

**City of Appleton – Parks, Recreation
and Facilities Management
Department**



**Request for Proposals
Professional Services**

Erb Park and Swimming Pool

11/13/2015

Request for Proposals

Erb Park and Swimming Pool **Professional Services**

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I. INTRODUCTION

A. Project Summary

The Appleton Parks, Recreation and Facilities Management Department (APRFMD) is issuing this “Request for Proposals” (RFP) to professional design firms or teams (Consultant) to provide design and construction management services for renovations to Erb Park and Pool. A single RFP is being issued because of the connectivity of all the facilities/features within the park.

The Consultant must have previous experience, similar in size and scope. This includes design of aquatic facilities, pavilions and bathhouses, walkways, parking lots including storm water compliance and demolition of existing structures. In addition, the Consultant must demonstrate past experience in conducting public information gatherings and public presentations. Excellent references will be required.

Funding of \$10.5 million has been approved in the 2016 APRFMD Capital Improvement Program. It is our goal to issue a contract for design services in January of 2016 and begin construction no later than August 2016 with a substantial completion of no later than May 15, 2017.

The Consultant selected to do this work will contract with, and be responsible to, the Director of Parks, Recreation and Facilities Management and the City of Appleton Common Council for the completion of work described in the RFP.

B. Project Contact Person

Questions for clarification concerning the RFP should be directed to:

Dean Gazza, Director

Appleton Parks, Recreation and Facilities Management Department

1819 Witzke Boulevard

Appleton, WI 54911

Office: 920-832-5572

Cell: 920-419-0374

dean.gazza@appleton.org

C. Directions for Submittal of Proposal

Consultants shall submit five (5) complete copies of the proposal and five (5) copies of the project budget for performing the required services. The project budget shall be provided in a separate envelope. A thumb drive including the proposal and project budget shall also be included with the proposal.

These materials must be received at the office of the Director of Parks, Recreation and Facilities Management by 2:00 p.m. on Thursday, December 10, 2015, at the following address:

*Dean Gazza, Director of Parks, Recreation and Facilities Management
Parks, Recreation and Facilities Management Department
1819 Witzke Boulevard
Appleton, WI 54911*

Packages containing the proposal and any related materials shall be plainly marked on the outside in the following manner:

“ERB PARK AND SWIMMING POOL– PROFESSIONAL DESIGN SERVICES”

Envelopes or packages containing proposals and related materials received after the date and time stated above will be returned unopened.

D. Pre-Proposal Meeting

There are no pre-proposal meetings pertaining to the RFP specifically scheduled at this time. Consultants intending to submit formal proposals and who may wish to discuss the proposed project should email their questions to Dean Gazza, Parks, Recreation and Facilities Management Director. Written responses to the questions will be provided to all Consultants prior to the deadline for submittal of proposals.

II. PROJECT DESCRIPTION

Erb Park is a 27.25 acre community park located at 1800 N. Morrison Street. The park was originally purchased by the City of Appleton in 1925 and includes an outdoor swimming pool, park pavilion with restrooms, playground equipment, 2 tennis courts, basketball court, open play areas and two separate parking lots. The park is located immediately adjacent to Roosevelt Middle School. Although Erb Park is identified by the APRFMD as a community park, it maintains a “neighborhood park” feel because of its location and access to a large residential area.

The City of Appleton has two outdoor swimming pools. Mead Pool is located at 1430 E. John Street and includes a water slide, zero depth entry, diving well, sand volleyball courts and playground areas, concession area and ample green space for the casual swimmer. Mead Pool was renovated in 1993 and offers many services currently offered by an “outdoor family aquatic center”.

The outdoor swimming pool at Erb Park was constructed in 1979 and includes a 50-meter tank with three diving boards on the deep end. There are also two smaller pools used for instruction and casual play by toddlers and small children. Updates to the pool have been

made throughout the years, including chemical feeders, pool heaters, painting, gutter replacement, etc., but the major mechanical systems, pool deck, bathhouse and filter room have not been addressed. The pool was originally designed and constructed to serve as a competitive pool and includes separate bathhouse and filter buildings on either side of the pool with earthen berms on the outside walls that provide some winter sledding activities. Erb Pool currently hosts two major swim meets during the summer and is also a popular site for local swim teams looking to train at a 50-meter facility. The pool is a popular site for summer swim lessons as parents and siblings are allowed to use the smaller pools at no cost during the lesson programs.

The current park pavilion was constructed sometime during the 1940's (exact date is unknown) and includes an open air picnic area, restrooms, food preparation area and storage. The restrooms do not meet ADA requirements, the kitchen area's functionality is limited and the electrical service is outdated. Access to the restrooms by the general park patrons is also limited when the pavilion is reserved by an individual, group or organization because the restrooms are a component of the pavilion building.

The two parking lots currently available were developed to accommodate the park in the 1950's and 1960's and were not changed when the current swimming pool was re-located and constructed in 1979. The current parking lots do not adequately or conveniently serve the two major facilities in the park, the outdoor swimming pool and park pavilion.

A master plan for the park was adopted by the City Council in 1998 and updated in 2008 during the development of a Safe Routes to School program for Franklin Elementary School located two blocks north of the park. The master plan included the following improvements to the park: re-location of the parking lots to better serve the pool and pavilion; additional walkways throughout the park to provide access to the recreation facilities; separate restroom facility; re-location of two tennis courts and basketball courts. Both master plan processes were completed without any significant review and/or consideration of the future for the outdoor swimming pool.

In 2014 we hired a Consultant to conduct a comprehensive and thorough review of the park and swimming pool and develop a final concept plan for the park. The primary focus of the concept plan includes improvements to the swimming pool that address community needs and trends in aquatic facilities, while considering opportunities to integrate other park improvements into the final swimming pool concept plan to maximize the functionality of all park components. The plans were developed in coordination with the APRFMD staff and major user groups.

III. SCOPE OF SERVICE

The scope of work outlined below is to be used as a general guide and is not intended to be a complete list of all work necessary to complete the project. Proposing Consultants may suggest a modified scope as part of their proposal.

A. Phase I - Erb Park and Swimming Pool – Conceptual Design

The Consultant shall develop a new conceptual park and pool design. Upon obtaining input the Consultant will advise the City of Appleton of the level of improvements to the park, park facilities and the outdoor swimming pool needed to accommodate existing and future demands of the community. The work shall be carried out with the input and cooperation of the APRFMD staff, applicable user groups, members of the community and neighborhood and other consultants, if applicable. The work shall be consistent with current land use concepts, existing recreation facilities trends and coexist with current and future use of the park and adjacent properties and make use of the following information:

1. Current topographical and survey mapping owned by the City of Appleton.*
2. Erb Park Master Plan developed in 2008.*
3. Schedule of facility use over the past 5 years.*
4. Local building and zoning regulations.*
5. Interviews with major user groups, including YMCA staff and swim teams, AASD staff, and other community leaders.
6. Community meeting(s) to be included to solicit public input and/or provide presentation of final conceptual plan.
7. Presentation(s) to Parks and Recreation Committee.
8. Interviews with APRFMD management and field staff.
9. Historical data pertaining to pool usage and operational costs.
10. Parks and Recreation section of Appleton Comprehensive Plan.*
11. Erb Park and Swimming Pool Existing Condition Analysis, Program Summary and Concept Plan(s). Completed in 2014.

*The City will provide the information above and the design firm will be responsible for all other data collection.

After the data collection phase, interviews with appropriate groups/organizations/agencies, public meetings and determination of improvement needs, a final concept plan will be developed. The plan will initially be presented to APRFMD staff for review and adjustments before being presented to the community for review and comment. The Consultant will hold at least one open house to provide the general public with the concept plans, relevant information, and record information that may impact the development of the concept plan. The concept plans will also be presented to the Parks and Recreation Committee for review and comment. The Consultant will then prepare a preliminary concept plan based on the comments and input received from the APRFMD, Parks and Recreation Committee and community and presented to the Parks and Recreation Committee for additional review and comment. Feedback provided by the Parks and Recreation Committee and public will be used to finalize the concept plan which will be utilized to begin design. The final concept plan will be prepared and presented to the Parks and Recreation Committee for review and approval. The

concept plan should include, but not be limited to, addressing items that are as follows:

1. Specific direction for improvements to the outdoor swimming pool in Erb Park.
2. Coordination of pool improvements to other park facilities, including pavilion improvements/replacement, parking lots, vehicular traffic, pedestrian and non-motorized traffic circulation.
3. Lighting, electric systems, and other utilities.
4. Vehicular and service needs.
5. Use of environmentally-sensitive and maintenance friendly design and materials.
6. Cost estimates to ensure project will comply with the budget for the project.
7. Identify operational and/or maintenance costs and requirements for proposed improvements.

Minimum Deliverables: Reach consensus with the City of Appleton and other stakeholders on the direction of outdoor aquatic facilities in the City of Appleton, final concept plan for the improvements to the Erb Park outdoor swimming pool and connectivity to the other park features. Develop probable costs and construction strategy for the proposed aquatic facilities, Erb Park swimming pool and park components. Develop operational cost models for each amenity to allow for informed decision making. Provide electronic copy of final concept plan, probable costs and construction strategies, including 3-D rendering for distribution and reproduction to applicable groups, committee, etc.

B. Phase II - Design Development

Once the final concept plan for the swimming pool, bathhouse, pavilion, parking lot and other amenities has been developed, the Consultant will develop the final plans and specifications for the improvements suitable for public bidding. Process for development of final plans and specifications shall include the following:

1. Conduct a Topographic Survey of the site to verify and confirm park features, facilities, etc.
2. Conduct necessary soil borings within proposed construction area to determine construction limitations/requirements for project.
3. Prepare a brief Soil Boring Report summarizing:
 - Location and methods for each sample
 - Strength, consolidation and bearing capacity of existing sub-surface
 - Presence of any unsuitable sub-grade materials
 - Structural recommendations for concrete foundations and slabs
4. Develop plan to ensure compliance with City of Appleton Stormwater design requirements and evaluating use of green infrastructure on-site.
5. Prepare Design Development drawings for the swimming pool improvements, illustrating the size, structures, connectivity/coordination with other park components, landscaping, lighting, utilities, etc.

6. Collect and review Product Data and Material Samples. Prepare Outline Specifications, including the products, materials and finishes of each component or system.
7. Prepare a summary of quantities and Construction Cost Opinion.
8. Prepare Exhibit Boards and PowerPoint for presentation.

Minimum Deliverables: Topographic Survey (24" x 36" ACAD files, one B&W paper copy), Soil Boring Report (one 8.5" x 11" B&W paper copy plus PDF file), Design Development Drawings (one 24" x 36" B&W paper copy plus PDF files), Product Data and Material Samples (quantities, formats and sizes TBD), Outline Specifications (one 8.5" x 11" B&W paper copy plus PDF file), Construction Cost Opinion (one 8.5" x 11" B&W paper copy plus PDF file), Exhibit Boards (one 24" x 36" color plan view, color updated perspective, and color details exhibit, each mounted on foam board, plus PDF files)

C. Phase III - Construction Documents (Final Design Specifications)

Obtain the required permits, all City of Appleton approvals, submit Site Plan Review and produce the final drawings, specifications, quantity schedules, project manual and other bid documents that will be used to competitively bid and construct the improvements in Erb Park, including:

1. Finalize and submit the graphic Construction Drawings and written Project Specifications that will be used to bid and construct the improvements.
The construction drawings will include:
 - a. Cover sheet, notes, index, etc
 - b. Summary of estimated quantities
 - c. Topographic survey and benchmarks
 - d. Demolition and removals
 - e. Grading and drainage
 - f. Utility modifications
 - g. Layout and materials
 - h. Pool/building structure
 - i. Landscaping
 - j. Custom and/or prefabricated site furnishings
 - k. Electrical and lighting
 - l. Other details as necessary
2. Revise and resubmit the Construction Drawings and Project Specifications, as may be required, to facilitate departmental approvals and permits
3. Finalize and resubmit the graphic and written documentation that will be used to bid and construct the improvements including:
 - a. Construction Drawings
 - b. Project Specifications
 - c. General and Supplemental Conditions of the Construction Contract
 - d. Other Project Manual documents

4. Finalize and submit the summary of quantities and Construction Cost Opinion
5. Prepare a Construction Strategy Memo including:
 - a. Anticipated construction schedule
 - b. Access, staging and other logistics
 - c. Public relations
 - d. City of Appleton and consultant roles

Minimum Deliverables: Construction Drawings (one 24" x 36" paper copy plus ACAD and PDF files for your distribution for each submittal), Project Specifications, Project Manual, Construction Cost Opinion, Construction Strategy Memo (one 8.5" x 11" paper copy plus PDF file for your use and distribution)

D. Phase IV – Erb Park and Pool - Bidding and Negotiation

Assist the City of Appleton with the selection of a qualified Contractor to construct the improvements in Erb Park. Following the City of Appleton's approval of the Construction Documents, the Consultant will:

1. Prepare and submit Bid Documents for our review including:
 - a. Advertisement for Bids
 - b. Invitation to Bid
 - c. Instructions to Bidders
 - d. Bid Proposal Form
2. Prepare Contractor Invitation List identifying reputable contractors for the City of Appleton's consideration.
3. Assist the City of Appleton with the advertisement of project and coordinate the bid letting.
4. Conduct a mandatory pre-bid meeting for interested bidders and issue a written Pre-bid Meeting Summary to participants.
5. Issue written Bid Addenda, when appropriate, to all bidders regarding changes to or clarifications of the Construction Documents
6. Review the bids, tabulate the results and issue an Award Recommendation Memo to the City of Appleton regarding the contract award.
7. Assist the City of Appleton with contract negotiations and preparation of the agreement between the City of Appleton and Contractor.

Minimum Deliverables: Bid Documents (one 8.5" x 11" paper copy plus PDF file), Contractor Invitation List, Pre-Bid Meeting Summary, Bid Addenda, Award Recommendation Memo (8.5" x 11" PDF files), City of Appleton/Contractor Agreement (AIA, A101 or comparable City of Appleton document). Collectively, the Construction Documents plus the executed City of Appleton/Contractor Agreement are the Contract Documents).

E. Phase V – Construction Administration/Management

Assist the City of Appleton with construction administration/management services.

1. Manage and maintain the Project Schedule and Budget.
2. Manage, coordinate and oversee all Owner contractors and consultants' activities.
3. Maintain full-time supervision on site for the duration of the project inclusive of punch lists. The CM shall be responsible for the administration, management, schedule and any related services needed to coordinate and manage the project on the owner's behalf.
4. Maintain all project files to State Audit Requirements, including but not limited to: Certified Payroll, Project Schedule, Correspondences, Submittals, Logs (RFI, Submittal, Procurement, Change Management, QA/QC, etc.), RFI's, As-Built, Meeting Minutes and Change Orders.
5. Conduct the following weekly meetings at a minimum: Owner Meetings, (with the Owner's Representative and Architect), Trade Contractor Meetings (which shall include a review of quality and safety concerns with the Trade Contractors), and Coordination Meetings. The CM shall conduct other meetings (trade contractor pre-construction, commissioning, etc.) as needed, but before related work begins.
6. Implement a QA/QC program and ensure conformity to the highest intent of the construction documents.
7. Assist the City with regular communication updates on the Project to the community.
8. Develop and maintain a method for tracking and expediting review and approvals of shop drawings, requests for information (RFI's) and change order requests. Provide log updates as requested (not more than bi-weekly).
9. Evaluate and present all change order proposals to the City for review.
10. Process and review submittals.
11. Monitor and review RFI's and comment to City on necessity.
12. Receive and process payment requisitions for the owners review.
13. Evaluate any and all claims and prepare a written response.
14. Prepare submissions to Utilities for rebates.
15. Manage the completion of the punch lists to the satisfaction of the Architect and Owner.
16. Monitor all trade contractors and consultants to ensure effective and timely adherence to the schedule. Work directly with general contractor towards recovery of any schedule slippage ASAP.
17. Provide cost control through progress payment and verification according to the approved schedule and contract amounts and terms.
18. Ensure that each contractor submits a site specific safety plan and upholds the requirements of that plan.
19. Manage and coordinate communications and activities related to all utility connections and work.
20. Develop and maintain an effective program so all operating manuals, maintenance manuals, and any preventive maintenance data are

- delivered to the owner by the trade contractors.
21. Provide on-site staff, to oversee the trade contractors to ensure that commissioning issues are addressed, until the owner takes full acceptance of the system and its associated equipment
 22. Provide oversight that the trade contractor's complete formal owner training of all systems.
 23. Coordinate delivery of all As-Built in .dwg (AutoCAD 2012 or later), and pdf formats from the trade contractors to the owner.
 24. Administrate the close-out of all trade contracts through final payment.
 25. Prepare and submit final paperwork to the State.
 26. Provide to the City, complete project files to satisfy State Audit requirements; provide personnel to assist the City during said audit.

Minimum Deliverables: A project completed on time and within budget built to the drawings and specifications.

IV. PROPOSAL REQUIREMENTS

A. Executive Summary

The executive summary may be submitted to City Committees and the Common Council. The Consultant should address their approach to the project in terms that would be understood by the general public. Fees must not be included in this letter or in any portion of the submittal except the sealed envelope. This summary will be limited to three pages.

B. Introductory Letter

This letter shall stipulate the following:

1. All terms and conditions outlined in the Request for Proposals are acceptable to the Consultant, or if not, clearly define those elements and reasons for the objection.
2. Person(s) authorized to represent the Consultant during the evaluation process, any negotiations, and signing of agreement that may result.
3. Any additional items the Consultant believes should be added to the project.

C. Description of Firm

This relates to the firm and sub consultants. All sub consultants and their respective roles, qualifications, and experience must be clearly identified. This section will provide a basis for judging how well the firm's qualifications and experience relate to this specific project. Firm profiles may be included. Elements that will be evaluated are:

1. Background & stability of the firm (length of time in business, ownership, affiliations, financials, etc.).
2. Relevant projects the firm has done (provide references).

3. Background of any sub consulting firm(s) used on this project, and an explanation of prior relationships with the consultant.
4. Relevant projects the sub consulting firm(s) has done (provide references).

D. Project Team and Experience with Similar Projects

This criterion relates to the project principal, project manager, key staff, and sub consultant staff. This section will provide a basis for judging how well the project team's qualifications, experience with similar projects, and time allocation relate to this specific project. Individual resumes must be included. Proposed hours for each project team member must be identified in this section. Elements that will be evaluated are:

1. Number of people and hours assigned to this project with information to be provided in a spreadsheet format that clearly identifies staff and hours. Costs must not be listed on this spreadsheet.
2. Extent of principal and project manager involvement. Meeting with the Project Team as often as necessary to meet objectives and additional meetings, as consultant believes necessary to enhance this project.
3. Key project team members on similar projects and unique qualifications that make them a valuable resource on this specific project, including experience with other design teams and consulting firms.
4. Key project team member roles during this project.
5. Does the project team cover all phases of this project.
6. Project Manager's technical and managerial experience with projects of similar scope and nature.
7. Identify training and start-up resources and hours, including after-project services.
8. Recommend level of service for design professional/construction administration services during construction phase of project.
9. Specific qualification of professional(s) providing Construction Administration services.

E. Project Understanding

A discussion of the approach the firm will use to complete the project. The proposal shall include a clear and concise understanding of the project, the work to be completed and the coordination required based on existing information. Elements that will be evaluated are:

1. Demonstrated understanding of the project.
2. Clear and concise explanation of specific tasks needed to accomplish the project.
3. List of project tasks in sequential order.
4. Define issues to be resolved in the course of the project.
5. Description of project quality control that will be exercised to deliver this project to meet the City of Appleton's needs and budget parameters?

6. Proposed schedule of design and progress meetings with the Project Team.
7. Recognition of elements with project not identified in this proposal the owner may wish to consider.

F. Project Schedule

This relates to the consultant's time requirements to complete those tasks identified. Elements that will be evaluated include:

1. Time required to complete tasks (duration).
2. Inter-relations between tasks (dependencies).
3. Key events during the project (milestones).
4. Critical input points from the owner.
5. Ability to design facility for occupancy on schedule.

G. Additional Information

The consultant may submit any information they believe relevant that does not fit within the body of the proposal. This may include brochures, company information, supplemental resumes, additional project descriptions, and any other information the consultant believes is useful. This additional submittal will be used by the Project Team as they see fit and may not have a significant bearing on the selection process.

V. FEE INFORMATION

Proposed Consultant fees for **each phase** of this project must be submitted in a spreadsheet format in a sealed envelope marked "**Fee Structure – Do Not Open.**" The fee structure relates to the total fee for this project as described by the consultant in Section E – Project Understanding. Proposed resources for each task must be identified, including hours and wage rates for consultants and sub consultants. Work that the consultant would not provide, and must be provided separately by the City, must also be identified. Elements that will be evaluated include:

1. Availability of resources from the consultant and sub consultant(s) for the project.
2. Estimated hours and fees to complete individual work elements.
3. Estimated total fee for the project, based on hourly rates including a not-to-exceed cap.
4. List of tasks not performed by consultant or sub consultant(s) for project, which must be performed by the City.
5. Identify what your firm considers reimbursable expenses and detailed costs of each.

The fee structure shall be based on the basic services described in AIA contract B 141 1997 edition in addition to those services encompassed in this RFP.

VI. FINAL AGREEMENT FORMAT

The City Attorney will provide a standard agreement with modification provided by the City (see attached). Please indicate in your proposal any terms that you are unable to agree with.

VII. INSURANCE

Certificate of insurance to be provided according to the attached requirements (see Attachment B).

VIII. EVALUATION PROCESS

A committee of City of Appleton staff (Selection Committee) will evaluate proposals. The proposals will be evaluated and ranked based on the information submitted in the proposals according to the evaluation criteria. The City of Appleton is intending to identify a Consultant with the following attributes:

1. Qualified and experienced team members who have designed and successfully completed similar type aquatic/park facilities.
2. A demonstrated ability to provide a variety of contemporary designs through creative use of available space, resources, collaboration of other park features/components and community input.
3. A demonstrated ability to work with municipalities, local groups and community members on similar type projects.
4. A demonstrated ability to assemble a comprehensive and well coordinated set of construction documents.
5. A demonstrated ability to effectively coordinate all construction disciplines for a successful project.
6. A demonstrated ability to produce accurate cost estimates throughout all phases of a project.
7. A demonstrated ability to provide effective and timely construction administration of project documentation.
8. A demonstrated ability to provide effective construction cost control.

Project fees will be evaluated separately after ratings of the proposals are completed. Weighing of the project fee will be subjective; however, lowest cost does not assure selection. The City reserves the right to select any consultant it believes to be in its best interest and to negotiate fees, or to reject any or all proposals at its sole discretion.

The proposals will require an estimated ten (10) working days for evaluation.

If the Selection Committee deems interviews are required, they will be held approximately twenty (20) working days after the proposals are received. After the evaluation process, the Selection Committee will make a recommendation to the Parks and Recreation Committee. The approval of any recommendation by the Parks and Recreation Committee is subject to approval of the Common Council. These officials have the right to terminate the project or to change the contract or budget, subject to subsequent agreement by the proposer.

The Selection Committee may request that Consultants schedule trips for the Selection Committee to view relevant projects. All costs of such visits will be borne by the City of Appleton. Additional references may be required prior to final selection.

The City of Appleton will not be liable for any costs incidental to the preparation of the Request for Proposals, presentations, or interviews relating to the selection process.

Public Information

Proposals will be treated as proprietary and confidential from the time of receipt and throughout the review process; however, the Proposer shall understand that all submitted proposals become the property of the City of Appleton and information included therein or attached thereto shall become public record pursuant to Wisconsin Statute after recommendation for endorsement of contract is made. Any specific portions of the proposal which the submitting firm desires to remain confidential due to legitimate “proprietary information” or “trade secret” must be clearly labeled as such upon submittal. The City of Appleton will be the final authority as to whether the information qualifies as confidential. In the event the City judges the information to be non-confidential, the proposer will be notified and given the opportunity to change the designation or withdraw the proposal prior to evaluation.

ATTACHMENT B

INSURANCE REQUIREMENTS FOR CITY OF APPLETON

It is hereby agreed and understood that the insurance required by the City of Appleton is primary coverage and that any insurance or self insurance maintained by the City of Appleton, its officers, council members, agents, employees or authorized volunteers will not contribute to a loss. All insurance shall be in full force prior to commencing work and remain in force until the entire job is completed or the length of time that is specified in the contract.

1. **PROFESSIONAL LIABILITY (INCLUDING DESIGN & CONSTRUCTION MANAGEMENT)**
 - A. **Limits**
 - (a) \$500,000 each claim/\$1,000,000 annual aggregate
 - B. **Must continue coverage for 2 years after final payment for service/job**
2. **GENERAL LIABILITY COVERAGE**
 - A. **Commercial General Liability**
 - (a) \$1,000,000 general aggregate
 - (b) \$1,000,000 products - completed operations aggregate
 - (c) \$500,000 personal injury and advertising injury
 - (d) \$500,000 each occurrence limit
 - B. **Claims made form of coverage is not acceptable.**
 - C. **Insurance must include:**
 - (a) Premises and Operations Liability
 - (b) Blanket Contractual Liability
 - (c) Personal Injury
 - (d) Explosion, collapse and underground coverage
 - (e) Products/Completed Operations
 - (f) The general aggregate must apply separately to this project/location
3. **BUSINESS AUTOMOBILE COVERAGE**
 - A. **Limits - \$250,000 each person/\$500,000 each accident for Bodily Injury and \$100,000 for Property Damage**

OR

\$500,000 Combined Single Limit for Bodily Injury and Property Damage each accident

- B. Must cover liability for "Any Auto" - including Owned, Non-Owned and Hired Automobile Liability

4. WORKERS COMPENSATION AND EMPLOYERS LIABILITY - If required by Wisconsin State Statute or any Workers Compensation Statutes of a different state.

- A. Must carry coverage for Statutory Workers Compensation and Employers Liability limit of:
 - \$100,000 Each Accident
 - \$500,000 Disease Policy Limit
 - \$100,000 Disease - Each Employee

5. UMBRELLA COVERAGE (CONSTRUCTION MANAGEMENT)

- A. Limits - \$2,000,000 each occurrence/\$2,000,000 aggregate
- B. Claims made coverage is not acceptable
- C. \$10,000 self-insured retention
- D. Must be no less broad than underlying coverage.

6. ADDITIONAL PROVISIONS

- * Additional Insured - On the General Liability Coverage, Comprehensive Automobile Coverage and Umbrella Coverage. City of Appleton, and its officers, council members, agents, employees, and authorized volunteers shall be Additional Insured's.
- * Endorsement - The Additional Insured Policy endorsement must accompany the Certificate of Insurance.
- * Certificates of Insurance – A copy of the Certificate of Insurance must be on file with the City Clerk.
- * Notice – “NOTE”: City of Appleton requires 30 day written notice of cancellation, non-renewal or material change in the insurance coverage.
- * The insurance coverage required must be provided by an insurance carrier with the "Best" rating of "A-VII" or better. All carriers shall be admitted carriers in the State of Wisconsin.

AGREEMENT BETWEEN OWNER AND ARCHITECT

TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 RESPONSIBILITIES OF THE PARTIES
- 3 TERMS AND CONDITIONS
- 4 SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS
- 5 COMPENSATION

AGREEMENT made as of the [] day of [] in the year **Two Thousand and []**.

BETWEEN the Architect's client identified as the Owner:

City of Appleton
100 North Appleton Street
Appleton, WI 54911

and the Architect:

[]
[]
[]

For the following Project:

Professional Architectural and Engineering Services for the [], Appleton, Wisconsin. The project construction budget is approximately \$ [] and the proposed building is approximately [] square feet.

The Owner and Architect agree as follows:

ARTICLE 1 INITIAL INFORMATION

§1.1 This Agreement is based on the following information and assumptions.

_____.

§1.2 PROJECT PARAMETERS

§1.2.1 The objective or use is:

_____.

§1.2.2 The physical parameters are:

The project site is _____.

§1.2.3 The Owner's Program is:

An approximately _____ square foot building. Program parameters will be verified as part of the project's first phase.

§1.2.4 The legal parameters are:

The site will be surveyed as part of the process. Refer to 1.2.2 above for other commentary.

§1.2.5 The financial parameters are as follows:

Amount of the Owner's overall budget for the Project, including the Architect's compensation, is approximately \$_____ (to be determined as part of conceptual approval).

Amount of the Owner's budget for the Cost of the Work, excluding the Architect's compensation, is approximately \$_____ (to be determined as part of conceptual approval).

§1.2.6 The time parameters are:

Conceptual Design completed _____ (with cost data)

Construction Documents completed by _____

§1.2.7 The proposed procurement or delivery method for the Project is:

_____.

§1.2.8 Other parameters are:

_____.

§1.3 PROJECT TEAM

§1.3.1 The Owner's Designated Representative is:

Dean R. Gazza, CPRE, CFM, PMP, LEED-AP
City of Appleton
Director of Facilities & Construction
100 North Appleton Street
Appleton, WI 54911
(920) 832-5572

§1.3.2 The persons or entities, in addition to the Owner's Designated Representative, who are required to review the Architect's submittals to the Owner are:

§1.3.3 The Owner's other consultants and contractors are:

Surveyor, Geotechnical, Construction Materials Testing and Environmental all to be determined.

§1.3.4 The Architect's Designated Representative is:

§1.3.5 The consultants retained at the Architect's expense are:

§1.4 Other important initial information is:

§1.5 When the services under this Agreement include contract administration services, the General Conditions of the Contract for Construction shall be the document attached hereto as Exhibit A.

ARTICLE2 RESPONSIBILITIES OF THE PARTIES

§2.1 OWNER

§2.1.1 Unless otherwise provided under this Agreement, the Owner shall consult with Architect and provide such timely information as may be reasonably necessary for the Architect to perform the Architect's services.

§2.1.2 The Owner shall periodically update the budget for the Project, including that portion allocated for the Cost of the Work.

§2.1.3 The Owner's Designated Representative identified in Section 1.3 shall represent the Owner with respect to the Project. The Owner or the Owner's Designated Representative shall render decisions in a timely manner pertaining to documents submitted by the Architect in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§2.1.4 The Owner shall furnish the services of consultants other than those designated in Section 1.3 or authorize the Architect to furnish them as a Change in Services when such services are requested by the Architect and are reasonably required by the scope of the Project.

§2.2.5 Unless otherwise provided in this Agreement, the Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§2.2.6 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§2.2.7 While the Owner has no affirmative duty to become aware of same, the Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including any errors, omissions or inconsistencies in the Architect's Instruments of Service.

§2.2 ARCHITECT

§2.2.1 The services performed by the Architect, Architect's employees and Architect's consultants shall be as enumerated herein and in those documents in Article 1.4. The Architect shall be responsible for the Architect's negligent acts, errors and omissions.

§2.2.2 The Architect's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project. The Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which initially shall be consistent with the time periods established in subparagraph 1.2.6 and which may be adjusted, if necessary, and through no sole fault of the Architect, as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.

§2.2.3 The Architect's Designated Representative identified in Section 1.3 shall be authorized to act on the Architect's behalf with respect to the Project.

§2.2.4 The Architect shall maintain the confidentiality of information specifically designated as confidential by the Owner, unless withholding such information would violate the law, create the risk of significant harm to the public or prevent the Architect from establishing a claim or defense in an adjudicatory proceeding. The Architect shall require of the Architect's consultants similar agreements to maintain the confidentiality of information specifically designated as confidential by the Owner.

§2.2.5 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§2.2.6 The Architect shall review laws, codes, and regulations applicable to the Architect's services. The Architect shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project.

§2.2.7 The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner. While the Architect has no affirmative duty to become aware of same, Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any errors, omissions or inconsistencies in such services or information.

ARTICLE 3 TERMS AND CONDITIONS

§3.1 COST OF THE WORK

§3.1.1 The Cost of the Work shall be the total cost or, to the extent the Project is not completed, the estimated cost to the Owner of all elements of the Project designed or specified by the Architect and the Architect's consultants as identified in paragraph 1.3.5.

§3.1.2 The Cost of the Work shall include the cost at current market rates of labor and materials furnished by the Owner and equipment designed, specified, selected or specially provided for by the Architect, including furniture furnishings and related equipment and the costs of management or supervision of construction or installation provided by a separate construction manager or contractor, plus a reasonable allowance for their overhead and profit. In addition, a reasonable allowance for contingencies shall be included for market conditions at the time of bidding and for changes in the Work.

§3.1.3 The Cost of the Work does not include the compensation of the Architect and the Architect's consultants, the costs of the land, rights-of-way and financing or other costs that are the responsibility of the Owner.

§3.2 INSTRUMENTS OF SERVICE

§3.2.1 Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are Instruments of Service for use solely with respect to this Project. The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service and shall retain all common law, statutory and other reserved rights, including copyrights. Drawings, specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants are for use solely with respect to this project. Any other use shall be at the Owner's sole risk and without liability to the Architect or the Architect's consultants. Unless Owner fails hereunder to pay Architect therefore, Owner shall be deemed the owner of such drawings, specifications and other documents and shall have and retain all rights therein. In the event Owner is adjusted to have failed hereunder to pay Architect for such drawings, specifications or other documents, ownership thereof, and all rights therein, shall revert to the Architect.

§3.3 CHANGE IN SERVICES

§3.3.1 Change in Services of the Architect, including services required of the Architect's consultants, may be accomplished after execution of this Agreement, without invalidating the Agreement, if mutually agreed in writing, if required by circumstances beyond the Architect's control, or if the Architect's services are affected as described in Section 3.3.2. In the absence of mutual agreement in writing, the Architect shall notify the Owner prior to changing such services. If the Owner deems that all or a part of such Change in Services is not required, the Owner shall give prompt written notice to the Architect, and the Architect shall have no obligation to change those services. Except for a change due to the fault of the Architect, Change in Services of the Architect shall entitle the Architect or the Owner as applicable to an adjustment in compensation pursuant to Section 5.2, and to any Reimbursable Expenses described in Section 3.9.2 and Section 5.5.

§3.3.2 If any of the following circumstances affect the Architect's services for the Project, the Architect or Owner as appropriate shall be entitled to an appropriate adjustment in the Architect's schedule and compensation:

§3.3.2.1 change in the instructions or approvals given by the Owner that necessitate revisions in Instruments of Service;

§3.3.2.2 enactment or revision of codes, laws or regulations or official interpretations which necessitate changes to previously prepared Instruments of Service;

§3.3.2.3 decisions of the Owner not rendered in a timely manner;

§3.3.2.4 significant change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget, or procurement method;

§3.3.2.5 failure of performance on the part of the Owner or the Owner's consultants or contractors;

§3.3.2.6 preparation for and attendance at a public hearing, a dispute resolution proceeding or a legal proceeding except where the Architect is party thereto;

§3.3.2.7 change in the information contained in Article 1.1.

§3.4 MEDIATION

§3.4.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation.

§3.4.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to this Agreement and with the American Arbitration Association. The request may be made concurrently with the filing of a civil action but, in such event, mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period

of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§3.4.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§3.5 MISCELLANEOUS PROVISIONS

§3.5.1 This Agreement shall be governed by the law of the State of Wisconsin.

§3.5.2 Terms in this Agreement shall have the same meaning as those in the General Conditions of the Contract for Construction attached hereto as Exhibit A.

§3.5.3 Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion for acts or failures to act occurring prior to Substantial Completion or the date of issuance of the final Certificate for Payment for acts or failures to act occurring after Substantial Completion. In no event shall such statutes of limitations commence to run any later than the date when the Architect's services are substantially completed.

§3.5.4 To the extent damages are covered by property insurance during construction, the Owner and the Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in Exhibit A. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§3.5.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§3.5.6 Unless otherwise provided in this Agreement, the Architect and Architect's consultants shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the Project site.

§3.5.7 Subject to the Owner's written approval thereof, the Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner may in its sole discretion provide professional credit for the Architect in the Owner's promotional materials for the Project.

§3.5.8 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§3.5.9 The Owner and Architect, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to an institutional lender providing financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under this Agreement. The Architect shall execute all consents reasonably required to facilitate such assignment.

§3.5.10 ARCHITECT'S ACCOUNTING RECORDS. Architect's records subject to audit shall include but not be limited to records which may have a bearing on matters of interest to the Owner in connection with the Architect's work for the Owner and shall be open to inspection and subject to audit by Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of (a) Architect's compliance with contract requirements, (b) compliance with Owner's business ethics policies and (c) compliance with provisions for reimbursables.

§3.5.11 Such records subject to audit shall also include those records necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this contract. In those situations where Architect's records have been generated from computerized data (whether mainframe, mini-computer, or PC based computer systems), Architect agrees to provide Owner's representatives with data in computer readable format on data disks or suitable alternative computer data exchange formats.

§3.5.12 The Owner or its designee shall be entitled to audit all of the Architect's records and shall be allowed to interview any of the Architect's employees, pursuant to the provisions of this article throughout the term of this contract and for a period of three years after final payment or longer if required by law. Such audits may require inspection of selected documents from time to time at reasonable times and places.

§3.6 TERMINATION OR SUSPENSION

§3.6.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, the Architect having performed the Architect's obligations hereunder, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, prior to suspension of services, the Architect shall give seven days' written notice to the Owner. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any direct expenses reasonably incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§3.6.2 If the Project is suspended by the Owner for more than 30 consecutive days through no fault of the Architect, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for direct expenses reasonably incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§3.6.3 If through no fault of the Architect the Project is suspended or the Architect's services are suspended for more than 90 consecutive days, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§3.6.4 This Agreement may be terminated by either party upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§3.6.5 This Agreement may be terminated by the Owner upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§3.6.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due.

§3.6.7 Termination Expenses are in addition to compensation for the services of the Agreement and include expenses directly attributable to termination for which the Architect is not otherwise compensated.

§3.7 PAYMENTS TO THE ARCHITECT

§3.7.1 Payments on account of services rendered and for Reimbursable Expenses incurred shall be made monthly within 30 days after presentation of the Architect's properly submitted statement of services. No deductions shall be made from the Architect's compensation on account of penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the Work other than those for which the Architect has been adjudged to be liable.

§3.7.2 Reimbursable Expenses shall mean reasonable expenses and are in addition to compensation for the Architect's services and include expenses incurred by the Architect and Architect's employees and consultants directly related to the Project, as identified in the following clauses:

§3.7.1 Transportation in connection with the project authorized out-of-town travel and subsistence, and electronic communications;

§3.7.2 Architect will submit documentation satisfactory to the Owner to support all reimbursable expenses. Such documentation will be submitted on a timely basis.

§3.7.3 Airfare for out-of-town travel will not exceed normal coach airfare.

§3.7.4 Cellular and long distance will be reimbursed at the actual net cellular and long distance charges of the actual provider of long distance services.

§3.7.5 Fees paid for securing approval of authorities having jurisdiction over the Project;

§3.7.6 Reproductions, plots, standard form documents, postage, handling and delivery of Instruments of Service; Only those reproductions prepared for distribution to/by the consultants, contractors, and/or Owner are reimbursable at the Architect's standard rates or at the rated billed by three party reproduction establishments as long as the charges by the Architect of the third

party do not exceed the fair market rates available locally to similar commercial customers for similar volumes and quality reproductions.

§3.7.7 renderings, models and mock-ups requested by the Owner;

§3.7.8 reimbursable expenses as designated in Section 5.5;

§3.7.9 any other expenses directly related to the Project and reasonably incurred after receiving written approval of the Owner-

§3.7.10 Records of Reimbursable Expenses, of expenses pertaining to a Change in Services, and of services performed on the basis of hourly rates shall be available to the Owner or the Owner's authorized representative at mutually convenient times.

§3.7.10.1 Architect will submit documentation satisfactory to the Owner to support all reimbursable expenses. Such documentation will be submitted on a timely basis.

§3.7.10.2 Reimbursable Expenses will be credited with all rebates, refunds, or dividends as well as a portion of any volume rebates or free material credits earned with purchase of material or other goods and services charged to reimbursable expenses.

§3.7.11 ADDITIONAL SERVICES. Copies of time sheets that include time worked on any authorized time and materials additional services shall be submitted on a timely basis but not later than the invoice for the services rendered. All Architect's billings for time and material additional services shall be supported with time sheets for billed and detailed cost support for reimbursable expenses.

ARTICLE 4 SCOPE OF SERVICES AND OTHER SPECIAL TERMS AND CONDITIONS

§4.1 Enumeration of Parts of the Agreement. This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect. This Agreement comprises the documents listed below.

§4.1.1 Agreement Between Owner and Architect.

§4.1.2 Architect's Services: Design and Contract Administration.

§4.1.3 Other documents as follows:

Exhibit 'A' – General Conditions of the Contract for Construction

Exhibit 'B' – RFP

§4.2 Special Terms and Conditions. Special terms and conditions that modify this Agreement are as follows:

§4.2.1. All design drawings and updated as built drawings shall be provided to the Owner as record drawings in a version of AutoCAD acceptable to the Owner and conforming to City of

Appleton layering standards so long as those standards are furnished to the Architect in a timely manner.

§4.2.2. If the Architect's project documentation, other than as-built documents; such as contractor requests for information, field orders, change orders, and other owner requests for information are not current, _____% of payment requests by the Architect shall not be paid by the Owner until such time that the Architect's project documentation is made current.

§4.3. Insurance Requirements

§4.3.1 Workers Compensation Insurance. Architect shall obtain and maintain throughout the duration of this contract statutory Worker's Compensation Insurance for all its employees employed at the site or while working on this project. In case any work is sublet, Architect shall require it's consultants to provide statutory Worker's Compensation Insurance for all of the consultant's employees, unless such employees are covered by the protection afforded the Architect.

§4.3.2 General Liability, Professional Liability and Property Damage Insurance. Architect shall secure and maintain in force throughout the duration of this contract such General Liability, Professional Liability and Property Damage Insurance that shall protect the Architect and any consultant performing work covered by this contract from claims for damages for personal injuries including accidental death, as well as from claims for property damage, which may arise from operations under this contract, whether such operations be by the Architect or by any consultant or by anyone directly or indirectly employed by either of them.

It is hereby agreed and understood that the insurance required by the City of Appleton is primary coverage and that any insurance or self-insurance maintained by the City of Appleton, its officers, council members, agents, employees or authorized volunteers will not contribute to a loss. All insurance shall be in full force prior to commencing work and remain in force until the entire job is completed or the length of time that is specified in the contract. Insurance amounts shall be as follows:

§4.3.2.1 PROFESSIONAL LIABILITY (INCLUDING DESIGN AND CONSTRUCTION MANAGEMENT)

Limits: \$500,000 each claim/\$1,000,000 annual aggregate

Must continue coverage for 2 years after final payment for service/job

§4.3.2.2 GENERAL LIABILITY COVERAGE

Commercial General Liability

\$1,000,000 general aggregate

\$1,000,000 products - completed operations aggregate

\$500,000 personal injury and advertising injury

\$500,000 each occurrence limit

Claims made form of coverage is not acceptable.

Insurance must include:

Premises and Operations Liability

Blanket Contractual Liability

Personal Injury

Explosion, collapse and underground coverage

Products/Completed Operations

The general aggregate must apply separately to this project/location

§4.3.2.3 BUSINESS AUTOMOBILE COVERAGE

Limits - \$250,000 each person/\$500,000 each accident for Bodily Injury and \$100,000 for Property Damage; or \$500,000 Combined Single Limit for Bodily Injury and Property Damage each accident

Must cover liability for "Any Auto" - including Owned, Non-Owned and Hired Automobile Liability

§4.3.2.4 WORKERS COMPENSATION AND EMPLOYERS LIABILITY - If required by Wisconsin State Statute or any Workers Compensation Statutes of a different state. Must carry coverage for Statutory Workers Compensation and Employers Liability limit of:

\$100,000 Each Accident

\$500,000 Disease Policy Limit

\$100,000 Disease - Each Employee

§4.3.2.5 ADDITIONAL PROVISIONS

Additional Insured - On the General Liability Coverage and Business Automobile Coverage. City of Appleton, and its officers, council members, agents, employees, and authorized volunteers shall be Additional Insureds.

Endorsement -The Additional Insured Policy endorsement must accompany the Certificate of Insurance.

Certificates of Insurance -A copy of the Certificate of Insurance must be on file with the City Clerk.

Notice - NOTE: City of Appleton requires 30 day written notice of cancellation, non-renewal or material change in the insurance coverage.

The insurance coverage required must be provided by an insurance carrier with the "Best" rating of "A-VII" or better. All carriers shall be admitted carriers in the State of Wisconsin.

§4.3.3. Proof of Insurance. Architect shall furnish the Owner with a Certificate of Insurance countersigned by a Wisconsin Resident Agent or Authorized Representative of the insurer indicating that the Architects meets the insurance requirements identified above. The Certificates of Insurance shall include a provision prohibiting cancellation of said policies except upon thirty (30) days prior written notice to the Owner and specify the name of the contract or project covered. The Certificate of Insurance shall be delivered to the Owner, with a copy of the Certificate of Insurance to be delivered to the Risk Manager for approval prior to the execution of the contract. Upon renewal of the required insurance and annually thereafter, the Owner shall receive a new Certificate of Insurance for three years after completion of the project. The Certificates shall describe the contract by name and or identification number in the "Description of Operations" section of the form.

ARTICLE 5 COMPENSATION

§5.1 For the Architect's services as described under Article 4, compensation shall be computed as follows:

Compensation shall be a base fixed fee of \$ _____ plus _____.

Compensation per phase of the work shall be as follows:

The contract terms and proposed fees and Reimbursable Expenses to be payable to any consultants shall be subject to advance written approval of the Owner.

§5.2 If the services of the Architect are changed as described in Section 3.3.1, the Architect's compensation shall be adjusted. Such adjustment shall be calculated as described below or, if no method of adjustment is indicated in this Section 5.2, in an equitable manner.

Additional services not included in the basic services of the Contract, shall be approved by the Owner in writing prior to starting the work. The Architect's compensation for any approved additional services shall be at the following hourly rates.

§5.2.1 There shall be no compensation to the Architect for work necessitated by the Architect's errors and omissions in the construction documents. Errors and omissions in the construction documents are defined as "errors and omissions that shall have been avoided by the Architect in the exercise of reasonable prudence and diligence during the preparation of the construction documents. If a Change Order is prepared to modify the contract due to an error or omission in the contract documents the Architects shall reimburse the Owner 5% of the total cost of the Change Order. Change orders due to the Architect's errors and omissions in the contract documents will not be included in the construction cost when computing the architect's compensation.

§5.3 For a Change in Services of the Architect's consultants, compensation shall be computed as a multiple of _____ times the amounts billed to the Architect for such services.

§5.4 For Reimbursable Expenses, the compensation shall be computed at cost.

§5.5 Other Reimbursable Expenses, if any, are as follows:

§5.6 The rates and multiples for services of the Architect and the Architect's consultants as set forth in this Agreement shall be adjusted in accordance with their normal salary review practices.

§5.7 An initial payment of _____ dollars (\$ _____) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account at final payment. Payments for services shall be made monthly,

and where applicable, shall be in proportion to services performed on the basis set forth in this Agreement.

§5.8 Payments are due and payable sixty (60) days from the date of the Architect's invoice, unless the invoice is in dispute.

§5.9 If the services covered by this Agreement have not been completed within _____ months of the date hereof, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as provided in Section 5.2.

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

OWNER

ARCHITECT

(Signature)

Timothy Hanna, Mayor

(Signature)

Printed Name and Title

(Signature)

Jaime Sova, Deputy City Clerk

Provision has been made to pay the liability that will accrue under this contract.

(Signature)

Tony Saucerman, Finance Director

Approved as to form:

(Signature)

James P. Walsh, City Attorney

GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION

for the following PROJECT:

Project Name

Address

City, State, Zip

THE OWNER:

City of Appleton

100 North Appleton Street

Appleton, WI 54911

THE ARCHITECT:

Architect/Design Firm Name

Address

City, State, Zip

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TELULAH PARK SKATE PARK PROJECT

ARTICLE 1 GENERAL PROVISIONS

§1.1 BASIC DEFINITIONS

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

§1.1.2 THE CONTRACT The Contract Documents form the Contract for Construction. The Contract together with the performance bond and payment bond, if any, represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor, (3) except as may be expressly provided in the agreement between the Owner and Architect or (4) between any persons or entities other than the Owner and Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

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

§1.1.4 THE PROJECT The Project is the total construction described in the Agreement of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

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

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

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

§1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required

only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of a conflict or inconsistency in or among the contract documents, or between the Contract Documents and applicable codes in effect at the time the Contract Sum is bid or negotiated, the contractor shall, unless directed otherwise in writing by the Architect and Owner, provide the greatest quantity, highest quality, highest degree of safety, and the most stringent material, equipment or work.

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

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

§1.2.4 Execute work as per Contract Documents. Make no changes therefrom without prior written permission. Where detailed information is lacking, before proceeding with work, refer matter to Architect for information. (Refer to General Conditions 3.2.1.).

§1.2.5 If any errors or omissions appear in Drawings, Specifications, or other documents, bidding Contractor shall notify Architect prior to submitting bid. Should conflict occur in or between Drawings and Specifications, bidding Contractor is deemed to have estimated more expensive way of doing work unless bidding Contractor shall have asked for and obtained written decision before submission of Proposal as to which method or materials will be required.

§1.2.6 Should any work be specified under more than one section of this Specification, it will be assumed that each Contractor and Sub-Contractor has included said item of material or labor unless they shall have obtained a written decision before submission of Proposal as to who shall furnish item in question. If no such decision has been obtained, it shall be Architect's choice as to who shall furnish such item(s).

§1.2.7 References to known standard specifications shall mean and intend latest edition of such specifications adopted and published to date of Invitation to Submit Proposal.

§1.3 CAPITALIZATION Terms capitalized in these General Conditions include those which are specifically defined, or the titles of numbered articles.

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

§1.5 EXECUTION OF CONTRACT DOCUMENTS

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

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

§1.6 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS, AND OTHER DOCUMENTS The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the Architect's consultants describe the work to be executed by the Contractor. Unless the Owner fails to pay the Architect, the Owner shall be deemed the Owner of the Drawings, Specifications and other documents, and shall have and retain all rights therein. In the event the Owner is adjudged to have failed to pay Architect, the ownership of such Drawings, Specifications and other documents, and all rights therein shall revert to the Architect. The Contractor may retain one record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants. All copies of such Drawings, Specifications and other documents, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner.

ARTICLE 2 OWNER

§2.1 GENERAL

§2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have authority to represent the Owner with respect to all matters requiring the Owner's representation. The Architect does not have such authority, except as otherwise provided in Section 4.2.1. The term "Owner" means the Owner or the Owner's authorized representative.

§2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce any mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site and the Owner's interest therein.

§2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§2.2.1 The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's payment obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement of the Work. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

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

§2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

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

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

§2.3 OWNER'S RIGHT TO STOP THE WORK If the Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

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

ARTICLE 3 CONTRACTOR

§3.1 GENERAL

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

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

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

§3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. Any errors, inconsistencies or omissions in the Contract Documents discovered by the Contractor shall be reported promptly to the Architect and Owner as a request for information in such form as the Architect or Owner may require before proceeding with the Work.

§3.2.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect, and the Owner in writing. While the Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Architect and the Owner in writing.

§3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Sections 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Sections 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Sections 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. The Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized, or in the exercise of ordinary care, reasonably should have recognized, such error, inconsistency, omission or difference and failed to report it in-writing to the Architect and Owner. Should the specifications and Drawings fail to particularly describe the product to be used in any place, then it shall be the duty of the Contractor to make inquiry of the Architect as to the product that is best suited. The product that would normally be used in this place to produce first quality finished work shall be considered a part of the Contract.

§3.2.4 The Contract Documents may specifically identify certain existing materials and items which are to be delivered to the Owner. For any materials removed in the course of the Work, the Contractor shall first offer them to the Owner; if not accepted by the Owner, the Contractor shall remove them from the project. Any materials which are paid for under the Contract, but not incorporated into the Work due to change orders or other reasons, shall be similarly offered to the Owner.

§3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. The Contractor has the responsibility to insure that all product suppliers and Subcontractors, their agents and employees, adhere to the Contract Documents and that they order products on time, taking into account the current market delivery conditions, and that they provide products on time. The contractor shall coordinate his work with that of all others on the Project including deliveries, storage, installations and construction utilities. The Contractor shall be responsible for space requirements, locations, and routing of his equipment in areas and locations where the proper and most effective space requirements, locations, and routing cannot be made as indicated, the Contractor shall meet with all others involved before installation to plan the most effective and efficient method of overall installation.

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

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

§3.4 LABOR AND MATERIALS

§3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the

Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

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

§3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and all other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Incompetent or incorrigible employees shall be removed from the project by the Contractor or his superintendent, if requested by the Owner. Such persons shall not be allowed to return to work on the project without Written Consent of the Owner.

§3.5 WARRANTY

§3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect or the Owner, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. All warranties shall begin at the time the Owner accepts the total project or at Substantial completion should the Owner decide to accept portions of the work prior to completion of the project.

§3.5.2 The words "Guarantee" and Warranty" used in the Contract Documents shall have the same meaning as follows: "An agreement by which the maker, installer, or both insures to the Owner the integrity of a product or system and shall be responsible for the material and labor required to repair, remove or replace a defective product or system with a non-defective product or system within the time specified."

§3.6 TAXES

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

§3.7 PERMITS, FEES AND NOTICES

§3.7.1 Unless otherwise provided in the Contract Documents, "Each Contractor" shall secure and pay for the building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded. "General Contractor shall secure and pay for local building permit. Mechanical and Electrical Contractors shall secure and pay for local permits for mechanical and electrical installation."

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

§3.7.3 While 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, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor

shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

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

§3.8 ALLOWANCES

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

§3.8.2 Unless otherwise provided in the Contract Documents:

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

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

§3.8.2.3 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 Section 3.8.2.1 and (2) changes in Contractor's costs and other expenses under Section 3.8.2.2.

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

§3.9 SUPERINTENDENT 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 be satisfactory to the Owner. So long as the superintendent remains employed by the Contractor or any related entity, the superintendent shall not be replaced without the Owner's prior written consent. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case.

§3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§3.10.1 The Contractor, promptly after being awarded the Contract, shall within 30 days after the Notice to Proceed and prior to the first application for payment, 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 current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§3.10.2 The Contractor shall within 45 days after the Notice to Proceed 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.

§3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§3.10.4 The construction schedule shall be a detailed format satisfactory to the Owner and Architect. If not accepted, the construction schedule shall be promptly revised by the Contractor in accordance with the recommendations of the Owner and Architect and resubmitted for acceptance. The Contractor shall monitor the progress of the Work relative to the Contract Documents, promptly advise the Owner and the Architect of any delays or potential delays and update the accepted construction schedule. In the event the updated construction schedule indicates any delays, the Contractor shall propose an alternative plan to correct the delay, including, without limitations, overtime, and/or addition labor, if necessary. In no event shall any proposed alternative plan constitute an adjustment in the Contract Time or Contract Sum unless such adjustment is agreed to by the Owner and authorized pursuant to Change Order.

§3.10.5 Should the Contractor fail or refuse to complete any portion of the work in accordance with the Construction Schedule, the Owner may perform or cause to be performed the work necessary to cause such completion, and all costs incurred by the Owner and the Architect shall be deducted from any monies which otherwise may become due the Contractor. Should such costs exceed monies due, the Contractor shall reimburse the Owner within 30 days of the Owner documenting the costs to the Contractor.

§3.10.6 No Adjustment or extension of schedule or time in which Contract is to be performed will be made or granted except as provided in Article 8 of General Conditions.

§3.11 DOCUMENTS AND SAMPLES AT THE SITE The Contractor shall maintain at the site for the Owner one record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work.

§3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

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

§3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract

Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action. Shop drawings, product data, samples, and similar submittals will not be considered by the Architect unless the submission clearly indicates that they have checked, coordinated between Subcontractors, and stamped approved by the Contractor, Subcontractor and fabricator.

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

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

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

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

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

§3.12.11 Contractors shall submit Shop Drawings in the form of five (5) prints of each sheet for each submittal until final review by Architect. Review comments of Architect will be made and returned to Contractor.

§3.12.12 Mechanical and Electrical Contractors shall, as soon as possible, submit to Architect two (2) copies of a brochure containing catalog cuts and specifications of all equipment being furnished. After Architect approval, one (1) copy shall remain in the file and one (1) copy shall be kept in job office for reference.

§3.12.13 When materials are specified "to be installed as per manufacturer's specifications or instructions", two (2) copies of these specifications or instructions shall be submitted to Architect.

§3.12.14 Contractor shall include, as part of Progress Schedule, dates various Shop Drawings will be made available for Architect approval. (Refer to General Conditions 3.10.).

§3.12.15 Shop Drawings shall be marked with the name of project, numbered consecutively, and bear stamp of approval of Contractor as evidence that Drawings have been checked by Contractor. Any drawings submitted without this stamp of approval will not be considered and will be returned to Contractor for re-submittal.

§3.12.16 Samples, where called for, shall be provided in triplicate, except where otherwise specified.

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

§3.14 CUTTING AND PATCHING

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

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

§3.15 CLEANING UP

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

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

§3.15.3 General Contractor shall remove all rubbish and leave building broom clean. Broom clean shall be defined as being free from dust and other material capable of being removed by use of a reasonable effort and a hand-held broom. In addition, General Contractor shall clean and wash all glass; replace any broken glass; remove stains, spots, marks and dirt from decorated work; clean hardware; remove paint spots and smears from all surfaces; clean fixtures; wash all concrete and tile floors; and vacuum and clean all carpets.

§3.16 ACCESS TO WORK The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

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

§3.18 INDEMNIFICATION

§3.18.1 To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Section 11.3, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, personal injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

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

§3.18.3 This "Hold Harmless Agreement" shall be specifically covered by Contractual Liability Insurance to be incorporated in Contractor's Commercial General Liability Policy and shall be so stated in insurance certificate provided by Contractor. Limits required for this coverage shall be same as for General Liability Coverage specified.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

§4.1 ARCHITECT

§4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

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

§4.1.3 If the employment of the Architect is terminated, the Owner shall employ a new Architect against whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the former Architect.

§4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

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

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

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

§4.2.4 Communications Facilitating Contract Administration. The Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract, except as otherwise provided in the Contract Documents. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner.

§4.2.5 Based on the Architect's evaluations of the Work as provided in Subparagraph 4.2.2 and on data comprising the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

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

§4.2.7 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not

conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may with the prior approval of the Owner authorize minor changes in the Work as provided in Section 7.4.

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

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

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

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

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

§4.3 CLAIMS AND DISPUTES

§4.3.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims shall be initiated by written notice and shall be expressly stated to be a Claim under this Paragraph 4.3. The responsibility to substantiate Claims shall rest with the party making the Claim.

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

§4.3.3 Continuing Contract Performance. Pending final resolution of a Claim except as otherwise agreed in writing or as provided in Section 9.7.1 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

§4.3.4 Claims for Concealed or Unknown Conditions. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such findings must be made within 21 days after the Architect has given notice of the finding. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree that the conditions are materially different or cannot agree on an adjustment in the Contract Sum or Contract Time, the matter shall be, subject to further proceedings pursuant to Section 4.4.

§4.3.5 Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Such notice shall include, to the extent then known by the Contractor, full details and substantiating data to permit evaluation by the Owner and the Architect. If further or other information subsequently becomes known to the Contractor, it shall be promptly furnished to the Owner and the Architect in writing. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.6.

§4.3.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Section 4.3. Failure to file any such Claim in accordance with this paragraph 4.3 shall constitute a waiver thereof.

§4.3.7 Claims for Additional Time

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

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

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

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

§4.3.10 Waiver of Claims. The Contractor waives Claims against the Owner for principal office expenses including the compensation of personnel stationed there, except those directly assigned to the Project to the extent of such assignment.

§4.4 RESOLUTION OF CLAIMS AND DISPUTES

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

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

§4.4.3 In evaluating Claims, the Architect may, but shall not be obligated to, consult with or seek information from either party.

§4.4.4 If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either provide a response or the requested supporting data, advise the Architect when the response or supporting data will be furnished or advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect will take one of the last four (4) numbered actions contemplated in Subparagraph 4.4.2 in writing stating the reasons therefore.

§4.4.5 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to final resolution of the Claim.

§4.5 MEDIATION

§4.5.1 Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5 shall, after initial recommendation by the Architect or 30 days after submission of the Claim to the Architect, be subject to mediation or the institution of legal or equitable proceedings by either party.

§4.5.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association.

§4.5.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

ARTICLE 5 SUBCONTRACTORS

§5.1 DEFINITIONS

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

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

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

§5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, shall within 20 consecutive calendar days, after award of the Contract, furnish in writing to the Owner through the Architect the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.

Apparent successful bidder, within two (2) days after notification that their bid has been accepted, shall submit to Architect, in writing, names and addresses of Sub-Contractors proposed to be used. Submit minimum of one (1) name for each section of Specifications and list section number and type of work for each name. Sub-Contractors with Sub-Contracts of \$2000 or less need not be listed. Failure of apparent successful bidder to have properly listed Sub-Contractors in Architect's office within two (2) days after notification will be cause for rejection of Bid by Owner. If agreement on Sub-Contractors cannot be reached, Owner reserves right to delete that particular portion of work from Contract and let separate Prime Contract for same. All listings shall be subject to preconstruction meetings and alternate bid selections. If construction conditions necessitate, Contractor, at no change in Contract Price, may make substitution of a Sub-Contractor provided such substitution is acceptable to Owner and Architect.

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

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

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

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

§5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

§5.4.1.1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements which the Owner accepts by notifying the Subcontractor and Contractor in writing; and

§5.4.1.2 assignment is subject to the prior rights of the surety, if any, obligated under a bond or bonds relating to the Contract.

§5.4.2 Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

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

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

§6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules and performance requirements when directed to do so. The Contractor shall make any revisions to the

construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

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

§6.2 MUTUAL RESPONSIBILITY

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

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

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

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

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

§6.2.6 Each Contractor agrees to coordinate his work with each other separate Contractor within the total timeframe established by the preparer of the overall Construction Schedule.

§6.3 OWNER'S RIGHT TO CLEAN UP If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will reasonably allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§7.1 GENERAL

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

§7.1.2 It is understood that these contract provisions will govern the pricing and administration of all change order proposals to be submitted by Subcontractors (Trade Contractors) and/or all other lower tier sub-subcontractors (all referred to as “Contractor”). In the event of a conflict between the other contract documents used for the project, the change order pricing contract provisions in this section shall govern.

§7.1.3 Contractor agrees that it will incorporate the provisions of this section into all agreements with lower tier Contractors who will also include this section into agreements with all lower tier subcontractors, etc. It is understood that these change order pricing provisions apply to all types of contracts and/or subcontracts specifically including lump sum (or fixed price contracts), unit price contracts. It is further understood that these change order provisions will apply to all methods of change order pricing specifically including lump sum change order proposals, unit price change order proposals, and cost plus Fee change order proposals.

§7.1.4 Whenever change order proposals to adjust the contract price become necessary, the Owner will have the right to select the method of pricing to be used by the contractor in accordance with the pricing provisions found in this section. The options will be (1) lump sum change order proposal, (2) unit price change order proposal, or (3) cost plus Fee change order proposal as defined in the following provisions.

§7.2 CHANGE ORDERS

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

§7.2.1.1 Change in the Work;

§7.2.1.2 The amount of the adjustment, if any, in the Contract Sum; and

§7.2.1.3 The extent of the adjustment, if any, in the Contract Time.

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

§7.3 PRICING OF CONSTRUCTION CONTRACT CHANGE ORDERS BY SUBCONTRACTORS LUMP SUM (FIXED PRICE) AND/OR UNIT PRICE SUBCONTRACTS

§7.3.1 LUMP SUM CHANGE ORDER PROPOSALS. The Contractor will submit a properly itemized Lump Sum Change Order Proposal covering the additional work and/or the work to be deleted. This proposal will be itemized for the various components of work and segregated by labor, material, and equipment in a detailed format satisfactory to Owner. The Owner will require itemized change orders on all change order proposals from the Contractor, subcontractors, and sub-subcontractors regardless of tier. Details to be submitted will include detailed line item estimates showing detailed materials quantity take-offs, material prices by item and related labor hour pricing information and extensions (by line item or by drawing as applicable.)

§7.3.2 LABOR Estimated labor costs to be included for self-performed work shall be based on the actual cost per hour paid by the Contractor for those workers or crews of workers who the contractor reasonably anticipates will perform the change order work. Estimated labor hours shall include hours only for those workmen and working foremen directly involved in performing the change order work. Supervision above the level of working foremen (such as general foremen, non-working foremen, superintendent, project manager, etc.) is considered to be included in the Markup Percentages as outlined

in paragraphs 7.3.6 and 7.3.7. Note: No separate allowances for warranty or safety expenses will be allowed as a direct cost of a change order. Costs attributed to warranty expenses and safety expense will be considered to be covered by the Markup Percentages as outlined in paragraphs 7.3.6 and 7.3.7.

§7.3.3 LABOR BURDEN. Labor burden allowable in change orders shall be defined as employer's net actual cost of payroll taxes (FICA, Medicare, SUTA, FUTA), net actual cost for employer's cost of union benefits (or other usual and customary fringe benefits if the employees are not union employees), and net actual cost to employer for worker's compensation insurance taking into consideration adjustments for experience modifiers, premium discounts, dividends, rebates, expense constants, assigned risk pool costs, net cost reductions due to policies with deductibles for self-insured losses, assigned risk rebates, etc. Contractor shall reduce their standard payroll tax percentages to properly reflect the effective cost reduction due to the estimated impact of the annual maximum wages subject to payroll taxes. (An estimated percentage for labor burden may be used for pricing change orders. However, the percentage used for labor burden to price change orders will be examined at the conclusion of the project and an adjustment to the approved change orders will be processed if it is determined that the actual labor burden percentage should have been more or less than the estimated percentage used.)

§7.3.4 MATERIAL. Estimated material change order costs shall reflect the Contractor's reasonably anticipated net actual cost for the purchase of the material needed for the change order work. Estimated material costs shall reflect cost reductions available to the Contractor due to "non-Cash" discounts, trade discounts, free material credits, and/or volume rebates. "Cash" discounts (i.e. prompt payment discounts of 1.5% or less) available on material purchased for change order work shall be credited to Owner if the Contractor is provided Owner funds in time for Contractor to take advantage of any such "cash" discounts. Price quotations from material suppliers must be itemized with unit prices for each specific item to be purchased. "Lot pricing" quotations will not be considered sufficient substantiating detail.

§7.3.5 EQUIPMENT. Allowable change order estimated costs may include appropriate amounts for rental of major equipment specifically needed to perform the change order work (defined as tools and equipment with an individual purchase cost of more than \$750). For contractor owned equipment, the "bare" equipment rental rates allowed to be used for pricing change order proposals shall be 75% of the monthly rate listed in the most current publication of The AED Green Book divided by 173 to arrive at a maximum hourly rate to be applied to the hours the equipment is used performing the change order work. Further, for contractor owned equipment the aggregate equipment rent charges for any single piece of equipment used in all change order work shall be limited to 50% of the fair market value of the piece of equipment when the first change order is priced involving usage of the piece of equipment. Fuel necessary to operate the equipment will be considered as a separate direct cost associated with the change order work.

§7.3.6 MAXIMUM MARKUP PERCENTAGE ALLOWABLE ON SELF-PERFORMED WORK.

With respect to pricing change orders, the maximum Markup Percentage Fee to be paid to any Contractor (regardless of tier) on self-performed work shall be a single markup percentage not-to-exceed fifteen percent (15%) of the net direct cost of (1) direct labor and allowable labor burden costs applicable to the change order or extra work; (2) the net cost of material and installed equipment incorporated into the change or extra work, and (3) net rental cost of major equipment and related fuel costs necessary to complete the change in the Work.

§7.3.7 MAXIMUM MARKUP PERCENTAGES ALLOWABLE ON WORK PERFORMED BY LOWER TIER CONTRACTORS.

With respect to pricing the portion of change order proposals involving work performed by lower tier contractors, the maximum Markup Percentage Fee allowable to

the Contractor supervising the lower tier contractor's work shall not exceed five percent (5%) of the net of all approved change order work performed by all subcontractors combined for any particular change order proposal.

§7.3.8 NO MARKUP ON BONDS AND LIABILITY INSURANCE COSTS. Change Order cost adjustments due increases or decreases in bond or insurance costs (if applicable) shall not be subject to any Markup Percentage Fee.

§7.3.9 DIRECT AND INDIRECT COSTS COVERED BY MARKUP PERCENTAGES. As a further clarification, the agreed upon Markup Percentage Fee is intended to cover the Contractor's profit and all indirect costs associated with the change order work. Items intended to be covered by the Markup Percentage Fee include, but are not limited to: home office expenses, branch office and field office overhead expense of any kind; project management; superintendents, general foremen; non-working foremen, estimating, engineering; coordinating; expediting; purchasing; detailing; legal, accounting, data processing or other administrative expenses; shop drawings; permits; auto insurance and umbrella insurance; pick-up truck costs; and warranty expense costs. The cost for the use of small tools is also to be considered covered by the Markup Percentage Fee. Small tools shall be defined as tools and equipment (power or non-power) with an individual purchase cost of less than \$750.

§7.3.10 DEDUCT CHANGE ORDERS AND NET DEDUCT CHANGES. The application of the markup percentages referenced in the preceding paragraphs §7.3.6 and §7.3.7 will apply to both additive and deductive change orders. In the case of a deductive change order, the credit will be computed by applying the sliding scale percentages as outlined in paragraphs §7.3.6 and §7.3.7 so that a deductive change order would be computed in the same manner as an additive change order. In those instances where a change involves both additive and deductive work, the additions and deductions will be netted and the markup percentage adjustments will be applied to the net amount.

§7.3.11 CONTINGENCY. In no event will any lump sum or percentage amounts for "contingency" be allowed to be added as a separate line item in change order estimates. Unknowns attributable to labor hours will be accounted for when estimating labor hours anticipated to perform the work. Unknowns attributable to material scrap and waste will be estimated as part of material costs.

§7.3.12 CHANGE ORDER PROPOSAL TIME AND CHANGE DIRECTIVES. The Contractor's proposals for changes in the contract amount or time shall be submitted within seven (7) calendar days of the Owner's request, unless the Owner extends such period of time due to the circumstances involved. If such proposals are not received in a timely manner, if the proposals are not acceptable to Owner, or if the changed work should be started immediately to avoid damage to the project or costly delay, the Owner may direct the Contractor to proceed with the changes without waiting for the Contractor's proposal or for the formal change order to be issued. In the case of an unacceptable Contractor proposal, the Owner may direct the Contractor to proceed with the changed work on a cost-plus basis with an agreed upon "not-to-exceed" price for the work to be performed. Such directions to the Contractor by the Owner shall be confirmed in writing by a "Notice to Proceed on Changes" letter within seven (7) calendar days. The cost or credit, and or time extensions will be determined by negotiations as soon as practical thereafter and incorporated in a Change Order to the Contract.

§7.3.13 GENERAL LIABILITY INSURANCE AND BONDS. In the event the Contractor has been required to furnish comprehensive general liability insurance and/or performance and/or payment bonds as part of the base contract price, a final contract change order will be processed to account for the

Contractor's net increase or decrease in comprehensive general liability insurance costs and/or bond premium costs associated with change orders to Contractor's base contract price.

§7.4 MINOR CHANGES IN THE WORK. The Architect will have authority upon prior approval of the Owner to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

§7.5.1 UNIT PRICE CHANGE ORDER PROPOSALS. As an alternative to Lump Sum Change Order Proposals, the Owner or the Construction Manager acting with the approval of the Owner may choose the option to use Contract Unit Prices. Agreed upon Contract Unit Prices shall be the same for added quantities and deductive quantities. Unit Prices are not required to be used for pricing change orders where other methods of pricing change order work are more equitable.

§7.5.2 The Contractor will submit, within seven (7) days after receipt of the Owner's written request for a Unit Price Proposal, a written Unit Price proposal itemizing the quantities of each item of work for which there is an applicable Contract Unit Price. The quantities must be itemized in relation to each specific contract drawing.

§7.5.3 Contract Unit Prices will be applied to net differences of quantities of the same item. Such Contract Unit Prices will be considered to cover all direct and indirect costs of furnishing and installing the item including the subcontractor's Markup Percentage Fee.

§7.6.1 COST PLUS CHANGE ORDER PROPOSALS. As an alternative to either Lump Sum Change Order Proposals or Unit Price Change Order Proposals, the Owner may elect to have any extra work performed on a cost plus markup percentage fee basis. Upon written notice to proceed, the Contractor shall perform such authorized extra work at actual cost for direct labor (working foremen, journeymen, apprentices, helpers, etc.), actual cost of labor burden, actual cost of material used to perform the extra work, and actual cost of rental of major equipment (without any charge for administration, clerical expense, general supervision or superintendent of any nature whatsoever, including general foremen, or the cost or rental of small tools, minor equipment, or plant) plus the approved Markup Percentage Fee. The intent of this clause is to define allowable cost plus chargeable costs to be the same as those allowable when pricing Lump Sum Change Proposals as outlined in subparagraphs 7.3.1 through 7.3.13 above. Owner and Contractor may agree in advance in writing on a maximum price for this work and Owner shall not be liable for any charge in excess of the maximum. Daily time sheets with names of all Contractor's employees working on the project will be required to be submitted to the Owner for both labor and equipment used by the Contractor for time periods during which extra work is performed on a cost plus fee basis. Daily time sheets will break down the paid hours worked by the Contractor's employees showing both base contract work as well as extra work performed by each employee.

§7.7.1 ACCURATE CHANGE ORDER PRICING INFORMATION. Contractor (subcontractor or sub-subcontractor) agrees that it is responsible for submitting accurate cost and pricing data to support its Lump Sum Change and/or Cost Plus Change Order Proposals or other contract price adjustments under the contract. Contractor further agrees to submit change order proposals with cost and pricing data which is accurate, complete, current, and in accordance with the terms of the contract with respect to pricing of change orders. Contractor agrees that any "buy-out savings" on change orders shall accrue 100% to Owner. "Buy-out savings" are defined as any savings negotiated by the Contractor with a subcontractor or a material supplier after receiving approval of a change order amount that was designated to be paid to a specific subcontractor or supplier for the approved change order work.

§7.7.2 RIGHT TO VERIFY CHANGE ORDER PRICING INFORMATION. Contractor, subcontractor and sub-sub-contractor agrees that any designated Owner's representative will have the

right to examine (copy or scan) the records of the Contractor, subcontractor or sub-sub contractor's records (during the contract period and up to three years after final payment is made on the contract) to verify the accuracy and appropriateness of the pricing data used to price all change order proposals and/or claims. Contractor agrees that if the Owner determines the cost and pricing data submitted (whether approved or not) was inaccurate, incomplete, not current, or not in compliance with the terms of the contract regarding pricing of change orders, an appropriate contract price adjustment will be made. Such post-approval contract price adjustments will apply to all levels of contractors and/or subcontractors and to all types of change order proposals specifically including lump sum change orders, unit price change orders, and cost-plus change orders.

§7.7.3 REQUIREMENTS FOR DETAILED CHANGE ORDER PRICING INFORMATION.

Contractor, subcontractor agrees to provide and require all Subcontractors and sub-subcontractors to provide a breakdown of allowable labor and labor burden cost information as outlined in this section. This information will be used to evaluate the potential cost of labor and labor burden related to change order work. It is intended that this information represent an accurate estimate of the Contractor's actual labor and labor burden cost components. This information is not intended to establish fixed billing or change order pricing labor rates. However, at the time change orders are priced, the submitted cost data for labor rates may be used to price change order work. The accuracy of any such agreed upon labor cost components used to price change orders will be subject to later audit. Approved change order amounts may be adjusted later to correct the impact of inaccurate labor cost components if the agreed upon labor cost components are determined to be inaccurate.

§7.8.1 DISCOUNTS. If a Contractor enters into an agreement to pay a subcontractor before they receive payment the Owner and in return they negotiate an early payment discount, the amount of any such discount that the contractor is allowed to keep as a "cash discount earned" will be limited to one and one-half percent (1.5%) of the costs subject to discount. Any percentage of discount greater than one and one-half percent (1.5%) shall be credited to the Owner as a reduction to the reimbursable Cost of Work and a credit to trade contracts or material purchases, and change orders as applicable.

ARTICLE 8 TIME

§8.1 DEFINITIONS

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

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

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

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

§8.2 PROGRESS AND COMPLETION

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

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

changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

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

§8.3 DELAYS AND EXTENSIONS OF TIME

§8.3.1 If the Contractor is materially delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or Architect, or of an employee of either, or of a separate contractor employed by the Owner, or by changes ordered in the Work, or by fire, unavoidable casualties or other causes beyond the Contractor's control, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect and Owner may determine.

§8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section 4.3.

§8.3.3 Extension of time shall be Contractor's sole remedy for delay unless the same shall have been caused by acts constituting intentional interference by the Owner with the Contractor's performance of the Work and where and to the extent that such acts continue after Contractor's notice to the Owner of such interference. Owner's exercise of any of its rights under ARTICLE 7 CHANGES IN THE WORK regardless of the extent or number of such changes, or Owner's exercise of any of its remedies of suspension of the Work, or requirement of correction or re-execution of any defective work, shall not under any circumstances be construed as intentional interference with Contractor's performance of the Work.

ARTICLE 9 PAYMENTS AND COMPLETION

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

§9.2 SCHEDULE OF VALUES

§9.2.1 Before the first Application for Payment, and if necessitated by Change Orders, from time to time thereafter, the Contractor shall submit to the Architect and the Owner a schedule of values allocated to various portions of the Work. The schedule shall be dated and signed by the Contractor and shall include a description of the work, quantities, labor, materials and total contract amount for each item, prepared in such form and supported by such data to substantiate its accuracy as the Architect and Owner may require. This schedule, when, and only when approved in writing by the Architect and Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§9.3 APPLICATIONS FOR PAYMENT

§9.3.1 At least ten days before the date established for each progress payment, and if necessitated by Change Orders, from time to time thereafter, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the most recent approved schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

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

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

§9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in writing in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

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

§9.3.4 The amount of money retained by the Owner from each monthly billing shall be 5%.

§9.3.4.1 All retained amounts shall be held by the Owner until final completion as identified in the General Conditions of the Contract for Construction.

§9.3.4.2 When the Work of each contract has reached 50% completion (as determined by the Owner and Architect) no additional amounts will be retained.

§9.4 CERTIFICATES FOR PAYMENT

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

§9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of the Architect's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the

Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§9.5 DECISIONS TO WITHHOLD CERTIFICATION

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

§9.5.1.1 Defective Work not remedied;

§9.5.1.2 Third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;

§9.5.1.3 Failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;

§9.5.1.4 Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

§9.5.1.5 Damage to the Owner or another contractor;

§9.5.1.6 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

§9.5.1.7 Failure to carry out the Work in accordance with the Contract Documents.

§9.5.1.8 Failure to process project documentation such as Architect or Owner requests for information, proposal requests, field orders, change order, submittals within fourteen (14) days upon receipt from the Architect or Owner.

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

§9.6 PROGRESS PAYMENTS

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

Agreement will provide a basis of payment as follows: On or about the tenth (10th) day of each month, 95% based on Contract Prices, of labor and materials incorporated in Work and/or value of materials stored on premises up to first day of month, as estimated by Architect, less aggregate of previous payments.

Application for payment shall be made on forms designated by the Architect or Owner.

After project is 50% complete, there shall be no additional retainage up to substantial completion, except on materials stored on site.

Upon determination by Architect that satisfactory progress has been made, payments authorized at time of substantial completion shall be for total retainage in Contract, except that an amount equal to twice estimated cost to complete or correct items on a tentative list of uncompleted items shall be retained until final completion.

When Project is completed in accordance with terms of Contract, final payment shall be due and payable to Contractor. Contractor shall notify Architect that Work is complete and Architect shall promptly make an inspection. Upon finding Work complete, Architect shall authorize final payment in accordance with Sub-Paragraph 9.10 of these General Conditions. Final Payment shall be made within 30 days of final certificate.

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

This provision shall not be construed as relieving Contractor from sole responsibility for care and protection of materials and work upon which payments have been made or the restoration of any damaged work or materials or as a waiver of the right of Owner to require fulfillment of all terms of Contract.

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

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

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

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

§9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner.

§9.7 FAILURE OF PAYMENT If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents the amount certified by the Architect, then the Contractor may, upon seven additional days' written notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs incurred for shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§9.8 SUBSTANTIAL COMPLETION

§9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use. The Work will not be considered suitable for Substantial Completion review until all Project systems are operational as designed; all designated or required governmental inspections and certifications have been made and posted, designated instruction of Owner's personnel in the operation of systems have been completed and all final finishes are in place. In general, the only remaining work shall be minor in nature, such that the Owner could occupy the building on the following date for its intended use and that the completion of the work by the Contractor would not materially interfere or hamper the Owner's normal business operation. As a further condition of Substantial Completion acceptance, the Contractor shall certify that all remaining work will be completed within 30 consecutive calendar days following the date of Substantial Completion.

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

§9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion. In the event all items on the Contractor's first list, as may have been amended by the Architect or Owner, have not been completed or corrected by the Contractor on the date of the second review, except items for which an extension of time has been agreed upon, the Contractor shall be deemed to have been neglected to prosecute the Work properly, and subsequent reviews required by the Architect and Owner's Representative to substantiate final completion will be deemed an extra service to the Owner. For this extra service, the Architect and Owner's Representative will be reimbursed by the Owner and due to the Contractor's failure to complete the Work as required; this reimbursement will be deducted from the funds due the Contractor by the Owner under the terms of this Agreement.

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

§9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall reduce the retainage withheld, as provided elsewhere in the Contract Documents. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§9.9 PARTIAL OCCUPANCY OR USE

§9.9.1 When applicable, the Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.4.1.5. Such

partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

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

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

§9.10 FINAL COMPLETION AND FINAL PAYMENT

§9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection and, when the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

§9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect if form and substance satisfactory 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 canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall promptly pay to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted

shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

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

§9.10.4.1 Liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;

§9.10.4.2 Failure of the Work to comply with the requirements of the Contract Documents; or

§9.10.4.3 Terms of special warranties required by the Contract Documents.

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

§9.10.6 Warranties required by the Contract Documents shall commence on the date of Final Completion of the Work or designated portion thereof.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§10.1 SAFETY PRECAUTIONS AND PROGRAMS The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§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:

§10.2.1.1 Employees on the Work and other persons who may be affected thereby;

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

§10.2.1.3 All materials delivered on premises for Work shall be neatly and compactly piled with such protection as may be required to prevent damage or soiling. If a Contractor's equipment or stored material interferes with work of another Contractor, Contractor shall move same to another location upon reasonable advance notice. General Contractor shall protect all glass surfaces against damage and discoloration due to run off of alkalis leaking from masonry materials and fluorides that wash from concrete floors treated with hardening solutions. To avoid damage, wash glass as soon as practical after a rain or other wash off conditions. All Contractors shall protect glass against pitting by welding sparks whenever such work is carried on in the vicinity of glazed openings.

§10.2.1.4 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.

§10.2.1.5 General Contractor shall provide pumps, equipment, and enclosures to protect excavations, trenches, and building against damage from rain water, spring water, drain or sewer back-up, and all other

water. General Contractor shall construct and maintain all necessary drainage and pumping to keep excavation free of water.

§10.2.1.6 General Contractor shall remove snow and ice as necessary to protect and execute Work.

§10.2.1.7 General Contractor shall provide continuous protection for Work, materials, apparatus, and fixtures against damage from wind, storms, rain, frost, heat, and other weather. For example; masonry work must be covered at end of each day's work.

§10.2.1.8 General Contractor shall protect all Work from cold weather damage. Should low temperatures make it impossible to continue operations safely, Contractor shall cease and shall notify Architect as soon as possible.

§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. Comply fully with General Orders of Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518, Safety and Health Regulations for Construction. Precautions shall be taken at all times for protection of persons and property. All scaffolds, forms and other support equipment shall be carefully designed to adequately support any superimposed loads. Any damage or injuries resulting from collapse of such scaffolds, forms or supporting equipment shall be responsibility of Contractor.

§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. General Contractor shall provide and maintain guard lights at barricades; railings; street; road and sidewalk obstructions; and at all trenches adjacent to public walks and roads.

§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 Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18. If glass is broken and plastering or other work is damaged, it will be repaired at expense of Contractor doing damage. If responsible party cannot be found, cost will be equally pro-rated among Contractors working in building at time damage occurred.

§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. Storage area on the premises will be apportioned among the various Contractors as needs dictate with due regard for storage requirements of each Contractor. Each Contractor shall be responsible for safety of their materials which are stored on premises.

§10.3 HAZARDOUS MATERIALS

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

§10.3.2 The Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to verify that it has been rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner, and in the event of an objection, the specific reasons therefore. If either the Contractor or Architect has a reasonable objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. If the absence of the material or substance is verified, work shall immediately resume without adjustment to the Contract Time or the Contract sum. If the presence of the material or substance is verified, when the material or substance has been rendered harmless, work in the affected area shall resume upon written agreement of the Owner and Contractor. The Contract Time shall be extended if an as appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs and incurred of shut-down, delay and start-up, if any, which adjustments shall be accomplished as provided in Article 7.

§10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) and provided that such damage, loss or expense is not due to the sole negligence of a party seeking indemnity.

§10.4 The Owner shall not be responsible under Section 10.3 for materials and substances brought to the site by the Contractor.

§10.5 If, without negligence on the part of the Contractor, or a breach of revelant provisions of the Contract Documents, the Contractor is held liable for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

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

ARTICLE 11 INSURANCE AND BONDS

§11.1 CONTRACTOR'S LIABILITY INSURANCE

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

§11.1.1.1 Claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;

§11.1.1.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;

§11.1.1.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;

§11.1.1.4 Claims for damages insured by usual personal injury liability coverage;

§11.1.1.5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

§11.1.1.6 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;

§11.1.1.7 Claims for bodily injury or property damage arising out of completed operations; and

§11.1.1.8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§11.1.1.9 Workers' Compensation, Employer's Liability and Occupational Diseases Insurance covering Contractor's liability under all applicable laws and statutes.

§11.1.1.10 Commercial General Liability coverage including completed Operation Coverage for all of Contractor's activities in connection with this Project.

§11.1.1.11 Business Automobile Liability Insurance covering Contractor's legal liability for ownership, operation, maintenance or use of any vehicle owned, non-owned or hired automobiles used in connection with this Project.

§11.1.1.12 Owner and Architect are to be indemnified and held harmless from all accidents arising out of Contractor's operation.

§11.1.2 The insurance required by Section 11.1.1 shall be primary and written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

§11.1.3 Certificates of insurance countersigned by a Wisconsin Resident agent or authorized Representative of the insurer acceptable to the Owner shall be filed with the Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. These insurance policies shall be renewed annually until date of final payment and final completion of the project. Upon annual

renewal of the required insurance thereafter, the City shall receive a new Certificate of Insurance. The Certificates shall describe the contract by name and or identification number in the “Description of Operations” section of the form. If any of the foregoing insurance coverages are required to remain in force after final payment and are reasonably available, an additional certificate evidencing continuation of such coverage shall be submitted with the final Application for Payment as required by Section 9.10.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with 30 days’ notice.

§11.1.4 REQUIRED INSURANCE COVERAGE It is hereby agreed and understood that the insurance required by the City of Appleton is primary coverage; and that any insurance or self-insurance maintained by the City of Appleton, its officers, council members, agents, employees or authorized volunteers will not contribute to a loss. All insurance shall be in full force prior to commencing work and remain in force until the entire job is completed or the length of time that is specified in the contract.

§11.1.4.1 GENERAL LIABILITY COVERAGE

§11.1.4.1.1 Commercial General Liability

\$1,000,000 general aggregate
\$1,000,000 products – completed operations aggregate
\$500,000 personal injury and advertising injury
\$500,000 each occurrence limit

§11.1.4.1.2 Claims made form of coverage is not acceptable.

§11.1.4.1.3 Insurance must include:

Premises and Operations Liability
Blanket Contractual Liability
Personal Injury
Explosion, collapse and underground coverage
Products/Completed Operations
The general aggregate must apply separately to this project/location

§11.1.4.2 BUSINESS AUTOMOBILE COVERAGE

§11.1.4.2.1 Limits - \$250,000 each person/\$500,000 each accident for Bodily Injury and \$100,000 for Property Damage OR \$500,000 Combined Single Limit for Bodily Injury and Property Damage each accident

§11.1.4.2.2 Must cover liability for “Any Auto” – including Owned, Non-Owned and Hired Auto-mobile Liability

§11.1.4.3 WORKERS COMPENSATION AND EMPLOYERS LIABILITY. If required by Wisconsin State Statute or any Workers Compensation Statutes of a different state, must carry coverage for Statutory Workers Compensation & Employers Liability limit of:

§11.1.4.3.1 \$100,000 Each Accident

§11.1.4.3.2 \$500,000 Disease Policy Limit

§11.1.4.3.3 \$100,000 Disease – Each Employee

§11.1.4.4 UMBRELLA COVERAGE

§11.1.4.4.1 Limits - \$5,000,000 each occurrence /\$5,000,000 aggregate

§11.1.4.4.2 Claims made coverage is not acceptable

§11.1.4.4.3 \$10,000 self-insured retention

§11.1.4.4.4 Must be no less broad than underlying coverages

§11.1.4.5 AIRCRAFT LIABILITY (including helicopter) – Owner, Non-Owned, or Hired

§11.1.4.5.1 If this exposure shall exist, the limits must be at least \$5,000,000 combined single limit for bodily injury (including passenger liability) and property damage.

§11.1.4.5.2 Any liability exclusions relating to slung cargo must be deleted.

§11.1.4.6 ADDITIONAL PROVISIONS

§11.1.4.6.1 Additional Insured – On the General Liability Coverage, Comprehensive Automobile Coverage and Umbrella Coverage. City of Appleton, and its officers, council members, agents, employees, authorized volunteers shall be Additional Insureds.

§11.1.4.6.2 Endorsement – The Additional Insured Policy endorsement must accompany the Certificate of Insurance.

§11.1.4.6.3 Certificates of Insurance – A copy of the Certificate of Insurance must be on file with the City Clerk.

§11.1.4.6.4 Note - City of Appleton requires 30 day written notice of cancellation, non-renewal or material change in the insurance coverage.

§11.1.4.6.5 The insurance coverage required must be provided by an insurance carrier with the “Best” rating of “A-VII” or better. All carriers shall be admitted carriers in the State of Wisconsin.

§11.2 OWNER'S LIABILITY INSURANCE The Owner may purchase and maintain insurance for self-protection against claims which may arise from operations under the contract

§11.3 PROPERTY INSURANCE

§11.3.1 Unless otherwise provided, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in the State of Wisconsin property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than the Owner has an insurable interest in the property required by this Section to be covered, whichever is earlier. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project. Coverage will be provided for goods stored off site with a limit of \$100,000, transit limit of \$100,000. This insurance does not include Contractor or Subcontractor's property owned or rented or similar property which is not intended to be incorporated into or become a permanent part of the structure. Nor does this insurance cover startup and testing of any installed equipment. Contractor shall be solely responsible for insuring the startup and testing of any equipment installed pursuant to the Contract.

§11.3.1.1 Property insurance shall be on an "all-risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) vandalism and malicious mischief. Coverage for other perils shall not be required unless otherwise provided in the Contract Documents.

§11.3.1.2 If the Owner does not intend to purchase such property insurance required by the Contract and with all of the coverages in the amount described above, the Owner shall so inform the Contractor in writing prior to commencement of the Work. The Contractor may then effect insurance which will protect the interests of the Contractor, Subcontractors and Sub-subcontractors in the Work, and by appropriate Change Order the cost thereof shall be charged to the Owner. If the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, without so notifying the Contractor in writing, then the Owner shall bear all reasonable costs properly attributable thereto.

§11.3.1.3 If the property insurance requires deductibles, the Contractor shall pay costs not covered because of such deductibles. Deductibles costs shall be \$10,000 per occurrence (except \$50,000 for earth movement, flood and surface water).

§11.3.1.4 The Contractor shall carry sufficient all risk insurance on both owned and leased equipment at the site of work and en route to and from the site of work to fully protect him. The Contractor shall require the same coverage of his Subcontractors. It is expressly understood and agreed that the Owner shall bear no responsibility for any loss or damage to such equipment.

§11.3.1.5 When applicable, partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance. Owner's Fire and Extended Coverage Insurance will not cover equipment such as tools owned by mechanics or tools, sheds, hoists, canvasses, tarpaulins, mixers, scaffolding, staging and towers owned or rented by Contractor. Contractor may carry such additional Fire and Extended Coverage, Theft and Vandalism Insurance as Contractor may deem necessary to protect equipment and property.

§11.3.2 Loss of Use Insurance. The Owner, at the Owner's option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused.

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

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

§11.3.5 A loss insured under the builder's risk property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner for the benefit of the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§11.3.6 The Owner shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Sections 4.5.

§11.4 PERFORMANCE BOND AND PAYMENT BOND

§11.4.1 See Supplementary Conditions.

§11.4.2 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.

§11.4.3 Every Contractor for work under this Project shall furnish surety company bond in an amount not less than full amount of this Contract as security for faithful performance of Contract, and shall furnish a Payment Bond. Bonds shall continue for 12 months after date of final certificate. Premium for bonds shall be paid by Contractor. Surety Company's form shall conform to Owner's requirements.

§11.4.4 After opening of bids, but before signing of Contract, Owner reserves right to waive either or both bond requirements. If Owner waives bond requirements, amount equal to premium cost of either or both bonds shall be deducted from total amount of Contract. Owner will not dictate name of bonding company, but reserves the right to approve or disapprove company selected by Contractor.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§12.1 UNCOVERING OF WORK

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

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

§12.2 CORRECTION OF WORK

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

§12.2.2 AFTER SUBSTANTIAL COMPLETION

§12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of

warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor at Contractor's expense 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 express acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. If any of the Work is found to be not in accordance with the requirements of the Contract Documents during the one-year period for correction of Work, and if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

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

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

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

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

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

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

ARTICLE 13 MISCELLANEOUS PROVISIONS

§13.1 GOVERNING LAW The Contract shall be governed by the law of the State of Wisconsin.

§13.2 SUCCESSORS AND ASSIGNS

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

without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§13.2.2 The Owner may, without consent of the Contractor, assign the Contract to an institutional lender providing construction financing for the Project. In such event, the lender shall assume the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

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

§13.4 RIGHTS AND REMEDIES

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

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

§13.5 TESTS AND INSPECTIONS

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

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

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

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

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

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

§13.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

§13.6.1 As between the Owner and Contractor:

§13.6.1.1 Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;

§13.6.1.2 Between Substantial Completion and Final Certificate for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and

§13.6.1.3 After Final Certificate for Payment. As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Section 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Section 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§14.1 TERMINATION BY THE CONTRACTOR

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

§14.1.1.1 Issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;

§14.1.1.2 An act of government, such as a declaration of national emergency which requires all Work to be stopped;

§14.1.1.3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or

§14.1.1.4 The Owner has failed to furnish to the Contractor promptly, upon the Contractor's request, reasonable evidence as required by Section 2.2.1.

§14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate

more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work properly executed and for payment of costs directly related to Work thereafter performed by Contractor in terminating the Contract, including reasonable demobilization and cancellation charges, proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit thereon.

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

§14.2 TERMINATION BY THE OWNER FOR CAUSE

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

§14.2.1.1 Persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

§14.2.1.2 Fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;

§14.2.1.3 Persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction; or

§14.2.1.4 Otherwise is guilty of substantial breach of a provision of the Contract Documents.

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

§14.2.2.1 Take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;

§14.2.2.2 Accept assignment of subcontracts pursuant to Section 5.4; and

§14.2.2.3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Contractor, the Owner shall furnish to the Contractor an accounting of the costs incurred by the Owner in finishing the Work.

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

§14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The

amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Architect, upon application, and this obligation for payment shall survive termination of the Contract.

§14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

§14.3.2.1 That performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or

§14.3.2.2 That an equitable adjustment is made or denied under another provision of the Contract.

§14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

§14.4.2.1 Cease operations as directed by the Owner in the notice;

§14.4.2.2 Take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

§14.4.2.3 Except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be entitled to receive payment for Work executed in accordance with the Contract Documents, and costs incurred by reason of such termination, along with reasonable overhead and profit thereon.

§14.4.4 Upon a determination by a court of competent jurisdiction that termination of the Contractor pursuant to Paragraph 14.2 was wrongful or otherwise improper, such termination shall be deemed for convenience pursuant to paragraph 14.4 and the provisions of Subparagraph 14.4.3 shall apply.

ARTICLE 15 DOCUMENTATION TO BE SUBMITTED TO THE OWNER

Copies of the following items will need to be submitted to the Owner's Representative periodically as requested by the Owner to keep Owner informed regarding transactions related to the project:

§15.1 SUBCONTRACT INFORMATION

15.1.1 Full copies of all subcontracts with attachments, etc.

§15.1.2 Copies of subcontracts proposals for successful and unsuccessful bidders. Also include a copy of the bid tabulation if prepared.

§15.1.3 Full copies of all subcontract change orders with related correspondence, change order price proposals with supporting change order estimating take-off sheets detailing by plan sheet the quantity of material additions or deletions and the price per unit of material, the related labor hours involved in making the change for each material line item, the estimated actual labor cost per hour and the estimated actual cost of labor burden, etc. in a form satisfactory to the Owner.

§15.2 PURCHASE ORDER INFORMATION

§15.2.1 Full copies of all Purchase Orders with attachments.

§15.2.2 Copies of Purchase Order proposals for successful and unsuccessful suppliers. Also include a copy of the bid tabulation if prepared.

§15.2.3 Full copies of all Purchase Order change notices with related correspondence, detailed estimating take-off sheet, change notice price proposals, etc. in a form satisfactory to the Owner.

§15.3 PAYROLL INFORMATION

§15.3.1 Information of actual wage and/or salary rates should be submitted to the Owner for approval in advance. Cost reimbursement will be subject to such approvals subject to audit verification of actual wages paid.

§15.3.2 Daily time reports, time cards, time sheet, foreman reports or other similar documents which document the hours worked by an individual at the job site. Such information should have a brief description of the work performed (a cost code notation, etc.) to document how the individuals time was spent during the day. These should be approved by the appropriate foreman and superintendent. Reimbursable supervisory personnel time reports should be approved by the Project Manager.

§15.3.3 Certified payroll listings and/or related payroll registers documenting the actual wages paid to the individuals charged to the job. This information should be reconcilable to the payroll charged to the job.

§15.3.4 Computations of the labor burden chargeable to the job in accordance with the contract, subject to audit verification of actual costs.

§15.4 SUBCONTRACT AND PURCHASE ORDER INVOICES

§15.4.1 Invoices from Subcontractors.

§15.4.2 Purchase order invoices with receiving reports where applicable.

§15.5 CONTRACTOR OWNED EQUIPMENT RENTAL INFORMATION

§15.5.1 Copies of daily equipment usage reports documenting how the equipment was used and the number of hours used in the execution of the work at the site. This information should be submitted daily for major pieces of equipment (and at least weekly for all other pieces of equipment) and should be reconcilable to the Contractor's charges for equipment rental.

§15.5.2 Information supporting the original purchase price, and/or the fair market value of each piece of equipment at the time it was committed to the job. The Contractor should submit requested equipment rental rates (hourly, daily, weekly and/or monthly) for advance review and written approval by the Owner before any items are committed to the job. Added items should go through the same advance Owner review and approval process, with respect to value and rates subject to post audit verification of accuracy of equipment information represented, as well as the accuracy of rental rates assigned.

§15.5.3 The Contractor shall maintain an inventory of all rented and/or purchased equipment which is used on the job. For purchased items, the inventory should describe the piece of equipment and the seller, note the date the piece of equipment was purchased, the purchase price, the condition of the equipment, etc. For rented items the inventory should describe the piece of equipment which was initially rented and the date the piece of equipment was returned to the leaser. A copy of this inventory should be furnished to the Owner monthly.

§15.6 OTHER JOB COST SUPPORT AND INFORMATION

§15.6.1 Copies of all miscellaneous general conditions invoices for supplies, materials, equipment rental, etc. Such invoices should include a reference showing that the cost was incurred for the project and should show approval via requisition, etc. of receipt of goods or services where applicable.

§15.6.2 Copies of information supporting any insurance and/or bond coverage chargeable to the job in accordance with the Contract. Insurance certified should be forwarded when the insurance takes effect. Owner may request copies of insurance policies, premium notices, correspondence with insurance company audit information, dividend information, etc.

§15.7 DAILY JOB SUPERINTENDENT REPORT

§15.7.1 Copies of the Contractor's field representative daily report showing such information as weather, general description of work performed, listing of subcontractors working, size of subcontract crews, daily general contractor head count by classification of worker, etc.

§15.7.2 Such reports should be prepared daily and submitted to the Owner weekly if requested by the Owner.

§15.8 OTHER COST SUPPORTING INFORMATION

§15.8.1 The Owner may require from time to time additional information which is not listed in this Article. Other requests will be communicated to the Contractor on an as needed basis, such as budget versus actual cost reports for labor, materials, subcontracts, etc.

§15.8.2 The Owner may request from time to time copies or payroll related information such as employee time sheets, payroll registers etc. and labor burden documentation from Subcontractors and Sub-subcontractors to evaluate the accuracy of change order pricing and/or verify the accuracy of time and material charges.

§15.9 OTHER JOB COSTS BILLED DURING THE PERIOD

§15.9.1 The general contractor should submit a listing of all reimbursable job costs incurred as of the last cut-off date (such as month-end). This listing of reimbursable costs incurred should be supported by invoices and/or the cost substantiation described above. Such information should be provided in a computer readable format, etc. downloaded to a data disk, etc.

§15.9.2 A final detailed job cost history should be provided at the conclusion of the project in hard copy and computer readable format

ARTICLE 16 RIGHT OF AUDIT - EXAMINATION OF RECORDS

§16.1 Records for all contracts, specifically including but not limited to lump sum contracts (i.e. fixed price or stipulated sum contracts), unit price, cost plus or time & material contracts with or without a guaranteed maximum (or not to-exceed amounts) shall upon reasonable notice be open to inspection and subject to audit, scanning, and/or reproduction during normal business working hours. Such audits may be performed by any Owner's representative or any outside representative engaged by Owner for the purpose of examining such records. The Owner or its designee may conduct such audits or inspections throughout the term of this contract and for a period of three years after final payment or longer if required by law. Owner's representatives may (without limitation) conduct verifications such as counting employees at the Construction Site, witnessing the distribution of payroll, verifying information and amounts through interviews and written confirmations with Contractor employees, field and agency labor, subcontractors, and vendors.

§16.2 Contractor's "records" as referred to in this Exhibit shall include any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, leases, contracts, commitments, arrangements, notes, daily diaries, superintendent reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in Owner's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any Contract Document. Such records shall include (hard copy, as well as computer readable data if it can be made available), written policies and procedures; time sheets; payroll registers; payroll records; cancelled payroll checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, negotiation notes, etc.); original bid estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; invoices and related payment documentation; general ledger, information detailing cash and trade discounts earned, insurance rebates and dividends; and any other contractor records which may have a bearing on matters of interest to the Owner in connection with the contractor's dealings with the Owner (all foregoing hereinafter referred to as "records") to the extent necessary to adequately permit evaluation and verification of any or all of the following:

- (a) Compliance with contract requirements for deliverables
- (b) Compliance with approved plans and specifications
- (c) Compliance with Owner's business ethics expectations
- (d) Compliance with contract provisions regarding the pricing of change orders
- (e) Accuracy of contractor representations regarding the pricing of invoices
- (f) Accuracy of contractor representations related to claims submitted by the contractor or any of his payees.

§16.3 Contractor shall require all payees (examples of payees include subcontractors, material suppliers, insurance carriers, etc.) to comply with the provisions of this article by including the requirements hereof in a written contract agreement between Contractor and payee. Contractor will ensure that all payees (including those entering into lump sum contracts) have the same right to audit provisions contained in this contract.

§16.4 Owner's authorized representative(s) shall have reasonable access to the Contractor's facilities, shall be allowed to interview all current or former employees to discuss matters pertinent to the performance of this contract and shall be provided adequate and appropriate work space, in order to conduct audits in compliance with this article.

§16.5 If an audit inspection or examination in accordance with this article, discloses overpricing or overcharges to the Owner (of any nature) by the Contractor and/or the Contractor's Subcontractors in excess of \$100,000 in addition to making adjustments for the overcharges, the reasonable actual cost of the Owner's audit shall be reimbursed to the Owner by the Contractor. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of Owner's findings to Contractor.

§16.6 In addition, to the normal paperwork documentation the Contractor typically furnishes to the Owner, in order to facilitate efficient use of Owner resources when reviewing and/or auditing the Contractor's billings and related reimbursable cost records, the Contractor agrees to furnish (upon request) the following types of information in the specified computer (PC) readable file format(s):

Type of Record	PC Readable File Format
Monthly Job Cost Detail	.pdf and Excel
Detailed job Cost History To Date	.pdf and Excel
Monthly Labor Distribution detail (if not already separately detailed in the Job Cost Detail)	.pdf and Excel
Total Job to date Labor Distribution detail (if not already included in the detailed Job Cost History to date)	.pdf and Excel
Employee Timesheets documenting time worked by all individuals who charge reimbursable time to the project	.pdf
Daily Foreman Reports listing names and hours and tasks of personnel who worked on the project	.pdf
Daily Superintendent Reports	.pdf
Detailed Subcontract Status Reports (showing original subcontract value, approved subcontract change orders, subcontractor invoices, payment to subcontractors, etc.)	.pdf and Excel
Copies of Executed Subcontracts with all Subcontractors	.pdf
Copies of all executed change orders issued to Subcontractors	.pdf
Copies of all documentation supporting all reimbursable job costs (subcontractor payment applications, vendor invoices, internal cost charges, etc.)	.pdf

ARTICLE 17 BUSINESS ETHICS EXPECTATIONS

§17.1 During the course of pursuing contracts with Owner and while performing contract work in accordance with this agreement, Contractor agrees to maintain business ethics standards aimed at avoiding any impropriety or conflict of interest which could be construed to have an adverse impact on the Owner best interests.

§17.2 Contractor shall take reasonable actions to prevent any actions or conditions which could result in a conflict with Owner's best interests. These obligations shall apply to the activities of contractor employees, agents, subcontractors, subcontractor employees, consultants of contractor, etc.

Contractor employees, agents, subcontractors, material suppliers (or their representatives) should not make or cause to be made any cash payments, commissions, employment, gifts, entertainment, free travel, loans, free work, substantially discounted work, or any other considerations to Owner's representatives, employees or their relatives.

Contractor employees, agents or subcontractors (or their relatives) should not receive any cash payments, commissions, employment, gifts, entertainment, free travel, loans, free work, or substantially discounted work or any other considerations from representatives of subcontractors, or material suppliers or any other individuals, organizations, or businesses receiving funds in connection with the project.

§17.3 Contractor agrees to notify a designated Owner representative within 48 hours of any instance where the Contractor becomes aware of a failure to comply with the provisions of this article.

The telephone number to report any concerns related to any possible violations of the Owner's Business Ethics Expectations is (920) 832-5572.

§17.4 Upon request by Owner, Contractor agrees to provide a certified Management Representation Letter executed by selected Contractor representatives in a form agreeable to Owner stating that they are not aware of any situations violating the business ethics expectations outlined in this contract or any similar potential conflict of interest situations.

§17.5 Contractor agrees to include this clause in all contracts with subcontractors and material suppliers receiving more than \$25,000 in funds in connection with the Owner's project.

§17.6 Contractor shall permit interviews of employees, reviews and audits of accounting or other records by Owner representative(s) to evaluate compliance with the business ethics standards. Such reviews and audits will encompass all dealings and activities of Contractor's employees, agents, representatives, vendors, subcontractors, and other third parties paid by Contractor in their relations with Owner's current or former employees or employee relatives.

§17.7 Contractor agrees to implement a program requiring their employees sign acknowledgements that they have read and understand Owner's Business Ethics Expectations and the related obligations outlined in this contract exhibit.