CONTRACT FOR CONSTRUCTION SERVICES
BETWEEN
SEMINOLE TRIBE OF FLORIDA
AND
_____

THIS CONTRACT (the "Contract") is made, entered into and effective as of the date of the last signature of this Contract by and between the SEMINOLE TRIBE OF FLORIDA, a federally recognized Indian Tribe under 25 U.S.C. §5123 ("Owner") and _____, a _____ ("Contractor").

PART I OF CONTRACT

A. Identification information

OWNER:
SEMINOLE TRIBE OF FLORIDA,
A FEDERALLY RECOGNIZED INDIAN
TRIBE UNDER 25 U.S.C §5123

CONTRACTOR:
_____

OWNER ADDRESS:
6300 STIRLING ROAD,
HOLLYWOOD FLORIDA 33024
PHONE: (954) 966-6300

CONTRACTOR ADDRESS:
_____
_____

OWNER REPRESENTATIVE:

CONTRACTOR REPRESENTATIVE:

PROJECT DESCRIPTION:

ENGINEER NAME AND ADDRESS:

PROJECT LOCATION AND ADDRESS:

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B. ***Scope of Work***

The scope of work ("Work") under the Contract includes construction services on the _____ Seminole Indian Reservation. The Work is subject to all applicable federal, state, and local laws, and Owner regulations. The Work to be performed by Contractor for Owner include, but is not limited to, the [choose either tasks associated in Exhibit "__" **OR** following]:

1) _____.

C. ***Contract Sum***

1. The Contract sum, including authorized adjustments, is the total amount payable by Owner to Contractor for performance of the Work under the Contract ("Contract Sum").

2. Owner agrees to pay to Contractor and Contractor agrees to accept a sum not to exceed _____ ($), inclusive of _____, subject to any increase or decrease in price as provided in the Terms and Conditions of the Contract, including the Allowances stated in Exhibit __ and as provided in Part II Section 4.8.

D. ***Contract Time***

The Contract time shall be measured from the date a Notice to Proceed is issued to Contractor, and is the period of time, including authorized adjustments ("Contract Time"). Unless otherwise specifically designated, the word "day" as used in the Contract shall mean a calendar day. Time limits stated in the Contract are of the essence of the Contract. By executing the Contract, Contractor confirms that the Contract Time is a reasonable period for performing the Work.

1. The date of commencement of the Work shall be the date of commencement as stated in the Notice to Proceed.

2. The Work shall be substantially completed, as defined in Part II Section 10.1, within _____ (__) calendar days from the commencement date stated in the Notice to Proceed. The Work shall be entirely complete (final) within _____ (__) calendar days from the commencement date stated in the Notice to Proceed.

3. Contractor shall not knowingly, except by agreement or instruction of Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 12 to be furnished by Contractor to 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 or a Notice to Proceed given by Owner, Contractor shall notify Owner in writing not less than five (5) calendar days or other agreed period before commencing the Work.

3. If Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of Owner or Architect/Engineer, or of an employee of either, or of a separate contractor employed by Owner, or by changes ordered in the Work, or by occurrences beyond the

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control and without the fault or negligence of Contractor and which by the exercise of reasonable diligence Contractor is unable to prevent or provide against, including labor disputes, (other than disputes limited to the work force of, or provided by, Contractor), unusual delay in deliveries not reasonably anticipatable and, unavoidable casualties, or by fire or other major casualty events to be covered under the property insurance regardless of cause (except for willful misconduct or gross negligence of Contractor or anyone for whom Contractor is responsible) or by other occurrences which the Architect/Engineer, subject to Owner's approval, determines may justify delay, then provided that Contractor is in compliance with Article 15 of Part II hereof, the Contract Time shall be extended by Change Order for the length of time actually and directly caused by such occurrence as determined by the Architect/Engineer with consultation with Owner and accepted by Contractor; provided, however, that such extension of Contract Time shall be net of any delays caused by or due to the fault or negligence of Contractor or which are otherwise the responsibility of Contractor (except with respect to any delays caused by fire and other casualty events to be covered under the property insurance regardless of cause (except for willful misconduct or gross negligence of Contractor or anyone for whom Contractor is responsible), and shall also be net of any contingency or "float" time allowance included in Contractor's construction schedule. In the event of any occurrence likely to cause a delay, Owner, Contractor, and Architect/Engineer shall cooperate in good faith with each other to minimize and mitigate the impact of any such occurrence and do all things reasonable under the circumstances to achieve this goal.

4. Liquidated damages will be applicable at _____ ***($) per calendar day*** for each day of delay beyond the Contract Time for Substantial Completion. The same rate of liquidated damages shall also be applied for each day of delay in achieving the Contract Time for Final Completion. Contractor acknowledges that delayed performance will damage Owner, but by their nature such damages are difficult to ascertain. Accordingly, the liquidated damages provisions stated in this Contract are not intended to be a penalty and are solely intended to compensate for damages.

E. Exhibits Incorporated into Contract

Part I of the Contract consists of the Exhibits and Attachments ("Contract Documents") described below which are listed, attached, and incorporated into the Contract:

EXHIBITS	
DESCRIPTION	ATTACHED
Exhibit A – Bid Form	
Exhibit B – Acknowledgement of Receipt of Addenda	
Exhibit C – Statement of Qualifications and Resumes	
Exhibit D – Contractor Certification Regarding Debarment and Suspension	
Exhibit E - Non-Collusion Affidavit of Prime Bidder	
Exhibit F - Proposed Sub-Contractor List	
Exhibit G – Bond Forms and Certificate of Ability to Obtain Performance Bonds	
Exhibit H - List of Recently Completed Projects and Contract Amounts	
Exhibit I - List of References	

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Exhibit J – Insurance Requirements and Certificate of Insurance	
Exhibit K – Firm Certification	
Exhibit L – Drug-Free Workplace Form	
Exhibit M – Proposed Sample Agreement Exceptions	
Exhibit N - Certificate of Authority to Do Business in The State of Florida – Occupational License	
Exhibit O - Florida Department of Business and Professional Regulation – License(s), Certification(s) and/or Registration(s)	
Exhibit P – Addenda (Incorporated by Reference)	
Exhibit Q - Alternates and Allowances	
ATTACHMENTS (attached and incorporated by reference)	
DESCRIPTION	ATTACHED
Attachment A - Plans	
Attachment B – Specifications	
Attachment C – Geotechnical Report	
Attachment D – Topographic Survey	

This Contract is made, entered into and is effective as of the date of the last signature by the authorized signatories hereto.

This Contract multiple contains Parts and Exhibits as specified in Part I, E above and Part II.

END OF TEXT. SIGNATURES APPEAR ON FOLLOWING PAGE.

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IN WITNESS WHEREOF, the parties have executed this Contract by their duly authorized representatives on the respective dates set forth below at the Hollywood Seminole Indian Reservation, Broward County, Florida.

OWNER: SEMINOLE TRIBE OF FLORIDA	**CONTRACTOR:** _____
By: _____	By: _____
Name: Marcellus W. Osceola, Jr.	Name: _____
Title: Chairman	Title: _____
Date: _____	Date: _____

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PART II OF CONTRACT FOR CONSTRUCTION SERVICES BETWEEN OWNER AND CONTRACTOR

PART II OF CONTRACT: TERMS AND CONDITIONS

ARTICLE I GENERAL PROVISIONS

§ 1.1 DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

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

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Change Order. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between Engineer and Contractor, (2) between Owner and a Subcontractor or Sub-subcontractor, (3) between Owner and Engineer or (4) between any persons or entities other than Owner and Contractor. Engineer shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of Engineer'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 Contractor to fulfill Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by 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. These are listed in Part I, Paragraph E, Exhibits Incorporated into Contract.

§ 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. These are listed in Part I, Paragraph E, Exhibits Incorporated into Contract.

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§ 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. These are listed in Part I, Paragraph E, Exhibits Incorporated into Contract.

§1.1.8 OWNER
The Owner is the person or entity identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number. Owner shall designate in writing a representative who shall have express authority to bind Owner with respect to all matters requiring Owner's approval or authorization.

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

§ 1.1.10 SUBCONTRACTOR
A Subcontractor is a person or entity who has a direct contract with 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.

§ 1.1.11 SUB-SUBCONTRACTOR
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.

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

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

§ 1.1.13 CONSTRUCTION CHANGE DIRECTIVES
A Construction Change Directive is a written order directed to Contractor and signed by Owner, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both.

§1.1.14 ENGINEER
The Engineer is the architect or engineer of record selected by Owner. The term “Engineer” means the Engineer or the Engineer’s authorized representative

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§1.2 CONTRACT DOCUMENTS
This Contract is made up of Part I and Part II, as well as the any exhibits or attachments enumerated in Part I and represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral.

§ 1.2.1 Contractor represents that as part of its submission of its price proposal it has reviewed the Plans and Specifications of the Contract Documents and acknowledges that the documents are sufficiently complete in detail for Contractor to perform Work required to produce the results intended by the Contract Documents and comply with all requirements of the Contract Documents.

§ 1.2.2 Contractor shall execute the entire Work described in the Contract Documents. This Work involves all applicable and necessary Work for the Project. Contractor shall provide all material, equipment, services, and any other items necessary to fully complete the Work. Contractor shall, at its own expense as part of the Contract Sum, secure all licenses, furnish all labor, material, plant, office space, tools, equipment, machinery, scaffolding, cartage, electric current for power purposes and provide all other items, services and personnel necessary for the full and diligent prosecution of the Work, all in compliance with applicable statutes, building codes, ordinances and regulations and in a first class workmanlike manner in strict accordance with the requirements of the Project as well as the directions of the Project Engineer and Owner and to the satisfaction of Owner.

§ 1.2.3 Contractor acknowledges that no representations as to the Work have been made by Owner, Engineer or by anyone on Owner's behalf, except as in this Contract expressly set forth. Contractor warrants and represents that it has visited the site of the proposed Work, that it has familiarized itself with existing conditions and the character of the operations to be carried on the Project per the requirements of the design documents and that it fully understands the facilities, difficulties and restrictions attending the execution of the Work under the Contract; Contractor acknowledges that it has examined the Project and applicable regulatory requirements and from its own investigations has satisfied itself as to the nature and location of the Work, the general and local conditions, and all matters which may in any way affect the Work or its performance, and Contractor agrees that it will not make any claim for or have any right to, damages because of any misinterpretation or misunderstanding of the Contract or because of any lack of information or because of any incorrect information or inaccuracies contained or conveyed by any borings or by any diagrams, drawings, surveys, maps or samples, or by reason of any conditions (subsurface of otherwise) at the site which are not disclosed thereby unless such conditions could not have been discovered by a legitimate investigation of Contractor. Contractor further acknowledges that any estimate of quantities set forth in this Contract is approximate, that the quantity of labor and materials requisite to complete its work may be more or less than estimated, and that no action for damages shall accrue to Contractor by reason of such difference, if any in the absence of a written change order.

§ 1.3 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS
§ 1.3.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by 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 conflicts or discrepancies between or among the Contract Documents, interpretations will be based on the following priorities:

1. Change Orders and Amendments, with those of later date having precedence over those of earlier date.
2. The Contract, with Addenda thereto taking precedence.

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3. Drawings and Specifications. In the case of an inconsistency between Drawings and Specifications or within either Document not clarified by Addendum, the better quality or greater quantity of Work shall be provided in accordance with Engineer's interpretation.
4. The General Conditions of the Contract for Construction.

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

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

§ 1.3.4 Contractor acknowledges and declares it 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. In connection therewith, Contractor specifically represents and warrants to Owner that it has, by careful examination, satisfied itself as to: (1) the nature, location and character of the Project and the site, including, without limitation, the surface conditions of the site and all structures and obstructions thereof, both natural and man-made, and all surface water conditions of the site and the surrounding area; (2) the nature, location and character of the general area in which the Project is located, including, without limitation, its climatic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; and (3) the quality and quantity of all materials, supplies, tools, equipment, labor and professional services necessary to complete the Work in the manner and within the cost and time frame required by the Contract Documents.

§ 1.3.5 In connection with the foregoing and being in the process of reviewing the Contract Documents and having visited the site, Contractor acknowledges and declares it has no current knowledge of any discrepancies, omissions, ambiguities, or conflicts in said Contract Documents, and that if it becomes aware of any such discrepancies, omissions, ambiguities, or conflicts in said Contract Documents, it will promptly notify Owner of such fact.

§ 1.3.6 In arriving at Contract Sum and the Contract Time, Contractor will, as an experienced and prudent contractor, exercise its best judgment and expertise to include the impact of such circumstances upon the Contract Sum and the Contract Time. The parties agree that time is of the essence with respect to all time requirements in the Contract Documents.

§ 1.3.7 The Work shall consist of all items specifically included in the Contract Documents, as well as all additional items of work which are reasonably inferable from that which is specified in order to complete the Work in accordance with the Contract Documents. The Contract Documents are complementary, and what is required by any one Contract Document shall be as binding as if required by all.

§ 1.3.8 When more than one material, brand or process is specified for a particular item of Work, the choice shall be Contractor's. Contractor may, after notifying Owner, select the one it considers to be the best. Approval by Owner of materials, suppliers, processes, or Subcontractors does not imply a waiver of any Contract requirements including, without limitation, Contractor's warranty.

§ 1.3.9 All Work shall conform to the Contract Documents. No change therefrom shall be made without review and written acceptance by Owner and Engineer.

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§ 1.4 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.4.1 The Drawings, Specifications, and other documents, including those in electronic form, prepared by Engineer and Engineer's subconsultants are Instruments of Service through which the Work to be executed by Contractor is described. Contractor may retain one record set. Neither 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 Engineer or Engineer's subconsultants, and unless otherwise indicated Engineer and Engineer's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of Instruments of Service, except Contractor's record set, shall be returned or suitably accounted for to Engineer, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by Engineer and Engineer's consultants, and copies thereof furnished to Contractor, are for use solely with respect to this Project. They are not to be used by 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 Owner, Engineer, and Engineer's consultants. Contractor, Subcontractors, Sub- subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by Engineer and Engineer's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by Engineer and Engineer's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of Engineer's or Engineer's consultants' copyrights or other reserved rights.

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ARTICLE 2 THE WORK OF THIS CONTRACT

Contractor shall fully execute the Work described in the Contract Documents, except to the extent specifically indicated in the Contract Documents to be the responsibility of others.

§ 2.1 The Work required by the Contract Documents, including, without limitation, all construction details, construction means, methods, procedures and techniques necessary to perform the Work, use of materials, selection of equipment and requirements of product manufactures are consistent with (1) good and sound practices within the construction industry; (2) generally prevailing practices in the accepted industry's standard application work; and (3) requirements of any warranties applicable to the Work. Prior to initiating any of the Work, Contractor shall carefully study and compare all Contract Documents and shall at once report to Engineer and Owner in writing any (i) error, inconsistency or omission found occurring therein. If Contractor performs or allows any subcontractor performing any of the Work knowing it to be (i) subject to error, inconsistency or omission in the Plans and Specifications, Contractor shall bear the costs of correcting such work.

§ 2.2 The Contract Documents are intended to include all items necessary for the proper execution and completion of the Work by Contractor. The Contract Documents are complementary and supplement each other. Any Work or materials shown, mentioned or reasonably inferable in one and not shown or reasonably inferable in others are still to be furnished by Contractor without extra charge. The enumeration of particular items is still to be furnished by Contractor without extra charge. The enumeration of particular items in the Contract Documents or in the Project Manual, Specifications and/or Drawings shall not be construed to exclude other items. The intention of the Contract Documents is to include all labor, materials, engineering, equipment, transportation, tools, plans, appliances, appurtenances, and other facilities, whether specified herein or not, necessary for the proper execution and completion of the Work for the Contract Sum and within the Contract Time. A more specific provision will take precedence over the less specific; a more stringent will take precedence over the less stringent; the more expensive item will take precedence over

the less expensive. On all drawings, figures take precedence over scaled dimensions. Scaling of dimensions, if done, is done at Contractor's own risk. Where a conflict in and between Contract Documents appears to occur, the higher quality and the greater quantity of both materials and labor shall govern and shall be intended to be included in the Contract Sum. All indications and notations on the drawings and specifications that apply to one area, shall apply to the other areas.

§ 2.3 If Contractor is required to furnish a payment and performance bond, such bonds shall be executed by it with a fidelity or surety company in form and amount satisfactory to Owner. The Performance Bond shall guarantee the faithful performance of all contact obligations of this Contract. The Payment Bond shall be an unconditional payment bond and assure the prompt payment of all claims of lienors and laborers. The cost of the bond shall be considered an alternative add to the Contract Sum.

§ 2.4 Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of Owner or Engineer in the administration of the Contract, or by tests, inspections or approvals required or performed by persons other than Contractor.

ARTICLE 3 OWNER

§ 3.1 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 3.1.1 Except for permits and fees, including those required under Section 4.7.1, which are the responsibility of Contractor under the Contract Documents, 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.

3.1.2 Owner may furnish surveys describing physical characteristics, legal limitations, and utility locations for the site of the Project, and a legal description of the site however, the furnishing of these surveys and the legal description of the site shall not relieve Contractor from its duties under the Contract Documents in general and Sections 1.3.4 and 1.3.7 of the general Conditions in particular. There is no warranty or guaranty, either expressed or implied, that the conditions indicated by such investigations or records thereof, or that unforeseen developments may not occur, or that materials other than or in proportions different from those indicated may not be encountered. Contractor shall undertake such further investigations and studies as may be necessary or useful. In connection with the foregoing, and subject to Section 15.4, Contractor shall be solely responsible for locating (and shall locate prior to performing any Work) all utility lines, telephone company lines and cables, sewer lines, water pipes, gas lines, electrical lines, including, without limitation, all buried pipelines and buried telephone cables and shall perform the Work in such a manner so as to avoid damaging any such lines, cables, pipes and pipelines. In the event that actual locations differ materially from the information provided by Owner, then Contractor shall provide prior written notice to Owner before executing the Work and adjustments to time and/or compensation (whether increases or decreases) shall be made accordingly but only to the extent such differing locations cause an actual increase or decrease (as applicable). Contractor shall exercise proper precautions relating to the safe performance of the Work.

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

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

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§ 3.2 OWNER'S RIGHT TO STOP THE WORK

§ 3.2.1 If Contractor fails to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section 11.2 or fails to carry out Work in accordance with the Contract Documents, or fails or refuses to provide a sufficient amount of properly supervised and coordinated labor, materials or equipment as to be able to complete the Work within the Contract Time subject to Owner being in compliance with its payment obligations hereunder or disregards the instructions of Owner when based on requirements of the Contract Documents or Contractor is using means and/or methods that Owner reasonably believes may cause damage to existing structures or facilities, Owner may issue a written order to Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of Owner to stop the Work shall not give rise to a duty on the part of Owner to exercise this right for the benefit of Contractor or any other person or entity, except to the extent required by Section 7.1.3.

§ 3.3 OWNER'S RIGHT TO CARRY OUT THE WORK

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

ARTICLE 4 CONTRACTOR

§ 4.1 CONTRACTOR'S REPRESENTATIVE

§ 4.1.1 Contractor's representative shall not be changed without ten (10) calendar days written notice to the other party.

§ 4.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 4.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, 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 Owner pursuant to Section 3.2.2, 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. These obligations are for the purpose of facilitating construction by Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by Contractor shall be reported promptly to Owner and Engineer as a request for information in such form as Owner and Engineer may require.

§ 4.2.2 If any errors, inconsistencies, or omissions in Contract Documents are recognized by Contractor, any member of its organization, or any of its Subcontractors, Contractor shall be responsible for notifying Owner and Engineer in writing of such error, inconsistency, or omission before proceeding with the Work. Said reasonable review shall not require Contractor to assume responsibility for the Project design or require it to perform a peer review of the Contract Documents. Owner will take such notice under advisement and within a reasonable time commensurate with job progress, render a decision. If Contractor fails to give such notice and proceeds with such Work, it shall correct any such errors, inconsistencies, or omissions, with

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Contractor being liable for its appropriate portion of any increased costs associated with such corrective Work and with no extension of time.

§ 4.2.3 Any design errors or omissions noted by Contractor during this review shall be reported promptly to Engineer, but it is recognized that Contractor's review is made in Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. 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 Contractor shall be reported promptly to Owner and Engineer.

§ 4.2.4 If Contractor believes that additional cost or time is involved because of clarifications or instructions issued by Engineer in consultation with Owner when applicable in response to Contractor's notices or requests for information pursuant to Sections 4.2.1 and 4.2.3, Contractor shall make Claims as provided in Sections 15.6 and 15.7. If Contractor fails to perform the obligations of Sections 4.2.1 and 4.2.3, Contractor shall pay such costs and damages to Owner as would have been avoided if Contractor had performed such obligations. Contractor shall not be liable to Owner or Engineer 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 Contractor recognized such error, inconsistency, omission, or difference and knowingly failed to report it to Owner and Engineer.

§ 4.2.5 Should the Specifications and Drawings fail to particularly describe the material or kind of goods to be used in any place, then it shall be the duty of Contractor to make inquiry of Owner as to what is best-suited. The material that would normally be used in this place to produce first quality finished Work shall be considered a part of the Contract.

§ 4.2.6 In addition to and not in derogation of Contractor's duties under Section 1.3.1 hereof, Contractor shall take field measurements and verify field conditions and shall carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents before commencing activities. Errors, inconsistencies, or omissions discovered shall be reported to Engineer and Owner at once. If Contractor fails to perform the obligations of Sections 4.2.1 and 4.2.3, Contractor shall pay such costs and damages to Owner as would have been avoided if Contractor had performed such obligations.

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§ 4.3 SUPERVISION AND CONSTRUCTION PROCEDURES

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

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

§ 4.3.3 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.

§ 4.3.4 It is understood and agreed that the relationship of Contractor to Owner shall be that of an independent contractor. Nothing contained herein or inferable therefrom shall be deemed or construed to (1) make Contractor the agent, servant, or employee of Owner, or (2) create any partnership, joint venture or other association between Owner and Contractor. Any direction or instruction by Owner in respect of the Work shall relate to the results Owner desires to obtain from the Work and shall in no way affect Contractor's independent contractor status as described herein.

§ 4.3.5 Contractor has the responsibility to ensure that all material suppliers and Subcontractors, their agents, and employees, adhere to the Contract Documents, and that they order materials on time, taking into account the current market and delivery conditions and that they provide materials on time. Contractor shall coordinate its Work with that of all others on the Project, including deliveries, storage, installations, and construction utilities. Contractor shall be responsible for the space requirements, locations, and routing of its equipment. In areas and locations where the proper and most effective space requirements, locations and routing cannot be made as indicated, Contractor shall meet with all others involved, before installation, to plan the most effective and efficient method of overall installation.

§ 4.3.6 Contractor shall establish and maintain bench marks and all other grades, lines, and levels necessary for the Work, report efforts or inconsistencies to Owner and Engineer before commencing Work and review the placement of the building(s) and permanent facilities on the site with Owner and Engineer after all lines are staked out and before foundation work is started. Contractor shall provide access to the Work for Owner, Engineer, other persons designated by Owner and governmental inspectors. Any encroachments made by Contractor or its subcontractors (of any tier) on adjacent properties due to construction as revealed by an improvement survey, except for encroachments arising from errors or omissions not reasonably discoverable by Contractor in the Contract Documents, shall be the sole responsibility of Contractor, and Contractor shall correct such encroachments within thirty (30) calendar days of the improvement survey (or as soon thereafter as reasonably possible), at Contractor's sole cost and expense, either by removal of the encroachment (and subsequent reconstruction on the Project site) or agreement with the adjacent property owner(s) (in form and substance satisfactory to Owner in its sole discretion) allowing the encroachment to remain.

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§ 4.4 LABOR AND MATERIALS

§ 4.4.1 Unless otherwise provided in the Contract Documents, 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.

§ 4.4.2 Contractor may make substitutions only with the consent of Owner, in accordance with a Change Order. Whenever a material or equipment is specified in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains "or equal" item, no substitution is permitted, and other materials or equipment of other suppliers may be submitted to Engineer for review. If in Engineer's discretion an item proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be

considered by Engineer as an "or equal" item. An "or equal" item (a) is at least equal in materials, quality, durability, appearance, strength, and design characteristics, (b) will reliably perform at least equally well and achieve the results imposed by the design concept as a functioning whole, and (c) has a proven record of performance and availability of responsive service. Contractor certifies that if approved there will be no increase in cost to Owner or increase in Contract Time.

§ 4.4.3 Contractor shall enforce strict discipline and good order among Contractor's employees and other persons carrying out the Contract. Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. Contractor shall also be responsible for labor peace on the Project and shall at all times make its best efforts and judgment as an experienced contractor to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes or strikes where reasonably possible and practical under the circumstances and shall at all times maintain Project- wide labor harmony.

§ 4.4.4 Materials shall conform to manufacturer's standards in effect at the date of execution of the Contract and shall be installed in strict accordance with manufacturer's directions. Contractor shall, if required by Owner, furnish satisfactory evidence as to the kind and quality of any materials. All packaged materials shall be shipped to the site in the original containers clearly labeled, and delivery slips can be submitted with bulk materials identifying thereon the source and warranting quality and compliance with Contract Documents.

§ 4.4.5 When the manufacturer's name, patent numbers, underwriter's labels, model numbers or similar identifying marks are required, such markings shall be located as inconspicuously as possible.

§ 4.4.6 Rejection of Defective Materials: Engineer, Owner's Representative, or Owner may reject materials that do not conform to the Contract Documents. No rejected materials, the defects of which have been subsequently corrected, shall be used in the Work except with the permission of the foregoing parties. No extra time shall be allowed for completion of the Work due to the rejection of nonconforming materials.

§ 4.4.7 Rejection of Defective Work. Engineer's inspection of the Work shall not relieve Contractor of its responsibilities to fulfill the Contract obligations, and all defective work shall be corrected. Unsuitable work may be rejected by Engineer or Owner, whether or not such work and materials have been previously overlooked or misjudged by Engineer and accepted for payment. If the Work or any part of the Work shall be found defective any time before the final acceptance of the whole Work, Contractor shall immediately correct such defect satisfactory to Engineer. If any material brought on the site for use in the Work, or selected for use in the Work, shall be rejected by Engineer or Owner as unsuitable or nonconforming with Contract requirements, Contractor shall immediately remove such materials from the vicinity of the Work. The correction of all rejected or defective work shall be the full and complete responsibility of Contractor. All costs incurred shall be at Contractor's expense. No adjustment in contract time shall occur unless approved by Owner.

§ 4.4.8 Materials Attached or Affixed to the Work: Nothing in this Contract shall be construed as vesting in Contractor any right of property in the materials used after Contractor has received payment in full from the Owner for such materials and after they have been attached or affixed to the Work or the soil; but all such materials shall, on being so attached or affixed and upon payment by Owner, become the property of Owner, as well as any materials stored off-site as approved by Owner.

§ 4.4.9 Debris, Chemical Waste:

1. Contractor shall not permit the accumulation of debris, both exterior and interior. The Work area shall always be kept satisfactorily clean. Contractor shall remove debris from the Work site and

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dispose of it at any private or public dump Contractor may choose. Contractor shall arrange for and obtain any approvals necessary from Owner or officials in charge of such dumps and shall bear all costs, including fees resulting from such disposal, as applicable.

2. All garbage and debris shall be removed daily.

3. No open fire shall be permitted on site.

4. Chemical waste shall be stored in corrosion-resistant containers, removed from the Project site, and disposed of not less frequently than monthly unless directed otherwise.

5. Fueling and lubricating of vehicles and equipment shall be conducted to afford the maximum protection against spills and evaporation. Lubricants to be discarded or burned shall be disposed of according to approved procedures meeting all applicable regulations. In case of an oil or hazardous materials spill large enough to violate applicable local regulations, Engineer shall be notified immediately. Contractor shall be responsible for immediately cleaning up any such oil or hazardous waste spills resulting from its operations. Any costs incurred in cleaning up any such spills shall not increase the Contract Sum, as applicable.

§ 4.4.10 Site and Weather Protection: Contractor shall take necessary precautions during the execution of work involving demolition not to disturb or damage any existing structure, landscaping, walks, roads, or other items scheduled to remain. Subject to the other terms of the Contract Documents, Contractor shall restore any damaged items to original condition as directed by Engineer. Contractor shall provide and erect acceptable barricades, fences, signs, and other traffic devices to protect the Work from traffic and the public necessary.

§ 4.4.11 Archaeological and Historical Resources: All items having any apparent historical or archaeological interest discovered during any construction activities shall be carefully preserved and reported immediately to Engineer and Owner for determination of appropriate actions to be taken.

§ 4.4.12 Safety Requirements: As between Owner and Contractor, Contractor is responsible to Owner for any and all the safety issues relating to the Work on the Project. Contractor shall administer and manage the safety program. This will include, but not necessarily be limited to review of the safety programs of each Subcontractor. Contractor shall monitor the establishment and execution of effective safety practices known to the industry, as applicable to Work on this Project, and compliance with all applicable regulatory and advisory agency construction safety standards. Contractor's responsibility for review, monitoring and coordination of the Subcontractor's safety programs shall not extend to direct control over execution of the Subcontractor's safety programs. Notwithstanding Contractor's safety obligations to Owner, it is agreed and understood that each individual Subcontractor shall remain controlling employer responsible for the safety programs and precautions applicable to its own work and the activities of others' work in areas designated to be controlled by such Subcontractors.

§ 4.5 WARRANTY

§ 4.5.1 Contractor warrants to Owner (Contractor's "General Warranty") 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. Contractor's General Warranty excludes remedy for damage or defect caused by abuse, modifications not executed by Contractor, improper or insufficient maintenance, improper operation,

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or normal wear and tear and normal usage. As required by Owner, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Contractor shall cause all special warranties and guaranties of equipment, suppliers and/or product manufacturers to name Owner or subsequent Purchaser as beneficiaries of such warranties and guaranties.

§ 4.5.2 All warranties shall include labor and materials and shall be signed by the manufacturer or subcontractor as the case may be and countersigned by Contractor. All warranties shall be addressed to Owner and Contractor and delivered to Owner upon completion of the Work and before or with the submission of request for all final payment.

§ 4.5.3 Contractor shall issue in writing to Owner as a condition precedent to final payment a "General Warranty" reflecting the terms and conditions of this Section 4.5 for all Work under the Contract.

§ 4.5.4 Except when a longer warranty time is specifically called for in the Specification sections of the final Construction Documents or is otherwise required of Contractor by law, the General Warranty shall be for twelve (12) months from Substantial Completion.

§ 4.5.5 Notwithstanding anything herein to the contrary, Owner and Contractor acknowledge and agree that nothing in the Contract Documents is intended in any way to transfer, shift or reallocate to Contractor from Owner any duty, responsibility, guarantee, warranty or liability placed by statute, law, ordinance, rule, regulation or other governmental act on Owner (in that capacity or through any other relationship between Owner and the Project).

§ 4.5.6 Warranties shall become effective as of the date of Substantial Completion of the entire Work, unless otherwise provided in any Certificate of Partial Substantial Completion approved by the parties or unless otherwise required of Contractor by law.

§ 4.5.7 In addition to the foregoing stipulations, Contractors shall comply with all other warranties required of Contractor referred to in any portions of the Contract Documents or otherwise provided by law or in equity, and where warranties overlap, the more stringent requirement shall govern.

§ 4.5.8 Reserved.

§ 4.5.9 Contractor shall warrant for a period of twelve (12) months from Substantial Completion or longer as required by law that the building(s) shall be watertight and leak proof at every point and in every area, except where leaks can be attributed to damage to the building(s) by external forces beyond Contractor's control, improper maintenance by Owner or its successors or by deficient design. Contractor shall, immediately upon notification by Owner of water penetration, cooperate with Owner and Engineer to determine the source of water penetration and if such source is due to Contractor's Work failing to comply with the requirements of the Contract Documents, Contractor shall do any work necessary to make the building(s) watertight. Subject to Contractor's right of recovery against any applicable property insurance, Contractor shall also repair or replace any other damaged material, finishes, and furnishings, damaged as a result of such water penetration caused by the failure of Contractor's Work to comply with the requirements of the Contract Documents, to return the building(s) to its (their) condition existing immediately prior to such water penetration at no increase in the Contract Sum, as applicable. Owner and Contractor will cooperate with each other in regard to any claims against any applicable insurance.

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§ 4.6 TAXES

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

§ 4.7 PERMITS, FEES, AND NOTICES

§ 4.7.1 Unless otherwise provided in the Contract Documents, 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.

§ 4.7.2 Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders of Tribal or other authorities applicable to performance of the Work.

§ 4.7.3 It is not Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if Contractor observes that portions of the Contract Documents are at variance therewith, Contractor shall promptly notify Engineer and Owner in writing, and necessary changes shall be accomplished by appropriate Modification.

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

§ 4.8 ALLOWANCES

§ 4.8.1 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 Owner may direct.

§ 4.8.2 Unless otherwise provided in the Contract Documents:

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

§4.8.2.2 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;

§4.8.2.3 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 4.8.2.1 and (2) changes in Contractor's costs under Section 4.8.2.2.

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

§ 4.9 SUPERINTENDENT

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

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§ 4.9.2 Owner shall have the right, upon notice, to demand that the superintendent or other key personnel retained by Contractor be replaced by Contractor; provided, however, Owner shall be responsible for any increases to Contractor's time or cost of performance of the Work in the event Owner requires Contractor's superintendent or other key personnel of Contractor to be replaced without cause. In the event of such demand, Contractor shall, within a reasonable period of time not to exceed thirty (30) calendar days after notification thereof, replace said individual(s) with an individual satisfactory to Owner, in Owner's sole discretion. If said replacement is disapproved, the Contract may, at Owner's option, be terminated for cause in accordance with the procedures set forth in Section 14.2 below.

§ 4.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 4.10.1 Contractor, promptly after being awarded the Contract, shall prepare, and submit at pre-construction meeting for Owner'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. The schedule shall indicate the proposed starting and completion dates for the various subdivisions of the Work as well as the totality of the Work. The schedule shall be updated every thirty (30) calendar days and submitted to Owner with Contractor's Application for Payment. Each schedule shall contain a comparison of actual progress with the estimated progress for such point in time stated in the original schedule. If any schedule submitted sets forth a date for Substantial Completion for the Work or any phase of the Work beyond the Date(s) of Substantial Completion established in the Contract (as the same may be extended as provided in the Contract Documents), then Contractor shall submit to Owner for its review and approval a narrative description of the means and methods which Contractor intends to employ to expedite the progress of the Work to ensure timely completion of the various phases of the Work as well as the totality of the Work. To ensure such timely completion, Contractor shall take all necessary action including, without limitation, increasing the number of personnel and labor on the Project and implementing overtime and double shifts. In that event, Contractor shall not be entitled to an adjustment in the Contract Sum or the schedule. For the purpose of determining what constitutes "overtime", a regular working day shall be 8:00 AM to 5:00 PM Monday thru Friday except holidays). Whenever overtime work is implemented (whether necessary to ensure timely completion of the Work as set forth above or as otherwise may be requested by Owner), Owner (or Owner's representative) shall have the right to inspect such overtime work and Contractor will be billed monthly at a rate of $150/hour therefor. Final payment will be withheld until all inspection overtime charges by Owner have been paid by Contractor. Inspection overtime costs and policies applicable to Contractor regarding Owner's inspectors shall include Owner's consultant engineering inspectors. All costs of engineering and inspection on behalf of Owner - for overtime inspection and extended overhead - will be charged to Contractor.

§ 4.10.2 Contractor shall prepare and keep current, for Owner's approval, a schedule of submittals which is coordinated with Contractor's construction schedule and allows Owner reasonable time to review submittals.

§ 4.10.3 Contractor shall perform the Work in general accordance with the most recent schedules submitted to Owner not less than on a weekly basis.

§ 4.11 DOCUMENTS AND SAMPLES AT THE SITE

§ 4.11.1 Contractor shall maintain at the site for 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

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Data, Samples and similar required submittals. These shall be available to Engineer and Owner and shall be delivered to Owner upon completion of the Work.

§ 4.11.2 At the Date of Final Completion and as a condition precedent to final payment, Contractor shall furnish the following documents to Owner: Record Drawings showing the field changes and selection (all changes and selections to be approved by Owner and Engineer in advance) affecting the general construction, mechanical, electrical, plumbing, and all other work, and carefully drawn marking on a set of reproducible prints of Engineer's Drawings obtained and paid for by Contractor. Contractor shall maintain at the job site one (1) set of Engineer's Drawings and indicate thereon each field change as it occurs. In addition, Contractor shall provide marked-up As-Builts for field revisions to Engineer with a copy to Owner and Engineer shall incorporate these revisions as well as any supplemental instructions or answers to RFI's on a reproducible set of drawings.

§ 4.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

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

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

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

§ 4.12.4 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 Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by Engineer with consultation with Owner where applicable is subject to the limitations of Section 6.2.6. Informational submittals upon which Engineer 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 Engineer without action.

§ 4.12.5 Contractor shall review for compliance with the Contract Documents, approve and submit to Engineer with a copy to Owner 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 Owner or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by Contractor may be returned by Engineer without action.

§ 4.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, Contractor represents that 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.

§ 4.12.7 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 Engineer with consultation with Owner where applicable.

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§ 4.12.8 The Work shall be in accordance with approved submittals except that Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by Engineer's review of Shop Drawings, Product Data, Samples or similar submittals unless Contractor has specifically informed Engineer and copied Owner in writing of such deviation at the time of submittal and (1) Engineer with consultation with Owner where applicable 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. Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by Engineer's review thereof.

§ 4.12.9 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 Engineer with consultation with Owner where applicable on previous submittals. In the absence of such written notice Engineer's approval of a resubmission shall not apply to such revisions.

§ 4.12.10 Contractor shall not be required to provide professional services which constitute the practice of architecting or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless Contractor needs to provide such services in order to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. 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 Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. 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 Engineer with copy to Owner. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Engineer has specified to Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section, Engineer 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. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

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§ 4.13 USE OF SITE

§ 4.13.1 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. Owner and Contractor shall cooperate and coordinate their uses of the Project site so as to not unreasonably interfere with each other's' required activities. Contractor shall submit to Owner, for its approval, Contractor's plan for staging the Work, including the planned location of any construction trailer(s), and such staging shall be accomplished as agreed to between the parties so as not to interfere with Owner's trailer.

§ 4.14 CUTTING AND PATCHING

§ 4.14.1 Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. It is the intent of the Contract Documents that all areas requiring cutting and patching shall be restored to a completely finished condition acceptable to Owner.

§ 4.14.2 Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of Owner or separate contractors by cutting, patching, or otherwise altering such construction,

or by excavation. Contractor shall not cut or otherwise alter such construction by Owner or a separate contractor except with written consent of Owner and of such separate contractor; such consent shall not be unreasonably withheld. Contractor shall not unreasonably withhold from Owner or a separate contractor Contractor's consent to cutting or otherwise altering the Work.

§ 4.15 CLEANING UP

§ 4.15.1 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, Contractor shall remove from and about the Project waste materials, rubbish, Contractor's tools, construction equipment, machinery, and surplus materials.

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

§ 4.16 ACCESS TO WORK

§ 4.16.1 Contractor shall provide Owner and Engineer access to the Work in preparation and progress wherever located.

§ 4.17 ROYALTIES, PATENTS AND COPYRIGHTS

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

§ 4.18 INDEMNIFICATION

§ 4.18.1 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 Contractor in accordance with Section 11.3, Contractor shall defend, indemnify and hold harmless Owner, Engineer, Engineer'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, 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 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 4.18.

§ 4.18.2 In claims against any person or entity indemnified under this Section 4.18 by an employee of Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 4.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

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ARTICLE 5 SUBCONTRACTORS

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

§ 5.1.1 Unless otherwise stated in the Contract Documents, Contractor, as soon as practicable after award of the Contract, shall furnish in writing to Owner through Engineer 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. Owner will promptly reply to Contractor in writing stating whether or not Owner, after due investigation, has reasonable objection to any such proposed person or entity. Failure of Owner to reply promptly shall constitute notice of no reasonable objection.

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

§ 5.1.3 If Owner has reasonable objection to a person or entity proposed by Contractor, Contractor shall propose another to whom Owner 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 Contractor has acted promptly and responsively in submitting names as required.

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

§ 5.2 SUB-CONTRACTUAL RELATIONS

§ 5.2.1 By appropriate agreement, written where legally required for validity, Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to Contractor by terms of the Contract Documents, and to assume toward Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which Contractor, by these Documents, assumes toward Owner and Engineer. Each subcontract agreement shall preserve and protect the rights of Owner and Engineer 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 Contractor that Contractor, by the Contract Documents, has against Owner. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.3 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

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

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

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2. assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

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

ARTICLE 6 ADMINISTRATION OF THE CONTRACT
§ 6.1 ENGINEER
§ 6.1.1 Engineer is the person lawfully licensed to practice Engineering or an entity lawfully practicing Engineering identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number.

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

§ 6.2 OWNER AND ENGINEER'S ADMINISTRATION OF THE CONTRACT
§ 6.2.1 Engineer with consultation with Owner where applicable will provide administration of the Contract as described in the Contract Documents (1) during construction, (2) until final payment is due and (3) during the one-year period for correction of Work described in Section 11.2. Engineer will have authority to act on behalf of Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract. No decision or action of Engineer pursuant to any provisions of this Contract shall be binding on Owner without Owner's express written consent.

§ 6.2.2 Engineer, as a representative of Owner, will visit the site at intervals appropriate to the stage of Contractor's operations but no less than once a month (1) to become generally familiar with the progress and quality of the portion of the Work completed, (2) to guard against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, Engineer will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Engineer nor Owner 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 Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 4.3.1.

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

§ 6.2.4 Communications Facilitating Contract Administration. Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, Owner and Contractor shall endeavor to communicate with each other with copies to Engineer about matters arising out of or relating to the Contract. Communications by and with Engineer's consultants shall be through Engineer. Communications by and with Subcontractors and material suppliers shall be through Contractor. Communications by and with separate contractors shall be through Owner.

§ 6.2.5 Based on Owner's and Engineer's evaluations of Contractor's Applications for Payment, Owner will review and pay the amounts due Contractor.

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§ 6.2.6 Engineer with consultation with Owner where applicable will have authority to reject Work that does not conform to the Contract Documents. Whenever Engineer with consultation with Owner where applicable considers it necessary or advisable, Engineer will have authority to require inspection or testing of the Work in accordance with Sections 18.5.2 and 18.5.3, whether or not such Work is fabricated, installed, or completed. However, neither this authority of Engineer 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 Engineer or Owner to Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 6.2.7 Engineer with consultation with Owner where applicable will review and approve or take other appropriate action upon 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. Engineer's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of Owner, Contractor, or separate contractors, while allowing sufficient time in Engineer'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 Contractor as required by the Contract Documents. Owner's and Engineer's review of Contractor's submittals shall not relieve Contractor of the obligations under Sections 4.3, 4.5 and 4.12. Engineer's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Engineer, of any construction means, methods, techniques, sequences, or procedures. Engineer's review of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 6.2.8 Owner will prepare Change Orders and Construction Change Directives. Owner may authorize minor changes in the Work as provided in Section 9.3. All Change Orders, Construction Change Directives and field directives shall require the approval of Owner in writing to be binding on Owner and before Contractor is required to commence the changed work.

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

§ 6.2.10 Engineer with consultation with Owner where applicable will interpret and decide matters concerning performance under and requirements of, the Contract Documents on written request of Contractor. Engineer'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 Engineer shall be furnished in compliance with this Section 6.2, then delay shall not be recognized on account of failure by Engineer to furnish such interpretations until fifteen (15) calendar days after written request is made for it with a copy to Owner.

§ 6.2.11 Interpretations and decisions of Engineer 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, Engineer 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.

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§ 6.2.12 In reviewing the quality and progress of the Work and submittals received from Contractor, Engineer is acting under the terms of its contract with Owner in following the work. Unless otherwise expressly agreed in writing by Owner, in each instance, no action, approval or omission to act or failure to advise Contractor as to any matter by Owner or Engineer shall in any way relieve Contractor from its responsibility for the performance of the Work in strict accordance with the Contract Documents; provided, however, Owner shall be responsible for any increased cost or time incurred by Contractor as a result of Owner's or Engineer's failure to promptly notify Contactor of any deficiency in the Work they have actual knowledge of.

ARTICLE 7 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

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

§ 7.1.1 Owner reserves the right to perform construction or operations related to the Project with Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If Contractor claims that delay or additional cost is involved because of such action by Owner, Contractor shall make such Claim as provided in Article 15.

§ 7.1.2 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 Contractor who executes each separate Owner-Contractor Contract.

§ 7.1.3 Owner shall provide for coordination of the activities of Owner's own forces and of each separate contractor with the Work of Contractor, who shall cooperate with them. Contractor shall participate with other separate contractors and Owner in reviewing their construction schedules when directed to do so. 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 Contractor, separate contractors, and Owner until subsequently revised.

§ 7.1.4 Unless otherwise provided in the Contract Documents, when Owner performs construction or operations related to the Project with Owner's own forces, Owner shall deemed to be subject to the same obligations and to have the same rights which apply to Contractor under the Conditions of the Contract, including, without excluding others, those stated in Articles 7, 11, 12 and 16.

§ 7.2 MUTUAL RESPONSIBILITY

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

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

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

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

§ 7.2.4 Contractor shall promptly remedy damage wrongfully caused by Contractor to completed or partially completed construction or to property of Owner or separate contractors as provided in Section 17.2.5.

§ 7.2.5 Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for Contractor in Section 4.14.

§ 7.3 OWNER'S RIGHT TO CLEAN UP

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

ARTICLE 8 PAYMENTS

§ 8.1 SCHEDULE OF VALUES

§ 8.1.1 Before the first Application for Payment, Contractor shall submit to Engineer and Owner's Representative a Schedule of Values allocated to various portions of the Work, prepared in such form, and supported by such data to substantiate its accuracy as Engineer and Owner's Representative may require. This schedule, unless objected to by Engineer and Owner's Representative, shall be used as a basis for reviewing Contractor's Applications for Payment. Such Schedule of Values shall be updated at the time of each change order.

§ 8.2 APPLICATIONS FOR PAYMENT

§ 8.2.1 At least thirty (30) calendar days before the date established for each progress payment, Contractor shall submit to Owner and Engineer an itemized Application for Payment for operations completed in accordance with the most recent Schedule of Values, a copy of which is attached to the application. Such application shall be notarized and supported by such data substantiating Contractor's right to payment as Owner or Engineer may require, such as copies of requisitions from Subcontractors and material suppliers and reflecting retainage if provided for in the Contract Documents.

> **§ 8.2.1.1** As provided in Section 9.2.8, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, but not yet included in Change Orders.
>
> **§ 8.2.1.2** Such applications may not include requests for payment for portions of the Work for which Contractor does not intend to pay to a Subcontractor or material supplier unless such Work has been performed by others whom Contractor intends to pay.

§ 8.2.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by 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 Contractor with procedures satisfactory to Owner to establish Owner's title to such materials and equipment or otherwise protect 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.

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§ 8.2.3 Contractor warrants that title to all Work covered by an Application for Payment will pass to Owner no later than the time of payment. Contractor further warrants that as part of its submittal of each Application for Payment that all persons performing work under the contract have been paid for all work through the date of the prior application payment.

§ 8.2.4 The Application for Payment shall be accompanied by an unconditional waivers and releases of any claim for payment excluding unpaid retainage from Contractor for Work done and materials furnished under the current Application for Payment in such form as may be required by Owner, and an unconditional waivers and releases of any claim for payment excluding unpaid retainage from all Subcontractors, laborers and material men for Work done and materials furnished under the prior month's Application for Payment in such form as may be required by Owner.

§ 8.3 CERTIFICATES FOR PAYMENT

§ 8.3.1 Engineer will, within seven (7) calendar days after receipt of Contractor's Application for Payment, either issue to Owner a Certificate for Payment approved and signed by Engineer, with a copy to Contractor, for such amount as Engineer determines is properly due, or notify Contractor and in writing Owner of Engineer's reasons for withholding certification in whole or in part as provided in Section 8.4.1.

§ 8.3.2 The issuance of a Certificate for Payment will constitute a representation by Engineer to Owner, based on Engineer'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 Engineer'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 Engineer. The issuance of a Certificate for Payment will further constitute a representation that Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that Engineer 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 Owner to substantiate Contractor's right to payment, or (4) made examination to ascertain how or for what purpose Contractor has used money previously paid on account of the Contract Sum.

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§ 8.4 DECISIONS TO WITHHOLD CERTIFICATION

§ 8.4.1 Owner or Engineer may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect Owner, if in Engineer's opinion the representations to Owner required by Section 8.3.2 cannot be made. If Owner or Engineer is unable to certify payment in the amount of the Application, Engineer will notify Contractor and as provided in Section 8.3.1. If Contractor and Owner or Engineer cannot agree on a revised amount, Engineer will promptly issue a Certificate for Payment for the amount for which Engineer is able to make such representations to Owner. Owner or Engineer 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 Engineer's opinion to protect Owner from loss for which Contractor is responsible, including loss resulting from acts and omissions described in Section 4.3.2, because of:

1. defective Work not remedied;
2. third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to Owner is provided by Contractor;
3. failure of Contractor to make payments properly to Subcontractors or for labor, materials, or equipment;

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

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

§ 8.5 PROGRESS PAYMENTS

§ 8.5.1 Based upon Applications for Payment submitted to Engineer and Owner by Contractor and Certificates for Payment issued by Engineer, Owner shall make progress payments on account of the Contract Sum to Contractor, as provided below and elsewhere in the Contract Documents.

§ 8.5.2 The period covered by each Application for Payment shall be one (1) calendar month ending on the last day of the month.

§ 8.5.3 Provided that an Application for Payment is received and approved by Engineer and Owner not later than the fifth (5th) day of a month, Owner shall make payment to Contractor not later than the fifth (5th) day of the following month. If an Application for Payment is received by Engineer and Owner after the application date fixed above, payment shall be made by Owner not later than thirty (30) calendar days after Engineer and Owner received the Application for Payment.

§ 8.5.4 Each Application for Payment shall be based on the most recent Schedule of Values submitted by Contractor in accordance with the Contract Documents. The Schedule of Values shall allocate the entire Contract Sum among the various portions of the Work.

§ 8.5.5 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

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

.1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the Schedule of Values, less retainage of ten percent (10%);

.2 Subtract the aggregate of previous payments made by Owner; and

.3 Subtract amounts, if any, for which Owner has withheld or nullified a Certificate for Payment as provided in Section 8.4.

Pending final determination of cost to Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 9.2.8.

§ 8.5.7 The progress payment amount determined in accordance with Section 8.5.6 shall be further modified under the following circumstances:

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1. Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as Owner shall determine for incomplete Work, retainage applicable to such Work and unsettled claims; and

2. Add, if final completion of the Work is thereafter materially delayed through no fault of Contractor, any additional amounts payable in accordance with Section 10.3.5.

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

§ 8.6 FAILURE OF PAYMENT

§ 8.6.1 If Engineer does not issue a Certificate for Payment, through no fault of Contractor, within seven (7) calendar days after receipt of Contractor's Application for Payment, or if Owner does not pay Contractor within seven (7) calendar days after the date established in the Contract Documents the amount certified by Engineer, then Contractor may, upon seven (7) additional days' written notice to Owner and Engineer, 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 Contractor's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Contract Documents.

§ 8.7 SUBCONTRACTOR PAYMENTS

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

§ 8.7.2 Contractor shall promptly pay each Subcontractor, upon receipt of payment from Owner out of the amount paid to 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 Contractor on account of such Subcontractor's portion of the Work. Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

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

§ 8.7.4 Neither Owner nor Engineer 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.

§ 8.7.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections 8.7.2, 8.7.3 and 8.7.4.

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

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

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§ 8.8 INTEREST

§ 8.8.1 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate of 0.50% per month not to exceed 6.0% per annum.

ARTICLE 9 CHANGES IN THE WORK

§ 9.1 GENERAL

§ 9.1.1 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.

§ 9.1.2 A Change Order shall be based upon agreement between Owner and Contractor. The Contract may be amended or modified only by a Change Order. A Construction Change Directive requires written approval by Owner and Engineer and may or may not be agreed to by Contractor; an order for a minor change in the Work may be issued by Owner alone.

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

§ 9.2 CONSTRUCTION CHANGE DIRECTIVES

§ 9.2.1 Owner may, by Construction Change Directive, without invalidating this Contract, order changes in the Work within the general scope of this Contract consisting of additions, deletions, or other revisions, including any proposed adjustments to the Contract Sum and Contract Time.

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

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

1. mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
2. unit prices stated in the Contract Documents or subsequently agreed upon;
3. cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
4. as provided in Section 9.2.6.

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

§ 9.2.5 A Construction Change Directive signed by Contractor indicates the agreement of Contractor therewith, including adjustment in Contract Sum and Contract Time or the method for determining them for the items covered in each Construction Change Directive. Such agreement shall be effective immediately and shall be formalized by Change Order.

§ 9.2.6 If Contractor does not respond promptly, or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by Owner on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and profit. In such case, and also under Section

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9.2.3.3, Contractor shall keep and present, in such form as Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 9.2.6 shall be limited to the following:

1. costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
2. costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
3. rental costs of machinery and equipment, exclusive of hand tools, whether rented from Contractor or others;
4. costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work;
5. additional costs of supervision and field office personnel directly attributable to the change;
6. Subcontractor's work;
7. Subcontractors overhead and profit shall not exceed an aggregate of ten (10%) percent of the cost of Subcontractor's work. This provision and any other applicable provisions of this Contract shall be included in all Subcontractor agreements with Contractor; and
8. Contractors overhead and profit shall not exceed an aggregate of ten (10%) percent of the cost.

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

§ 9.2.8 Pending final determination of the total cost of a Construction Change Directive to Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs.

§ 9.2.9 When Owner and Contractor agree concerning the adjustments in the Contract Sum and Contract Time, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

§ 9.3 MINOR CHANGES IN THE WORK

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

ARTICLE 10 COMPLETION AND FINAL PAYMENT

§ 10.1 SUBSTANTIAL COMPLETION

§ 10.1.1 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 Owner can occupy or utilize the Work for its intended use. Substantial Completion shall be deemed on the date certified by Engineer in accordance with requirements herein. The Work will not be considered suitable for Substantial Completion review until all of the following conditions have been met:

a) Project systems included in the Work are operational as designed and scheduled;
b) All designated or required inspections and certifications have been made and posted, specified instructions to Owner's personnel in the operation of major systems have been provided;
c) Successful completion of all required system testing provisions in the Contract Documents;
d) Record shop drawings and operation and maintenance manual submittals received and accepted by Engineer;

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e) Record drawing redlines have been received and accepted by Engineer;
f) Delivery to and acceptance by Engineer of all spare parts and special tools;
g) Receipt and acceptance by Engineer of all guarantee certifications, performance affidavits, and all other certifications required by the Contract Documents; and
h) Contractor shall certify that all remaining Work will be completed within fourteen (14) consecutive calendar days or as agreed upon following the date Contractor receives Owner's final punch list.

Warranties applicable to the Work shall commence upon issuance of a Certificate of Substantial Completion for the entire Work covered under this Contract. Contractor shall pay for extended warranties as required. In general, the only remaining Work shall be minor in nature, so that Owner or its designees could occupy the building on that date and the completion of the Work by Contractor would not materially interfere or hamper Owner's or Owner's designees (or those claiming by, through or under Owner) normal operations.

§ 10.1.2 When Contractor considers that the Work, or a portion thereof which Owner agrees to accept separately, is substantially complete, Contractor shall prepare and submit to Owner and Engineer 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 Contractor to complete all Work in accordance with the Contract Documents.

§ 10.1.3 Upon receipt of Contractor's list, Owner and Engineer will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If Owner's and Engineer's inspection discloses any item, whether or not included on Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that Owner can occupy or utilize the Work or designated portion thereof for its intended use, Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by Owner and Engineer. In such case, Contractor shall then submit a request for another inspection by Owner and Engineer to determine Substantial Completion.

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

§ 10.1.5 The Certificate of Substantial Completion shall be submitted to Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, Owner shall make payment in accordance with 8.5.7. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 10.1.6 Upon achievement of Substantial Completion, Engineer, Owner and/or Owner's Representative together with Contractor, shall generate a comprehensive final punch list of items that either remain to be completed or do not comply with Contract Documents (the "Punch List"). The items included on the Punch List will be evaluated by Contractor as provided elsewhere in this Contract, and an amount equal to one hundred and fifty percent (150%) of the value of the Punch List items as confirmed and approved by Engineer and consented to by Owner will be withheld as final Punch List retainage (the "Final Punch List Retainage"). The Final Punch List Retainage shall be paid to Contractor within thirty (30) calendar days of

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certification by Engineer that all Punch List items have been properly completed to the satisfaction of Owner.

§ 10.2 PARTIAL OCCUPANCY OR USE

§ 10.2.1 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 Contractor, provided such occupancy or use is consented to by the insurer as required under Section 12.4.1.3 and authorized by Tribal or Other authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided 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 Contractor considers a portion substantially complete, Contractor shall prepare and submit a list of Owner as provided under Section 10.1.2. Consent of 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 Owner and Contractor or, if no agreement is reached, by decision of Engineer.

§ 10.2.2 Immediately prior to such partial occupancy or use, Owner, Contractor, and Engineer 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.

§ 10.2.3 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.

§ 10.3 FINAL COMPLETION AND FINAL PAYMENT

§ 10.3.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by Owner to Contractor when:

1. Contractor has fully performed the Contract, except for Contractor's responsibility to correct Work as provided in Section 11.2.2, and to satisfy other requirements, if any, which extend beyond final payment; and

2. a final Certificate for Payment has been issued.

§ 10.3.2 Owner's final payment to Contractor shall be made no later than thirty (30) calendar days after the issuance of the final Certificate for Payment, and subject to the provision of Section 10.3.6 below.

§ 10.3.3 Upon receipt of written notice from Contractor that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, Owner and Engineer will promptly make such inspection and, when Owner and Engineer find the Work acceptable under the Contract Documents and the Contract fully performed, Owner will promptly approve the application for Payment indicating that to the best of Owner's knowledge, information and belief, and on the basis of Engineer'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 less stipulated retainage found to be due Contractor payable subject to conditions listed in Section 10.3.4.

§ 10.3.4 Neither final payment nor any remaining retained percentage shall become due until Contractor submits to Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner or 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 thirty (30) calendar days' prior written notice has been given to Owner, (3) a written statement that Contractor knows of no substantial

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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 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 Owner. If a Subcontractor refuses to furnish a release or waiver required by Owner and Contractor may furnish a bond satisfactory to Owner to indemnify Owner against such lien. If such lien remains unsatisfied after payments are made, Contractor shall refund to Owner all money that Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 10.3.5 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of Contractor or by issuance of Change Orders affecting final completion, and Engineer so confirms, Owner shall, upon application by Contractor and certification by Engineer, 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 Contractor to Engineer 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.

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

1. liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
2. failure of the Work to comply with the requirements of the Contract Documents including but not limited to faulty or defective work; or
3. terms of special warranties required by the Contract Documents.

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

§ 10.3.8 Contractor shall provide two (2) bound sets of all equipment warranties, operation and maintenance instructions, a list of subcontractors with contact information including name and telephone number, two (2) sets of keys for each Residence, shop drawings, and product data.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 UNCOVERING OF WORK

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

§ 11.1.2 If a portion of the Work has been covered which Owner or Engineer has not specifically requested to examine prior to its being covered, Owner or Engineer may request to see such Work and it shall be uncovered by Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at Owner’s expense. If such Work is not in accordance with the Contract Documents, correction shall be at Contractor's expense unless the condition

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was caused by Owner or a separate contractor in which event Owner shall be responsible for payment of such costs.

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

§ 11.2.2 AFTER SUBSTANTIAL COMPLETION
In addition to 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 9.39.1, 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, Contractor shall correct it promptly after receipt of written notice from Owner to do so unless Owner has previously given Contractor a written acceptance of such condition. Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if Owner fails to notify Contractor and give Contractor an opportunity to make the correction, Owner waives the rights to require correction by Contractor and to make a claim for breach of warranty. If Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from Owner or Engineer, Owner may correct it in accordance with Section 3.4.

> **§ 11.2.2.1** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.
>
> **§ 11.2.2.2** The one-year period for correction of Work shall not be extended by corrective Work performed by Contractor pursuant to this Section 11.2.

§ 11.2.3 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 Contractor nor accepted by Owner.

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

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations which Contractor might have under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of 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 Contractor's liability with respect to Contractor's obligations other than specifically to correct the Work.

§ 11.3 ACCEPTANCE OF NONCONFORMING WORK
§ 11.3.1 If Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, Owner may do so instead of requiring its removal and correction, in which case the Contract

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Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 12 INSURANCE AND BONDS
§ 12.1 CONTRACTOR'S LIABILITY INSURANCE
§ 12.1.1 Contractor shall purchase and maintain insurance as will protect Contractor from claims set forth below which may arise out of or result from Contractor's operations under the Contract and for which Contractor may be legally liable, whether such operations be by Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefit and other similar employee benefit acts which are applicable to the Work to be performed;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
4. claims for damages insured by usual personal injury liability coverage;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
6. claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance, or use of a motor vehicle;
7. claims for bodily injury or property damage arising out of completed operations; and
8. claims involving contractual liability insurance applicable to Contractor's obligations under Section 4.18.

The insurance must be purchased from a company lawfully authorized to do business in the jurisdiction in which the Project is located and be otherwise satisfactory to Owner.

§ 12.1.2 The insurance required by Section 12.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment.

§ 12.1.3 Certificates of insurance and policy endorsements acceptable to Owner shall be filed with Owner prior to commencement of the Work. These certificates and the insurance policies required by this Section 12.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least thirty (30) calendar days' prior written notice has been given to Owner. 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 10.3.4. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by Contractor with reasonable promptness in accordance with Contractor's information and belief.

§12.1.4 Owner shall require Contractor to include Owner, or other persons or entities as additional insured on Contractor’s Liability Insurance coverage under Section 12.1.

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§ 12.2 OWNER'S LIABILITY INSURANCE
§ 12.2.1 Owner may be responsible for purchasing and maintaining Owner's usual liability insurance.

§ 12.3 Reserved.

§ 12.4 PROPERTY INSURANCE
§ 12.4.1 Contractor shall purchase and maintain, in a company lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or until no person or entity other than Owner has an insurable interest in the property required by this Section 12.4 to be covered, whichever is later. This insurance shall include interests of Owner, Contractor, Subcontractors and Sub-subcontractors as co-insureds in the Project.

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

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

§ 12.4.1.3 Partial occupancy or use in accordance with Section 10.2 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise. Owner and 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.

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

§ 12.4.3 Contractor shall pay Subcontractors their just shares of insurance proceeds received by Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 12.4.4 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 (5) calendar days after occurrence of loss to Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Sections 15.12.

§ 12.5 PERFORMANCE BOND AND PAYMENT BOND
§ 12.5.1 [**OPTIONAL** Contractor will be required to obtain a Performance Bond and Payment Bond and

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obtain the same in accordance with the terms and conditions contained in Article 12.5 herein, during the term of this Contract] **OR** [Contractor will not be required to obtain a Performance Bond and Payment Bond. Owner reserves the right to require Contractor obtain the same in accordance with the terms and conditions contained in Article 12.5 herein, during the term of this Contract].

§ 12.5.2 Owner shall have the right to require Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract. In such event, the Performance Bond will be in accordance with the AIA 312 Form. The Payment Bond shall be unconditional.

§ 12.5.3 The bonds shall (1) name as additional obligees: Owner, any designee of Owner and affiliates or any construction lender(s) of Owner (2) be in a form and be issued by a licensed surety satisfactory to Owner, (3) be in an amount equal to 100% of their contract price as applicable and (4) be automatically increased in the amount of any additive Change Orders and Construction Change Directives issued by Owner to Contractor.

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

§13.1 CONTRACTOR INSURANCE

§ 13.1.1 Contractor shall maintain insurance for the coverage and amount indicated on the attached Exhibit J. To the extent that any provision of Exhibit J is not consistent with the provisions of Part II or the provisions of Exhibit J shall control.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 Contractor may terminate the Contract if the Work is stopped for a period of thirty (30) consecutive days through no act or fault of 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 Contractor, for any of the following reasons:

1. issuance of an order of a court or other authority having jurisdiction which requires all Work to be stopped;
2. because Engineer has not issued a Certificate for Payment and has not notified Contractor of the reason for withholding certification as provided in Section 8.3.1, or because Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
3. Owner has not notified Contractor of the reason for withholding payment.

§ 14.1.2 Contractor may terminate the Contract if, through no act or fault of 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 Contractor, repeated suspensions, delays or interruptions of the entire Work by Owner as described in Section 14.3 constitute in the aggregate more than one hundred (100%) percent of the total number of days scheduled for completion, or one-hundred twenty (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, Contractor may, upon seven (7) calendar days' written notice to Owner and Engineer, unless the reason is cured prior to the expiration of the notice period, terminate the Contract and recover from Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead, profit and damages.

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§ 14.1.4 If the Work is stopped for a period of sixty (60) consecutive days through no act or fault of Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with Contractor because Owner has persistently failed to fulfill Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, Contractor may, upon seven (7) additional days' written notice to Owner and Engineer, terminate the Contract and recover from Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 Owner may terminate the Contract if Contractor:

1. persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
2. fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between Contractor and the Subcontractors;
3. persistently disregards laws, ordinances, or rules, regulations or orders of the Tribe or other authority having jurisdiction; or
4. otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the above reasons exist, Owner may without prejudice to any other rights or remedies of Owner and after giving Contractor and Contractor's surety, if any, seven (7) calendar days' written notice, terminate employment of Contractor and may, subject to any prior rights of the surety:

1. take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by Contractor;
2. accept assignment of subcontracts pursuant to Section 5.3; and
3. finish the Work by whatever reasonable method Owner may deem expedient. Upon request of Contractor, Owner shall furnish to Contractor a detailed accounting of the costs incurred in finishing the Work.

§ 14.2.3 When Owner terminates the Contract for one of the reasons stated in Section 14.2.1, 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 Engineer's services and expenses made necessary thereby, and other damages incurred by Owner and not expressly waived, such excess shall be paid to Contractor. If such costs and damages exceed the unpaid balance, Contractor shall pay the difference to Owner. The amount to be paid to Contractor or Owner, as the case may be, shall be certified by Engineer, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

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

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

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

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

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

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

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

§ 14.4.3 If the performance of the Work is terminated, either in whole or in part, Owner shall be liable to Contractor for reasonable and proper costs resulting from such termination upon the receipt by Owner of a properly presented claim setting in detail: 1) the total cost of the Work performed to date of termination less the total amount of the contract payments made to Contractor; 2) the cost (including reasonable profit) of settling and paying claims under subcontracts and material orders for work performed and materials and supplies delivered to the site, payment for which has not been made by Owner to Contractor or by Contractor to the subcontractor or supplier; 3) the cost of preserving and protecting the Work already performed until Owner or assignee takes possession thereof or assumes responsibility therefore; 4) the actual or estimated cost of legal and accounting services reasonably necessary to prepare and present the termination claim to Owner; and 5) an amount constituting a reasonable profit on the value of the Work performed by Contractor.

ARTICLE 15 CLAIMS AND DISPUTES

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

§ 15.2 Time Limits on Claims. Claims by Contractor must be initiated within twenty-one (21) calendar days after occurrence of the event giving rise to such Claim or within twenty-one (21) calendar days after Contractor first recognizes the condition giving rise to the Claim, whichever is later. The failure of Contractor to comply with the notice requirements of this Section 15.2 shall be a waiver of the claim. Claims must be initiated by written notice to Engineer and Owner.

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

§ 15.4 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 twenty-one (21) calendar days after first observance of the conditions. Owner and Engineer will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in 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 by Change Order. If Owner determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, Owner shall so notify Engineer and Contractor in writing, stating the reasons. Claims

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by either party in opposition to such determination must be made within twenty-one (21) calendar days after Owner has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be subject to further proceedings pursuant to Section 15.12.

§ 15.5 Claims for Additional Cost. If 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. Said notice shall itemize all claims and shall contain sufficient detail and substantiating data to permit evaluation of same by Owner and Engineer to the extent then known by Contractor. No such claim shall be valid unless so made. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 17.4.

§ 15.6 If Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from Engineer, (2) an order by Owner to stop the Work where Contractor was not at fault, (3) a written order for a minor change in the Work issued by Owner, (4) failure of payment by Owner, (5) termination of the Contract by Owner, (6) Owner's suspension or (7) other reasonable grounds, Claim shall be filed in accordance with this Article 15.

§ 15.7 CLAIMS FOR ADDITIONAL TIME

§ 15.7.1 If Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work on the critical path. In the case of a continuing delay only one (1) Claim is necessary. Contractor shall submit a Time Impact Analysis, using P6, with any claim submission.

§ 15.7.2 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. Requests for extensions of construction time due to adverse weather conditions shall include U.S. Weather Bureau Climatological Reports for the months involved plus a report indicating the average precipitation, temperature, wind, etc. for the past ten (10) years from the nearest reporting station. The ten (10) year average will be the basis for determining the number of adverse weather days and the effect resulting therefrom on construction for days lost due to adverse weather in excess of the normally expected lost time; provided, however, if Owner reasonably determines that the seasonal average of adverse weather days during any particular month during construction is less than the monthly seasonal average that would be normally expected, no Change Order shall be issued and the request for extension of time shall be denied.

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

§ 15.9 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 Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 15.10 Claims for Consequential Damages. Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract which would not normally be reasonably

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anticipated from the terms of the Contract Documents. This mutual waiver includes:

1. damages incurred by Owner for financing, business, and reputation, and for loss of management or employee productivity or of the services of such persons; and
2. of personnel stationed there, for losses of financing, business, and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.10 shall be deemed to preclude an award of liquidated or direct damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 15.11 RESOLUTION OF CLAIMS AND DISPUTES

§ 15.11.1 Claims, including those alleging an error or omission by Engineer but excluding those arising under Sections 17.3.1 through 17.3.5, shall be referred initially to Owner with a copy to Engineer for evaluation. An initial evaluation by Engineer with consultation with Owner where applicable shall be required as a condition precedent to mediation or litigation of all Claims of Contractor arising prior to the date final payment is due, unless thirty (30) calendar days have passed after the Claim has been referred to Engineer and copied to Owner with no evaluation has been made by Engineer or decision having been rendered by Owner.

§ 15.11.2 Owner with consultation with Engineer will review Claims of Contractor and within ten (10) calendar days of the receipt of the Claim give an evaluation of the Claim that may involve one or more of the following actions: (1) request additional supporting data from Contractor or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise Contractor that there is not sufficient information to evaluate the merits of the Claim. Engineer's evaluation is advisory only and is not binding on Owner. Owner may take Engineer's evaluation and independently advise Contractor of its position on the Claim as provided in § 15.11.4.

§ 15.11.3 If Owner requests Contractor to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten (10) calendar days after receipt of such request, and shall either provide a response on the requested supporting data, advise Owner when the response or supporting data will be furnished or advise Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, Owner will either reject or approve the Claim in whole or in part.

§ 15.11.4 Owner will approve or reject Claims by written decision, and it shall notify the parties of any proposed change in the Contract Sum or Contract Time or both by Change Order.

§ 15.11.5 Upon receipt of a Claim against Contractor or at any time thereafter, Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, Owner may, but is not obligated to, notify the surety, and request the surety's assistance in resolving the controversy.

§ 15.11.6 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 resolution of the Claim by Owner, by mediation.

§ 15.12 MEDIATION

§ 15.12.1 Any controversy or claim arising out of or relating to this Contract, or the breach thereof may be subject to mediation which may be initiated by either party upon ten (10) days written notice to the other

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party. All mediation proceedings shall be held at the Administrative Offices of the Seminole Tribe of Florida within the confines of Broward County in the State of Florida. Selection of a mediator shall be subject to mutual agreement of the parties. In the alternative, the mediator shall be selected by a neutral third party. The parties and the mediator shall maintain strict confidentiality with respect to any mediation proceeding. Nothing that transpires during the mediation proceeding is intended in any way to affect the rights or prejudice the position of any of the parties to the dispute in any later litigation or proceeding. The mediator is authorized to end the mediation whenever further efforts at mediation would not contribute to a solution of the dispute between the parties. A written report of the mediation process will not be prepared by the mediator. There shall be no record, electronic or otherwise, of the mediation proceeding. Mediator's fee or time charge rate will be established at the time of selection or appointment. The expenses of witnesses for either side shall be paid by the party providing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the expenses of any witness, or the cost of any proofs or expert advice produced at the direct request of the mediator, shall be shared equally by the parties unless they agree otherwise. Neither party shall institute litigation while the mediation proceeding is pending; however, a party may withdraw at any time from the mediation proceeding. Any written settlement agreement of the parties that emerges from mediation shall be final and binding once fully executed, and the contents of which shall be maintained in strict confidentiality. The mediation proceeding shall be deemed terminated if, and when: (a) the parties have not executed a written settlement agreement within forty-five (45) days following conclusion of the mediation formal meeting (which deadline may be extended by mutual agreement), or (b) either party serves on the other party and on the mediator a written notice of withdrawal from the proceeding. The mediator shall apply all applicable laws in conducting the mediation proceedings, and in assessing the respective positions of each party to the mediation in an effort to bring about a voluntary resolution of the dispute. Nothing contained herein is intended to constitute consent on the part of Owner or Contractor to participate in any legal proceeding regarding any claim, controversy or dispute arising out of or relating to this Contract or to pay any alleged breach thereof and nothing contained herein shall be construed as consent on the part of either Owner or Contractor to submit to the jurisdiction of any tribunal for that purpose.

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§ 15.13 ATTORNEY'S FEES AND WAIVER

§ 15.13.1 The prevailing party in any litigation brought under this Contract shall be entitled to reimbursement from the other of all reasonable costs incurred in connection therewith, including attorneys' fees, all pre-trial, appellate, post-judgment, bankruptcy and other proceedings. The right to recover attorneys' fees shall also include any attorneys' fees incurred in establishing the amount of such fees.

§15.13.2 EACH OF THE UNDERSIGNED HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION BETWEEN OR AMONG THEM, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL CAUSE OR CAUSES OF ACTION, DEFENSES, COUNTERCLAIMS, CROSSCLAIMS, THIRD PARTY CLAIMS AND INTERVENOR'S CLAIMS, REGARDLESS OF THE CAUSE OR CAUSES OF ACTION, DEFENSES OR COUNTERCLAIMS ALLEGED OR THE RELIEF SOUGHT BY ANY PARTY, ALL TO THE EXTENT BASED ON OR ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT.

ARTICLE 16 REPAIR OF DEFECTIVE WORK AND WARRANTY OBLIGATIONS

§16.1. For inspection purposes, Contractor has two (2) calendar days, from date of written notice, to correct any items of its Work needed to pass inspection and meet Seminole Tribe of Florida quality control (QC) standards. If these items are not corrected, the penalty for not complying will result in an assessment of $150.00 per day or if not complied with within three (3) calendar days, could result in another contractor completing the Work and the original Contractor being back charged. Contractor shall clean up their own Work as directed by Owner and dispose of all debris.

§ 16.2. Contractor has seven (7) calendar days, from being contacted, for any and all Warranty Work to be completed; this Work will be scheduled by Owner or Owner's Representative within five (5) days' notice. If for any reason Contractor cancels the appointment made by Owner, or does not show to an appointment, without 24 hours' notice, another contractor will be scheduled, and the original Contractor will be back charged whatever the replacement contractor charges. It is a breach of this Contract if the warranty work order is not completed by the original Contractor. The cost incurred or back charged shall result in a credit to the Contract by Owner by unilateral Change Order. The amount so back charged shall either be deducted from the Final Payment, or if Final Payment has already been made, Contractor shall pay such amount within ten (10) calendar days of receipt of demand from Owner.

§ 16.3. Contractor represents that all materials, labor, and/or systems furnished by Contractor in connection with the construction of this project by Contractor shall be free of defect for a period of one (1) year for workmanship and two (2) years for systems. If a defect of material or workmanship occurs within this time period, Owner will notify Contractor of such defect and upon receipt of such notice, Contractor shall immediately at its expense act to satisfactorily repair and/or replace the defective material and/or workmanship and/or system.

ARTICLE 17 PROTECTION OF PERSONS AND PROPERTY
§ 17.1 SAFETY PRECAUTIONS AND PROGRAMS
§ 17.1.1 Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 17.2 SAFETY OF PERSONS AND PROPERTY
§ 17.2.1 Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to:

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

§ 17.2.2 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.

§ 17.2.3 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.

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

§ 17.2.5 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 and 17.2.1.3 caused in whole or in part by Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or

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indirectly employed by any of them, or by anyone for whose acts they may be liable and for which Contractor is responsible under Sections 17.2.1.2 and 17.2.1.3, except damage or loss attributable to acts or omissions of Owner or Engineer 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 Contractor. The foregoing obligations of Contractor are in addition to Contractor's obligations under Section 4.18.

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

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

§ 17.3 HAZARDOUS MATERIALS

§ 17.3.1 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 Contractor, Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to Owner and Engineer in writing.

§ 17.3.2 Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by 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, Owner shall furnish in writing to Contractor and Engineer 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. Contractor and Engineer will promptly reply to Owner in writing stating whether or not there is reasonable objection to the persons or entities proposed by Owner. If Contractor or Engineer has an objection to a person or entity proposed by Owner, Owner shall propose another to whom Contractor and Engineer have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of Owner and Contractor. The Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Article 9.

§ 17.3.3 To the fullest extent permitted by law, Owner shall indemnify and hold harmless Contractor, Subcontractors, Engineer, Engineer's subconsultants 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 in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 17.3.1 and has not been rendered harmless, provided that such claim, 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.

§ 17.3.4 Owner shall not be responsible under Section 17.3 for materials and substances brought to the site by Contractor unless such materials or substances were required by the Contract Documents.

§ 17.3.5 If, without negligence on the part of Contractor, 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, Owner shall indemnify Contractor for all cost and expense thereby incurred.

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§ 17.4 EMERGENCIES

§ 17.4.1 In an emergency affecting safety of persons or property, Contractor shall act, at Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by Contractor on account of an emergency shall be determined as provided in Articles 9 and 15.

ARTICLE 18 MISCELLANEOUS PROVISIONS

§ 18.1 GOVERNING LAW

§ 18.1.1 The Contract shall be governed by the applicable law of United States of America, the Seminole Tribe of Florida, the State of Florida, or other applicable authority, applied in that order

§ 18.2 SUCCESSORS AND ASSIGNS

§ 18.2.1 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 18.2.2, 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.

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

§ 18.3 WRITTEN NOTICE

§ 18.3.1 All notices or other communications provided for by this Contract shall be in writing and sent to the individuals identified in Section A of Part 1 of this Contract. Notice shall be deemed properly sent if by: (a) personal delivery; (b) a nationally recognized overnight courier, such as FedEx; or (c), mailing by certified mail, return receipt requested, postage prepaid. Notice shall be deemed given when: (i) personally delivered; (ii) the next business day after delivery of the notice to the nationally recognized overnight courier; or (iii) three (3) business days after being sent by certified mail, return receipt requested, postage prepaid. A change in the identity of the person to receive notice or the notice address may be made by a party be providing notice of the same to the other in accordance with the terms of this Section.

§ 18.4 RIGHTS AND REMEDIES

§ 18.4.1 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.

§ 18.4.2 No action or failure to act by Owner, Engineer 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.

§ 18.5 TESTS AND INSPECTIONS

§ 18.5.1 Tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, ordinances, rules, regulations, or orders of Owner, Tribal, or other authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to Owner, and shall bear all related costs of tests, inspections, and approvals. Contractor shall give Owner and Engineer timely notice of when and where tests and inspections are to be made so that Owner and Engineer

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may be present for such procedures. Owner shall bear costs of tests, inspections or approvals which do not become requirements until after negotiations are concluded.

§ 18.5.2 If Engineer, Owner or authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 18.5.1, Owner or Engineer will instruct Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to Owner, and Contractor shall give timely of when and where tests and inspections are to be made so that Owner or Engineer may be present for such procedures. Such costs, except as provided in Section 18.5.3, shall be at Owner's expense.

§ 18.5.3 If such procedures for testing, inspection, or approval under Sections 18.5.1 and 18.5.2 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 Owner's and Engineer's services and expenses shall be at Contractor's expense.

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

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

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

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§ 18.6 COMMENCEMENT OF STATUTORY LIMITATION PERIOD

§ 18.6.1 As between Owner and Contractor:

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;
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
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 Contractor pursuant to any Warranty provided under Section 4.5, the date of any correction of the Work or failure to correct the Work by Contractor under Section 11.2, or the date of actual commission of any other act or failure to perform any duty or obligation by Contractor or Owner, whichever occurs last.

§ 18.7 EXECUTION IN COUNTERPART

§ 18.7.1 This Contract and any Change Orders may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. Signatures transmitted by facsimile or electronic means, shall be deemed the same as an original.

§ 18.8 SEVERABILITY

§ 18.8.1 If performance of any provision hereof or any transaction related hereto is limited by law, then the obligation to be performed shall be reduced accordingly to its maximum lawful scope; and if any clause or provision herein contained operates or would prospectively operate to invalidate this Contract in part, then the invalid part of said clause or provision only shall be held for naught, as though not contained herein, and the remainder of this Contract shall remain operative and in full force and effect.

§ 18.9 INTERPRETATION

§ 18.9.1 Terms capitalized in this Contract include those which are (1) specifically define, (2) the title of numbered articles, or (3) the titles of other documents.

§ 18.9.2 In the interest of brevity, this Contract frequently omits modifying words such as "all" and "any", and articles such as "the" and "an"; the absence of such is not intended to affect the interpretation of any provision hereof.

§ 18.9.3 Unless the context otherwise requires, the definitions set forth in Article 1 § 1.1 shall apply equally to the singular and plural, as well as the active form of any particular term.

§ 18.9.4 Heading, tables, and the like are included and intended solely for purposes of convenience and reference only, and shall not be deemed to explain, modify, limit, amplify, or aid in the meaning, construction, or interpretation of any provision of this Contract.

§18.10 ACTS OF GOD AND FORCE MAJEURE

§18.10.1 Unless otherwise stated herein, time is of the essence for the performance of all obligations under the terms and conditions of this Contract; provided, however, that neither Owner nor Contractor shall be liable for failure to perform their respective obligations if such failure is as a result of Acts of God (including fire, flood, earthquake, storm, hurricane or other natural disaster), or a Force Majeure such as war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, nationalization, government sanction, blockage, embargo, labor dispute, strike, lockout or interruption or failure of electricity or telephone service. Neither an Act of God nor a Force Majeure shall, itself, shall be grounds to terminate this Contract.

§18.10.2 If Owner or Contractor asserts Force Majeure as an excuse for failure to perform any of their respective obligations under this Contract, the nonperforming party must prove, in the absence of a written stipulation between the parties, that the nonperforming party took reasonable steps to minimize delay and to mitigate damages caused by foreseeable events, and that the nonperforming party substantially fulfilled all non-excused obligations, and that the other party was timely notified of the likelihood or actual occurrence of an event described herein as a Force Majeure.

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