Occurrence	\$1,000,000.00 Aggregate
Property Damage:		\$1,000,000.00 Each occurrence

4. Umbrella liability policy in follow form and to provide the same coverages as provided for

comprehensive general liability, completed operations and product, automobile and employers liability with a minimum \$2,000,000 (two million dollars) limit of liability.

5.	Workers' Compensation, applicable federal and state Statutory Limits	
	Employer's Liability	\$500,000.00

11.1.2.1 XCU exclusions shall be removed from all policies under this Contract and coverage with limits set forth herein before. For coverages listed under items (1), (2) and (3) of Subparagraph 11.1.2 above, all stated limits shall be increased by \$1, 000, 000 if the Contract Price exceeds \$1, 000, 000. Coverages, shall be written on an occurrence basis and shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment. The insurance policies, amendatory riders or endorsements required pursuant to Subparagraphs 11.1.2 shall state that the coverages afforded by the Contractor shall be primary and non-contributory in all respects to any insurance carried independently by the Owner.

11.1.2 The Contractor shall furnish to the Owner, with delivery of the copy of the Contract between the Owner and Contractor executed by the Contractor and as an attachment to the Contract, certificates of insurance acceptable to the Owner. These Certificates and the insurance policies required by this Paragraph 11 shall contain a provision that coverages afforded under the policies will not be cancelled, amended, or allowed to expire until at least 30 days' prior written notice has been given to the Owner. The certificates shall have attached to them, prior to filing, true and correct copies of the amendatory endorsements or riders required by this Paragraph 11 and stating that there shall be severability of interests with respect to the Owner and Architect under the coverages afforded. For insurance coverages required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment. The Contractor shall furnish to the Owner information concerning reduction of coverage with reasonable promptness in accordance with the Contractor's information and belief. Upon written request from the Owner, the Contractor shall furnish to the Owner full and complete photocopies of all insurance policies, endorsements and riders.

11.1.3 The Contractor shall require each of its Subcontractors to comply with the provisions of this paragraph 11.1 to the same extent as the Contractor is bound thereby.

## 11.2 BUILDER'S RISK

11.2.1 For roofing projects with an initial cost of \$100,000 and for other projects with an initial cost of \$500,000 or more, the Contractor shall purchase and maintain builders' risk property insurance in the amount of the Contract Price, as adjusted by subsequent modifications, for the entire work at the site on a replacement cost basis without any voluntary deductibles. Such property insurance shall be maintained, until final payment has been made as provided in Paragraph 9.9 or until no person or entity other than the Owner has an insurable interest in the property required by this Paragraph 11.2.1 to be covered, whichever is earlier. This insurance shall include the interests of the Owner, the Contractors and the Subcontractors in the Work, and shall be assignable to Owner at Owner's direction.

11.2.2 Builder's risk insurance shall be on an all risk completed value policy form and shall insure against the perils of fire and extended coverage and physical loss or damage including, without duplication of coverage theft, vandalism, malicious mischief, collapse, false work, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect's services and expenses required as a result of such insured loss.

11.2.3 If the builder's risk insurance requires minimum deductibles and such deductibles are identified in the Contract Documents, the Contractor shall pay the costs of the deductibles.

11.2.4 Unless otherwise provided in the Contract Documents, the builder's risk insurance shall cover portions of the Work stored off the site and in transit after written approval of the Owner at the value established in the approval, and also portions of the Work in transit.

11.2.5 The Owner and Contractor waive all rights against each other and any of their Subcontractors, agents and employees, the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their Subcontractors, agents and employees, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this Paragraph 11.2 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the Subcontractors, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the Insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. The foregoing waiver by the Owner shall be effective only to the extent that the Owner receives payment for such damages and shall not operate as a waiver of any claims of the Owner not compensated in full by such insurance.

### 11.3 PERFORMANCE BOND AND PAYMENT BOND

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

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

## ARTICLE 12

### INDEMNIFICATION

12.1 To the fullest extent permitted by law and without limiting any of the Contractor's obligations under this Agreement, the Contractor shall indemnify, defend and hold harmless the Owner, its present and future officers, employees, agents (hereinafter collectively and severally referred to as the "Indemnitees") and the Owner's interest in any property, from and against any and all claims liabilities, disputes, obligations, liens, encumbrances, causes of action, settlements, costs and expenses, including without limitation any claims for attorneys' fees or other litigation expenses, arising, or allegedly arising, from any negligent or other wrongful errors, acts or omissions of the Contractor, its Subcontractors, agents, employees, and consultants, due to personal injury, including death, property damage, including loss of use thereof, economic loss, or otherwise occurring, or alleged to have occurred, in whole or in part in connection with the Project and/or the Contractor's performance of this Agreement, whether any act, error, omission, or negligence of any Indemnatee contributed thereto, except for the sole negligence of any Indemnatee. The sole negligence of any Indemnatee shall not bar the recovery of any other Indemnatee hereunder. This indemnification provision is in addition and cumulative to any other right of indemnification or contribution which any of the Indemnitees may have in law, at equity, or otherwise, and shall survive final completion of the Project and the Contractor's performance under this Agreement.

12.2 No provision of this Agreement, including the indemnification provision in paragraph 12.1, shall be interpreted as or be evidence of any waiver of the Contractor's right to limit its liability under *Kotecki v. Cyclops Welding Corp.*, 146 Ill. 2d 155, 585 N.E. 2d 1023 (1991).

12.3 In the event that applicable law prohibits enforcement of this Article as written, then this Article shall be modified to provide the maximum indemnification allowable to the Indemnitees under applicable law.

## ARTICLE 13

### **UNCOVERING AND CORRECTION OF WORK**

#### 13.1 UNCOVERING OF WORK

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

13.1.2 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 or Owner may request to see such Work and it shall be uncovered by the Contractor. If such Work in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be charged to the Owner. If such Work in not in accordance with the Contract Documents, the Contractor shall pay such costs unless the condition was caused by the Owner in which event the Owner shall be responsible for payment of such costs.

#### 13.2 CORRECTION OF WORK

13.2.1 The Contractor shall promptly correct Work rejected by the Architect or Owner as 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.

13.2.2 If, within one year after the date of Substantial Completion of the Work or designated portion thereof, or after the date for commencement of warranties established under Paragraph 9.7.2, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the owner to do so unless the owner has previously given the Contractor a written acceptance of such condition. This one-year period shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work. This obligation under this Subparagraph 13.2.2 shall survive acceptance of the Work under the Contract and termination of the Contract. The Owner shall give such notice after discovery of the condition.

13.2.3 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.

13.2.4 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner may correct in accordance with Paragraph 2.3. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Architect or Owner, the Owner may remove it and store the salvable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten days after written notice, the Owner may upon ten additional days written notice sell such materials and equipment at auction or at private sale and shall account for the proceeds thereof, after deducting costs and damages that should have been borne by the Contractor, including compensation for the Architect's and attorney's services and expenses made



necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner.

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

13.2.6 Nothing contained in Paragraph 3.2.2 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 one year as described in Paragraph 13.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### 13.3 ACCEPTANCE OF NONCONFORMING WORK

13.3.1 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 14

### **DISPUTE RESOLUTION**

14.1 All claims, disputes or other matters in question or controversy arising out or relating to this Agreement or breach thereof may, at the Owner's election, may first be subject to and decided by a meeting between the Contractor and the Owner.

14.2 In the event any claim, dispute or other matter in question or controversy arising out or relating to this Agreement or breach thereof is not resolved at the meeting between the Contractor and the Owner, or in the event the Owner elects not to hold a meeting as provided for in paragraph 14.1, the Parties, at the Owner's election, shall endeavor to settle disputes by mediation in accordance with the Construction Industry Mediation and Arbitration Rules of the American Arbitration Association currently in effect. Demand for mediation shall be filed in writing with the other Party to this Agreement and with the American Arbitration Association. A demand for mediation shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for mediation be made after the date when institution of legal, equitable, or arbitration proceedings as provided in Paragraph 14.3 based on such claim, dispute or other matter in question would be barred by the applicable statute of repose.

14.3 The Owner may, at its election, submit claims, disputes or other matters in question between the Parties to the Agreement arising out of or relating to this Agreement or breach thereof for arbitration in accordance with the Construction Industry Mediation and Arbitration Rules of the American Arbitration Association. The Owner's participation in any meeting to or mediation to settle any disputes shall not be a condition precedent to the Owner electing to arbitrate any disputes. Demand for arbitration shall be filed in writing with the other Party to this Agreement and with the American Arbitration Association. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of repose.

14.4 An arbitration pursuant to this Article 14 may be joined with an arbitration involving common issues of law or fact between a Party to this Agreement and any person or entity with whom that Party has a contractual obligation to arbitrate disputes. No other arbitration arising out of or relating to this Agreement shall include, by consolidation, joinder or in any other manner, an additional person or entity not a Party to this Agreement, except by written consent containing a specific reference to this Agreement signed by the Parties to this Agreement and any other person or entity sought to be joined. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the Parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.

14.5 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

14.6 The Contractor hereby waives any statute of limitations or statute of repose applicable to any claim of the Owner for breach of this Agreement, including without limitation the obligations of the Contractor under Article 12.

## ARTICLE 15

### **MECHANICS LIENS**

Contractor shall at all times keep the Work, including any interest of the Owner in any property, free from, and clear of, all mechanics liens and other encumbrances of its Subcontractors, material suppliers and other persons or entities making a claim by reason of having provided labor, materials or equipment related to the Work. Contractor shall hold harmless, defend and indemnify Owner from any claim, demand, liabilities, suits, causes of action, judgments, costs and expenses, including attorneys fees and other litigation costs, related in any manner whatsoever to any mechanics lien or other encumbrance made or filed against the Work or the interest of the Owner in any property, by any of its Subcontractors, material suppliers or any other persons or entities making a claim by reason of having provided labor, materials or equipment related to the Work, including, without limitation, any suit to foreclose any mechanics lien. Owner, at its option, may withhold from any payments due the contractor an amount not to exceed one-and-one-half times the amount of any mechanics liens and other encumbrances of any Subcontractors, material suppliers or other persons or entities making a claim by reason of having provided labor, materials or equipment related to the Work.

## ARTICLE 16

### **TERMINATION OR SUSPENSION OF THE CONTRACT**

#### 16.1 TERMINATION BY THE CONTRACTOR

16.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 days through no act or fault of 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 an declaration of national emergency, making material unavailable.



16.1.2 If one of the above reasons exists, the Contractor may, upon seven additional days, written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed.

## 16.2 TERMINATION BY THE OWNER FOR CAUSE

### 16.2.1 Termination for Default.

16.2.1.1 The Owner may, by mailing or otherwise delivering written notice to the Contractor and its surety, if any, immediately terminate the Contract:

- (i) if the Contractor files a voluntary petition under any chapter of the United States Bankruptcy Code as now or thereafter in effect, or if a petition is filed against the Contractor under any chapter of the United States Bankruptcy Code as now or hereafter in effect at the time of filing, or if any petition filed by or against the Contractor is converted to a Chapter 11 proceeding under the Bankruptcy Code, and the Contractor's Trustee or the Contractor as debtor-in-possession fails to assume this Contract, within the meaning of Paragraph 15.2.1.2, below, within fifteen (15) days from the date of filing such petition or conversion,
- (ii) if the Contractor files a voluntary petition relating to bankruptcy or insolvency or if a petition is filed seeking any such equivalent or similar relief against the Contractor under any state law in effect at the time relating to bankruptcy or insolvency,
- (iii) if the Contractor makes a general assignment for the benefit of creditors,
- (iv) if a trustee, receiver, custodian or agent of the Contractor is appointed under applicable law or under contract, whose appointment or authority to take charge of property of the Contractor is for the purpose of general Administration of such property for the benefit of the Contractor's creditors,
- (v) if the Contractor admits in writing an inability to pay its debts generally as they become due,
- (vi) if the Contractor persistently fails to perform the Work in accordance with the Contract Documents,
- (vii) if the Contractor violates any law, ordinance, rule, regulation, or order of any public authority having jurisdiction over the Work,
- (viii) if the Contractor either threatens to abandon or abandons the Work, or
- (ix) if the contractor, without good cause shown, failed to satisfy any of its or their obligations under the Contract Documents,

then the Owner may, without prejudice to any right or remedy and without being liable to the Contractor for trespass or conversion, take possession of the site and of all materials, equipment, tools, machinery, appliances, and plants thereon owned by the Contractor and, where appropriate, by its Subcontractors, and may finish the Work by whatever method owner may deem appropriate. In such case, the Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the costs to the owner of finishing the Work, including compensation for the Owner's additional services and attorneys' fees made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. This obligation for payment shall survive the termination of the Contract.

16.2.1.2 To be effective, any election to assume the Contract by the Contractor's Trustee or the Contractor, an debtor-in Possession, must be in writing addressed to the Owner and, in the Owner's business judgment, all of the following conditions, which the Contractor understand and agrees are commercially reasonable, must have been satisfied:

- (i) the Trustee or the Contractor, as debtor-in possession, shall have cured or shall have provided to the Owner adequate assurance that all monetary defaults under the Contract will be cured within ten (10) days from the date of assumption and all nonmonetary defaults under the Contract will be cured within twenty (20) days from the date of assumption, and
- (ii) the Trustee or Contractor, as debtor-in possession, shall have provided the Owner with adequate assurance of the future performance of each of the Contractor's obligations under the Contract.

For purposes of this Paragraph 15.2.1.2, the term "adequate assurance" means that the Owner shall have determined that the Trustee or the Contractor, as debtor-in-possession, has and will continue to have sufficient unencumbered assets, after the payment of all secured obligations and administrative expenses, to assure the Owner that the Trustee or the Contractor, as debtor-in-possession, will have sufficient funds to satisfy Contractor's obligations timely under the Contract, including but not limited to keeping in full force and effect all bonds and retaining all Subcontractors currently employed for any portion of the Work.

16.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, 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 5.3, and
- .3 finish the Work by whatever reasonable method the Owner may deem expedient.

16.2.3 When the Owner terminates the Contract for one of the reasons stated in Subparagraph 15.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

16.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and other expenses made necessary thereby, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

### 16.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

16.3.2 An adjustment shall be made for increases in the costs of performance of the Contract, including profit on the increased coat of performance, caused by suspension, delay or interruption. No adjustment shall be made to the extent:

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

16.3.3 Adjustments made in the cost of performance may have a mutually agreed fixed or percentage fee.

#### 16.4 TERMINATION BY THE OWNER FOR CONVENIENCE.

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

16.4.2 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.

16.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed and costs incurred by reason of such termination, but the Contractor shall not be entitled to receive any payment for the Work not executed, including overhead and profit.

## ARTICLE 17

### **MISCELLANEOUS PROVISIONS**

#### 17.1 GOVERNING LAW

17.1.1 The Contract shall be governed by the law of the State of Illinois.

#### 17.2 SUCCESSORS AND ASSIGNS

17.2.1 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. Neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

#### 17.3 WRITTEN NOTICE

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

#### 17.4 RIGHTS AND REMEDIES

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

17.4.2 No action or failure to act by the Owner 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.

## 17.5 TESTS AND INSPECTIONS

17.5.1 Tests, inspections and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so the Architect may observe such procedures. The Owner shall bear costs of tests, inspections or approvals which do not become requirements until after bids are received or negotiations concluded.

17.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Paragraph 16.5.1, 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 Paragraph 16.5.3.

17.5.3 If such procedures for testing, inspection or approval under Paragraphs 16.5.1 and 16.5.2 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.

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

17.5.5 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.

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

## 17.6 CONSEQUENTIAL DAMAGES

17.6.1 In no event shall either Party be liable to the other for any special, incidental or consequential damages, including, but not limited to, loss of income, loss of revenue, loss of profits, loss of use, loss of capital, rental expenses, financing, reputation, overhead expenses, or interest, whether based on contract, tort, negligence, strict liability, or otherwise and arising from any cause whatsoever by performance under this Agreement or breach of this Agreement.

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